Levelling Up and Regeneration Bill

Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Levelling Up and Regeneration Bill ("the Bill"). It has been drafted taking into account the conclusions and recommendations set out in the DPRRC's report on The Legislative Process: The Delegation of Powers, and subsequent correspondence between the Leader of the House of Commons and the Chairs of the House of Lords Committees principally concerned with the scrutiny of legislation.

The Bill was introduced to the House of Commons on 11 May 2022. It will be introduced to the House of Lords on 19 December 2022. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. SUMMARY OF THE BILL

The Levelling Up and Regeneration Bill supports the Government's manifesto commitment to Level Up the United Kingdom. The Government's objective is to reverse geographical disparities between different parts of the United Kingdom by spreading opportunity more equally.

The Bill therefore makes provisions on a wide range of policies and a number of changes to existing legislation. The Bill contains 13 parts and 18 schedules:

- Part 1 establishes the concept of Levelling-Up missions and the framework in which they lie.

- Part 2 deals with Local Democracy and Devolution in the form of Combined County Authorities and sets out provisions to further empower local leaders.

- Part 3 makes changes to planning in relation to data, development plans, heritage, decision-making and enforcement.

- Part 4 details the non-negotiable Infrastructure Levy which enables Local Authorities to raise money from developments to regenerate their areas through infrastructure.

- Part 5 establishes Community Land Auction pilots.

- Part 6 replaces the EU environmental assessment system with a new environmental assessment framework.

- Part 7 makes provision for nutrient pollution standards.

- Part 8 deals with Development Corporations ensuring they have the powers and functions to deliver strategic development across England.

- Part 9 amends the power of local authorities to make compulsory purchases of land, to clarify that it applies, in England, to acquisitions for regeneration purposes. It also amends the legislation setting out the process for making minor amendments relating to compensation for compulsory purchase.

- Part 10 contains provisions that deal with vacant commercial properties in town centres and high streets

- Part 11 is concerned with information about dealings and interests in land and the making of this data public.

- Part 12 details other provisions including pavement licensing, historic environment records and a review of governance of the Royal Institute of Chartered Surveyors.

- Part 13 contains the technical clauses related to the Bill, including Data protection, Crown application and power to make consequential provision.

C. DELEGATED POWERS

On introduction, the Bill will contain a number of substantive clauses creating new, or amending existing, delegated powers including:

a. powers to make provision in connection with local government reforms
b. powers to make provision in connection with key route networks
c. powers to make provision in relation to local government capital finance
d. powers to make provision in connection with council tax empty and second home premiums
e. powers to make provision in connection with street names
f. powers to make provision in connection with national development management policies, local plans, neighbourhood planning and spatial development strategies
g. powers to make provision in connection with planning data
h. powers to make provision in connection with enforcement action in the context of listed buildings
i. powers to make provision in connection with the new route for obtaining planning permission where it is supported by a positive street vote
j. powers to make provision in connection with the new route for applying and granting planning permission for urgent and non-urgent Crown land development
k. power to make provision in connection with a new post permission route
l. powers to make provision in connection with the manner and form for planning applications and related documents
m. powers to make provision in connection with completion notices
n. powers to make provision in connection with commencement notices
o. powers to make provision in connection with the register of planning enforcement and related matters

p. powers to make provision in connection with infrastructure levy
q. powers to make provision in connection with community land auctions
r. powers to make provision in connection with requirements for environmental outcomes reports
s. powers to make provision in connection with nutrient pollution standards
t. powers to make provision in connection with development corporations
u. powers to make provision in connection with compulsory purchase process
v. powers to make provision in connection with the letting by local authorities of vacant high-street properties
w. powers to make provision in connection with pavement licences
x. powers to make provision in connection with the provision and publication of information about contracts relating to land
y. powers to make provision in connection with the duty to maintain an Historic Environment Record
z. powers to make provision for consequential provision, commencement and transitional provision

This includes a number of Henry VIII powers in respect of: exercise of mayor's functions (clauses 36-38) and alternative mayor's titles (clauses 72-73) and further provision (schedule 2, paragraph 11); street vote development orders (clause 99, which inserts sections 61QC(3), 61QH(2) and 61QI(5) into the Town and Country Planning Act 1990; power to make pre-consolidation amendments to planning, development and compulsory purchase legislation (clause 123); the infrastructure levy (Schedule 11, inserting new sections 204N(4) and 204Z(1)(g) into the Planning Act 2008); community land auctions and the non-exhaustive list of matters which are within the definition of "infrastructure" (clause 129(6)); provision for interaction between environmental outcome report regulations with existing legislation and consequential etc provision relating to such environment outcome report regulations (clauses 138 and 140); provisions relating to the nutrient pollution standards to apply to certain sewage disposal works (clause 153 inserting sections 96I(1) and (4), and 96K into the Water Industry Act 1991); provision relating to 'the vacancy condition' and grounds of appeal for letting of vacant high street properties (clauses 178 and 186); enforcement of requirements in the context of disclosure of information about interests in land (clause 208); provision relating to fees for pavement licence applications (schedule 18, paragraph 3(3)); and relating to consequential provision (clause 218). Further details are provided in the relevant sections below, but in all cases the power and associated procedure is considered necessary and appropriate.

Upon introduction to the House of Commons, the Bill contained two placeholder clauses which were, by default, drafted as Regulation-making powers. The Department undertook to provide a supplementary Delegated Powers Memorandum to reflect the detail of the substantive clause. The placeholder clauses were at clause 96 regarding Street Votes, and clause 187 regarding Vagrancy of the Bill as then published. This Delegated Powers Memorandum has been updated at the appropriate places to include details of the powers that are contained in the substantive drafting of the Street Votes provisions. The text relating to the Vagrancy placeholder has been deleted because this measure has been removed from the Bill.

D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

PART 2 – Local Democracy and Devolution

Clause 7(1) power for the Secretary of State to make regulations to establish as a body corporate a combined county authority for an area

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

1. Clause 7(1) enables the Secretary of State to establish a new local government institution, a combined county authority (CCA) in an area, to which local authority and public authority powers can be conferred. This new model would allow two or more upper tier local authorities (including at least one county council in areas where there are also district councils, and unitary councils) to form a CCA. The CCA model parallels the combined authority model in Part 6 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act").

Justification for delegation

2. This power is required to allow CCAs to be established in circumstances appropriate to the local authorities seeking to establish CCAs. Secondary legislation under clauses 16 and 17 will support the commitment that new CCAs can be established where the "triple lock" is place – that is consent from the upper tier local authorities, agreement from Government and approval from Parliament. All delegated powers for CCAs mirror similar delegated powers for combined authorities. This reflects the existing legislation relating to combined authorities in Part 6 of the 2009 Act.

Justification for procedure selected

3. The affirmative procedure is consistent with the procedure for combined authorities at section 103 of the 2009 Act, which enables the Secretary of State by order to establish a combined authority. We consider that it affords an appropriate level of Parliamentary scrutiny for the establishment of a new local government body with additional functions.

Clause 8(1) power for the Secretary of State to make provision for the constitutional arrangements of a CCA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

4. Clause 8(1) enables the Secretary of State to make provision for the constitution of a CCA, with the consent of its constituent councils

Justification for delegation

5. This power is required to allow the making of constitutional provisions tailored to reflect the local needs of a CCA, which would vary depending on their individual composition (for example, the number of members, their remuneration and the voting powers of members of the CCA), and the functions that the CCA have agreed with central government to be conferred on them.

Justification for procedure selected

6. The affirmative procedure is consistent with the procedure for combined authorities at section 104 of the 2009 Act, which enables the Secretary of State by order to establish a combined authority. We consider that it affords an appropriate level of Parliamentary scrutiny for the provision of constitutional arrangements.

Clause 11(1) power for the Secretary of State to make further provision by regulations about non-constituent members and associate members of a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

7. Clause 11(1) enables the Secretary of State to make further provision about the process for members of a CCA, including constituent council members, the mayor of a CCA, the designation of an appointing body for non-constituent and associate members or the removal of such a designation, the number of appointing bodies that may be designated by a CCA, the number of non-constituent members and associate members that may be appointed by an appointing body of a CCA, the appointment, disqualification, resignation or removal of a non-constituent member or an associate member, the maximum number of non-constituent members or associate members of a CCA, the things which may or may not be done by, or in relation to, a non-constituent member or an associate member, and the making by the appointing body of a CCA of payments towards the costs of the authority.

Justification for delegation

8. This power is required to allow provision to be made about the operational arrangements of such appointments in combined authorities and for those arrangements to be varied in the light of changing or different circumstances (e.g. reflecting the functions of the CCA). Such provision may include, for

example, which meetings of the cabinet or committees non-constituent and associate members could attend, and what (if any) matters they may vote upon.

9. Given the key role of associate and non-constituent members in allowing individuals with relevant expertise and neighbouring areas to participate in combined authorities, it is considered right that whilst there should be flexibility in their operational arrangements, these arrangements at any time may need to contain certain mandatory requirements, which would be implemented through a power to make further provision by regulations.

Justification for procedure selected

10. We consider that the affirmative procedure is appropriate for these regulations. We consider that the affirmative procedure will provide the appropriate level of Parliamentary scrutiny, given that the appointment of constituent council members is through secondary legislation that is subject to affirmative resolution procedure.

Clause 14(1) power for the Secretary of State to make further provision by regulations for the funding of a CCA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

11. Clause 14(1) enables the Secretary of State to make further provision to set out how CCAs will be funded by its constituent authorities. This includes provision for the costs of a CCA to be met by its constituent councils, and about the basis on which the amount payable by each constituent council is to be determined.

Justification for delegation

12. This power is required to allow provision to be made about the mechanism by which CCAs are funded. CCAs are a new local government institution which will be available to areas for the exercise of combined and/or devolved powers. The Secretary of State will need to be able to establish individual CCAs, each of which will need to be provided with suitable locally/situationally tailored funding arrangements to meet the needs identified by and consented to by the appropriate authorities.

Justification for procedure selected

13. We consider that the affirmative procedure will provide the appropriate level of Parliamentary scrutiny, given that the provision for constitutional arrangements of a CCA is proposed to be through secondary legislation that is subject to affirmative resolution procedure.

Clause 16(1) power for the Secretary of State to make regulations to provide for a function of a county council or a district council to be exercisable by the CCA in relation to the CCA's area.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

14. Clause 16(1) provides that the Secretary of State may by regulations confer on a CCA in relation to its area any function which is exercisable by a county council or a district council that is exercisable in relation to an area all or part of which is within a CCA's area. The regulations may provide for a function of a county council or a unitary district council to be exercisable by the CCA instead of by that county council or district council. The regulations may also provide for a function of a county council or any district council to be exercisable by the CCA concurrently or jointly with the county council or district council, and for the function to be exercisable by the CCA jointly with the county council or district council but also continue to be exercisable by that council alone.

Justification for delegation

15. This power is necessary to ensure that the functions which the Government and the authorities for a proposed CCA have agreed should be devolved can be conferred on the CCA. The functions to be conferred on a CCA will be agreed between Government and authorities as part of a "devolution deal" – these are expected to be locally led and bespoke to an area, to provide the powers needed by the area to support "levelling up" – in line with the local leadership mission of the Levelling Up White Paper. Functions of a district council in a two-tier area cannot be exercisable by the combined authority instead of by the district council.

Justification for procedure selected

16. The affirmative resolution procedure is consistent with the procedure at section 105A of the 2009 Act, which enables the Secretary of State by order to confer any function of a public authority to be exercised by a combined authority within the area of that combined authority. We consider that it affords an appropriate level of Parliamentary scrutiny for the conferring of additional functions while enabling bespoke arrangements in different areas, consistent with their devolution deal.

Clause 17(1) power for the Secretary of State to make regulations to provide for a function of a public authority to be exercisable by the CCA in relation to the CCA's area.

Powers conferred on: *Secretary of State.*

Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

17. Clause 17(1) provides that the Secretary of State may by regulations confer on a CCA in relation to its area any power or function which is exercisable by local public bodies or a Minister in relation to an area all or part of which is within a CCA's area. The regulations may provide for the function to be exercisable by the CCA instead of the public body, or for the function to be exercisable by the CCA concurrently with the public authority or jointly with the public authority. Clause 18 makes further provision for the making of regulations under clause 17.

Justification for delegation

18. This power is necessary to ensure that the functions which the Government and the authorities for a proposed CCA have agreed should be devolved can be conferred on the CCA. Powers to be conferred on a CCA will be agreed between Government and authorities as part of a "devolution deal" – these are expected to be locally led and bespoke to an area, to provide the powers needed by the area to support "levelling up" – in line with the local leadership mission of the Levelling Up White Paper.

Justification for procedure selected

19. The affirmative resolution procedure is consistent with the procedure at section 105A of the 2009 Act, which enables the Secretary of State by order to confer any function of a public authority to be exercised by a combined authority. We consider that it affords an appropriate level of Parliamentary scrutiny for the conferring of additional functions while enabling bespoke arrangements in different areas, consistent with their devolution deal.

Clause 19(1) power for the Secretary of State to make regulations to transfer functions of an Integrated Transport Authority or by a Passenger Transport Executive to a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

20. Clause 19(1) provides that the Secretary of State may by regulations confer on a CCA in relation to its area any power or function which is exercisable by an Integrated Transport Authority (ITA) or by a Passenger Transport Executive (PTE).

Justification for delegation

21. This power is necessary to ensure that the powers which the Government and the authorities for a proposed CCA have agreed should be devolved can be conferred on the CCA. This provision is equivalent to the provision available to combined authorities in section 104 of the 2009 Act.

Justification for procedure selected

22. The affirmative resolution procedure is consistent with the equivalent order-making power for combined authorities in section 104 of the 2009 Act.

Clause 20(1) power for the Secretary of State to make regulations to confer on a CCA a power to give a direction about the exercise of an eligible power as a highways authority or as a traffic authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

23. Clause 20(1) provides that the Secretary of State may by regulations confer on a CCA a power to give a direction about the exercise of an eligible power as highway authority under section 1 of the Highways Act 1980, or as a traffic authority under section 121A of the Road Traffic Regulation Act 1984.

Justification for delegation

24. This power is necessary to ensure that functions of a local transport authority can be conferred on the CCA, where the Government and the authorities for a proposed CCA have agreed that these functions should be devolved. This power mirrors the existing power under section 88 of the Transport Act 2008 for combined authorities designated as a local transport authority. Providing CCAs with the power to direct via primary legislation would not be practical as it would not reflect the differing local needs and the different devolution deal agreements on different functions reached with each area.

Justification for procedure selected

25. We consider that affirmative resolution procedure affords an appropriate level of Parliamentary scrutiny for the conferring of these local transport authority functions, which is consistent with the equivalent procedure for conferring these functions on a combined authority at section 104 of the 2009 Act.

Clause 22 – powers for combined county authorities and the Secretary of State to designate highways as key route network roads with alternative consent

requirements for orders made under both clause 20(1) and 28(1), in so far as the order relates to such roads.

Powers conferred on: Combined county authorities and the Secretary of State
Powers exercised by: Written designation
Parliamentary Procedure: No parliamentary procedure

Context and Purpose

26. This clause changes the consent requirements for provisions made by regulations under clause 20(1) (directions relating to highways and traffic functions) and 28(1) (functions of mayors: general) in so far as the provision confers on a mayoral combined county authority (MCCA) a power, to be exercised by the mayor, to give a direction in relation to highways and traffic functions in respect of key route network (KRN) roads.

27. Clause 20(11) requires the unanimous consent of the constituent councils and of the combined county authority to regulations under clause 20(1) to confer on a combined county authority a power to give a direction about the exercise of an eligible power as highway authority under section 1 of the Highways Act 1980, or as a traffic authority under section 121A of the Road Traffic Regulation Act 1984. Clause 28(11) requires the consent of the appropriate authorities to regulations under clause 28(1) to make provision for any function of a MCCA to be a function exercisable only by the mayor.

28. Subclause 22(7) enables regulations made under clause 20(1) and 28(1) to confer a power of direction to be exercisable by the mayor in relation to KRN roads, with the consent of the mayor alone. Before consenting to such regulations, the mayor must first consult the constituent councils within the MCCA's area and, if they do not all agree to the making of the regulations, set out the reasons why the mayor considers that the regulations should nevertheless be made.

29. Subclause 22(1) gives a power to combined county authorities to designate highways within their area as KRN roads, with the consent of each council within whose area the highway is and, in the case of a MCCA, the mayor. Subclause 22(2) gives a separate power to the Secretary of State to designate highways as KRN roads upon receipt of an application from either the combined county authority, mayor or a council within whose area the highway is.

Justification for delegation

30. This clause changes the consent requirements for making regulations conferring a power of direction on a mayoral combined county authority that is to be exercised by the mayor, requiring the consent of the mayor rather than the combined county authority and constituent councils. However, a power of direction granted in this way is to be limited to KRN roads within the mayoral combined county authority's area. The Government wishes the decision about the roads to which this applies to remain primarily a local decision, and

therefore believes the ability to designate roads as KRN roads should be delegated to combined county authorities, acting with the consent of the councils within whose area the roads are and, in the case of a MCCA, the mayor. This approach allows for flexibility and ensures that the combined county authority and mayor are able to adapt to the needs of the area and provide the appropriate governance over the road network.

31. This clause also allows the Secretary of State to designate or remove a road as a KRN road. It is expected that this would only be done where agreement has not been reached locally between the combined authority, mayor and relevant councils. As such, the Secretary of State's power to designate a KRN road is limited to when a combined county authority, mayor or local council requests this, to ensure that designation remains locally driven.

Justification for procedure selected

32. Regulations to confer a power of direction on an MCCA to be exercised by the mayor will remain subject to the affirmative procedure. Therefore, the granting of the power of direction will be subject to parliamentary oversight. However, each authority's governance arrangements will be unique to that authority and it is important that they have flexibility to determine locally the roads within their area that the power of direction applies to, in order to adapt as the road network and needs of the area change over time.

33. The ability to designate a KRN road has the safeguard that a combined county authority will only be able to make a designation with the consent of the council within whose area the road is and, in the case of a MCCA, the mayor. Similarly, as the designation of KRN roads is intended to primarily be a local decision, the Secretary of State would only be able to make a designation upon request from either the combined county authority, the mayor or the relevant council.

34. For these reasons, the Government considers that it is appropriate to have no Parliamentary procedure in respect of the designation of a road as a KRN road.

Clause 23(1) power for Secretary of State to make regulations to add or remove a local government area to the area of a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

35. Clause 23(1) provides that the Secretary of State may by regulations change the boundaries of a CCA's area by adding a relevant local government area to an existing area of a CCA, or removing a relevant local government area to an existing area of a CCA.

Justification for delegation

36. This power is necessary to ensure flexibility to amend the boundaries of a CCA in response to a proposal by the constituent councils of the CCA, by adding or removing local government areas; for example, to expand an existing CCA to include a neighbouring upper tier local authority.

Justification for procedure selected

37. The affirmative resolution procedure is consistent with the procedure for combined authorities at section 106 of the 2009 Act, which enables the Secretary of State by order to add or remove areas from a combined authority, with appropriate consents.

Clause 24(1) power for Secretary of State to make regulations to dissolve a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

38. Clause 24(1) provides that the Secretary of State may by regulations abolish a CCA and dissolve its area.

Justification for delegation

39. This power is necessary to ensure flexibility to abolish a CCA and dissolve its area if there is no longer the need for a CCA in the area; for example, in the event a CCA is no longer considered the appropriate vehicle for the exercise of devolved and/or combined LA powers in the particular geography by a majority of its constituent members, the government, and parliament. It may be that the CCA is to be replaced by another vehicle differing in type or geography (in the event the previous clause is not appropriate) or is to cease to exist altogether.

Justification for procedure selected

40. The affirmative resolution procedure is consistent with the procedure for combined authorities at section 107 of the 2009 Act, which enables the Secretary of State by order to dissolve a combined authority.

Clause 25(1) power for Secretary of State to provide for an elected mayor of a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

41. Clause 25(1) gives the Secretary of State the power to by regulations provide for there to be a mayor for the area of a CCA, with further requirements at clause 26 for the making of these regulations through either a proposal for a new combined authority or in relation to an existing combined authority, or by the consent of the constituent councils. The power in clause 25(1) is necessary to provide for certain CCAs to have an elected mayor.

Justification for delegation

42. This power is necessary to ensure flexibility in the regime and so that each CCA is able to adapt and provide the appropriate governance for the powers conferred on it and the needs of the area. Where major powers are devolved and conferred on a CCA in line with the devolution framework in the Levelling Up White Paper, there needs to be a clear point of accountability for the exercise of those powers. The Government believes that this point of accountability for the highest level of devolution for CCAs, as for combined authorities and local authorities, may best be provided by a directly elected mayor, an internationally proven form of governance, dependent on the individual circumstances of the CCA. This regulation-making approach allows for flexibility, enabling the adoption of the CCA model which the councils concerned and the Secretary of State agree is most suited for the circumstances of that authority and area. Some non-mayoral CCAs may wish to move to a mayoral model over time to access greater powers.

Justification for procedure selected

43. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to determine the governance arrangements of a CCA. This choice of Parliamentary procedure is consistent with the equivalent order-making power for combined authorities under section 107A of the 2009 Act.

Clause 28(1) power for Secretary of State to make provision by regulations for functions of a mayoral combined county authority to be exercisable by the mayor on behalf of the authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

44. A mayoral CCA comprises the mayor and other members of the authority. Certain functions ("general functions") of the authority are to be exercisable only by the mayor or delegated by the mayor to be exercised by the deputy mayor or another member or officer of the CCA. All other functions of the CCA are to be exercised by the authority's members collectively (as provided for in the

regulations establishing the CCA), which may involve their deciding to delegate the function to a committee, or officers, of the authority. Clause 28(1) allows the Secretary of State to specify by regulations which functions are to be general functions which are exercisable by the mayor. The regulations may also limit the general functions that a mayor may delegate.

Justification for delegation

45. The functions to be conferred on a CCA and which of those functions are to be general functions and exercisable with the high degree of accountability that a mayor brings, are matters that it is expected the Secretary of State will agree in the context of agreeing a bespoke Devolution Deal with the authorities of a proposed CCA or with an existing CCA.

46. This regulation-making power is required to enable Devolution Deals to be agreed with the authorities of a proposed CCA or with an existing CCA which are able to reflect the particular needs and priorities of the area of the CCA. It enables powers that are considered to require the accountability that a mayor can bring to be devolved with confidence, since they will be required to be the responsibility of the mayor. Moreover, the regulations may provide that the mayor cannot in a particular case delegate that responsibility.

Justification for procedure selected

47. We consider that the affirmative resolution procedure provides an appropriate level of Parliamentary scrutiny of the allocation of functions and delegation arrangements in a specific mayoral CCA. This choice of Parliamentary procedure is consistent with the equivalent procedure for mayoral combined authorities in respect of the Secretary of State's powers under section 107D of the 2009 Act.

Clause 29(1) power for Secretary of State to make provision by regulations for, or in connection with, permitting arrangements under section 101(5) of the Local Government Act 1972 to be entered into in relation to general functions of a mayor for the area of a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

48. Section 101 of the Local Government Act 1972 allows for local authorities to arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority; or by any other local authority. The definition of a "local authority" at section 101(13) of that Act for the purposes of this provision includes county councils and combined authorities, and will be amended by paragraph 3 of Schedule 4 to the Bill to include CCAs.

Justification for delegation

49. This provision allows for the mayor of a CCA to make equivalent arrangements for the discharge of functions to ensure a mayor can arrange the conduct of business of those matters for which the mayor is responsible. It enables the mayor to put in place the necessary practical arrangements, reflecting the day to day circumstances of the authority, for the discharge of the functions for whose exercise they are responsible, and for which they remain responsible irrespective of the arrangements they have set up.

Justification for procedure selected

50. We consider that the affirmative resolution procedure provides an appropriate level of Parliamentary scrutiny of the appropriate arrangements for a mayor to discharge their functions.

Clause 31(1) power for Secretary of State to make regulations for a mayor of a CCA to exercise police and crime commissioner functions in place of a police and crime commissioner

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

51. Clause 31(1) allows for the Secretary of State to make regulations to transfer statutory functions conferred on a police and crime commissioner (PCC) to the mayor for the area of a CCA. Such regulations can only be made with the consent of the mayor.

Justification for delegation

52. This power is considered necessary to allow for the appropriate exercise of police and crime commissioner functions by a CCA which has been conferred these functions, by making provision to allow for the mayor to act as the PCC. This mirrors equivalent provision for combined authorities in section 107F of the 2009 Act.

53. The associated powers to cancel PCC elections and extend the tenure of the current PCC are necessary to ensure that where, for example, a PCC ordinary election is due to take place between the making of an order to transfer PCC powers to a mayor and the date that the mayor takes office, that election can be cancelled to avoid electing a new PCC for a short period with the associated cost implications.

Justification for procedure selected

54. The affirmative resolution procedure is consistent with the equivalent arrangements for mayoral combined authorities in section 107F of the 2009 Act and we consider that this provides an appropriate level of Parliamentary scrutiny.

Clause 32(2) power for Secretary of State to make regulations for a mayor of a CCA with PCC functions to exercise fire and rescue functions

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

55. Clause 32(2) allows for the Secretary of State to make regulations to enable the mayor of a CCA to delegate fire and rescue functions to the chief constable of the police force for their area and for the chief constable to further delegate these functions to both police and fire and rescue personnel (the single employer model). This mirrors equivalent provision for combined authorities in section 107EA of the 2009 Act.

56. Clauses 33 to 35 impose further requirements on the making of regulations under clause 32. This mirrors equivalent provision for combined authorities in section 107EB, 107EC and 107ED of the 2009 Act.

57. Clause 33 requires a CCA mayor to make a request to the Secretary of State to make regulations under clause 32, and for that request to set out why it would be in the interests of either economy, efficiency and effectiveness, or public safety, for regulations establishing the single employer model to be made. The mayor is also required to submit a description of any local public consultation and a summary of any responses to such a consultation, and a summary of representations made by constituent members of the CCA when making their request.

58. Clause 34 enables the Secretary of State to make a transfer scheme which transfers property, rights and liabilities from a fire and rescue authority (if the mayor is moving straight to the single employer model upon taking fire and rescue functions) or from the CCA (if the single employer model is implemented subsequently) to the chief constable for the corresponding police area if regulations have been made under clause 32 delegating fire and rescue functions to that chief constable.

59. Clause 35 applies where fire and rescue functions have been delegated to the chief constable by the mayor of a CCA under the single employer model, and requires the chief constable to whom fire and rescue functions have been delegated to ensure that they, and those to whom they have delegated fire and rescue functions, secure good value for money in the exercise of their functions. Clause 35 further requires the mayor of a CCA to ensure that the fire and rescue functions that are delegated to the chief constable are exercised efficiently and

effectively whether exercised by the chief constable, members of their police force, civilian police staff or fire staff, and for the mayor to hold the chief constable to account for the exercise of their functions.

Justification for delegation

60. This power is considered necessary to the mayor of a CCA to ensure that the fire and rescue functions that are delegated to the chief constable are exercised efficiently and effectively whether exercised by the chief constable, members of their police force, civilian police staff or fire staff.

Justification for procedure selected

61. The affirmative resolution procedure is consistent with the equivalent arrangements for mayoral combined authorities in section 107EA of the 2009 Act and we consider that this provides an appropriate level of Parliamentary scrutiny.

Clause 36(1) power for Secretary of State to make regulations applying Part 2 of the Police Reform Act 2002 in relation to a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

62. Clause 36(1) allows for the Secretary of State to amend Part 2 of the Police Reform Act 2002 (persons serving with the police: complaints and conduct matters etc) in consequence of that provision. Before exercising these powers, the Secretary of State must consult the Police Advisory Board, the Independent Office for Police Conduct, persons considered by the Secretary of State to represent the views of police and crime commissioners and fire and rescue authorities, and other persons considered appropriate.

Justification for delegation

63. This power is considered necessary to ensure the appropriate accountability of a mayor of a CCA where they have police and crime and fire and rescue functions. It reflects the day to day circumstances of the CCA.

64. We consider that a regulation-making power is appropriate as it mirrors equivalent provision for combined authorities in section 107EE of the 2009 Act.

Justification for procedure selected

65. The affirmative resolution procedure is consistent with the equivalent arrangements for mayoral combined authorities and we consider that this provides an appropriate level of Parliamentary scrutiny.

Clause 37(1) power for Secretary of State to make regulations applying fire and rescue enactments in relation to a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

66. Clause 37(1) allows for the Secretary of State to apply fire and rescue enactments (with or without modifications) or to make new provisions that are corresponding or similar to existing such legislation, in relation to chief constables to whom fire and rescue functions have been delegated and their staff.

Justification for delegation

67. This power is considered necessary as it allows for further provisions applying first and rescue enactments when new legislation comes into place that may affect the running of a single employer model locally by a CCA.

68. We consider that a regulation-making power is appropriate as it mirrors equivalent provision for combined authorities in section 107EF of the 2009 Act.

Justification for procedure selected

69. The affirmative resolution procedure is consistent with the equivalent arrangements for mayoral combined authorities and we consider that this provides an appropriate level of Parliamentary scrutiny.

Clause 38(1) power for Secretary of State to make regulations applying local policing provisions to a CCA.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

70. Clause 38(1) allows for the Secretary of State to apply local policing enactments (with or without modifications) or to make new provisions that are corresponding or similar to existing such legislation, in relation to mayors of CCAs who implement the single employer model, chief constables to whom fire and rescue functions have been delegated, and any panels established under Schedule 3.

Justification for delegation

71. This power is considered necessary as it allows for further provisions applying local policing enactments when new legislation comes into place that may affect the running of a single employer model locally by a CCA.

72. We consider that a regulation-making power is appropriate as it mirrors equivalent provision for combined authorities in section 107EF of the 2009 Act.

Justification for procedure selected

73. The affirmative resolution procedure is consistent with the equivalent arrangements for mayoral combined authorities and we consider that this provides an appropriate level of Parliamentary scrutiny.

Clause 39(1) power for Secretary of State to make provision for the costs of a mayor for the area of a CCA that are incurred in, or in connection with, the exercise of mayoral functions to be met from precepts issued by the CCA under section 40 of the Local Government Finance Act 1992.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

74. Clause 39(1) allows for the Secretary of State to make regulations to make provision for the costs of a mayor for the area of a CCA that are incurred in, or in connection with, the exercise of mayoral functions to be met from precepts issued by the CCA under section 40 of the Local Government Finance Act 1992.

Justification for delegation

75. This power is considered necessary as these costs are the responsibility of the mayor for the area of a CCA which is democratically accountable to local people. Other costs for which the members of the CCA are responsible are met from the budgets of the constituent authorities either by way of levy or agreed contributions; this is considered appropriate as the CCA's members are drawn from the constituent councils.

76. We consider that a regulation-making power is appropriate in order to provide for flexibility so that appropriate provision can be made for the specific circumstances of each mayoral CCA. This mirrors equivalent provisions for mayoral combined authorities

Justification for procedure selected

77. The affirmative resolution procedure is consistent with the equivalent arrangements for mayoral combined authorities in section 107G of the 2009 Act

and we consider that this provides an appropriate level of Parliamentary scrutiny.

Clause 42 power to amend list of alternative titles contained within section 40(2) or section 41(3) to add, modify or remove a reference to an alternative mayoral title or a description of an alternative title.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

78. Clause 42(1) confers a new power on the Secretary of State to make regulations to add, modify, or remove a reference to an alternative title or description of an alternative title in relation to mayors of a new CCA. The ability for authorities to choose to use a different title other than mayor for the directly elected role may encourage more areas to take up a directly elected leadership model. This could encourage more areas to come forward for devolution, and others to achieve deeper devolution.

Justification for delegation

79. We consider that secondary legislation is an appropriate mechanism to amend the list of titles in section 40 and section 41, to provide the ongoing flexibility that areas and Government will wish to see to enable this to continue to meet its policy intent.

Justification for procedure selected

80. As clause 42 provides a power to amend the specified provisions in primary legislation, we consider that it is appropriate to use the affirmative resolution procedure.

Clause 43(8) power for Secretary of State to make further provision about the matters which must be addressed by a proposal for the establishment of a CCA under this section; and to make provision about material which must be included in or submitted with a proposal under this section.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

81. Clause 43(8) allows for the Secretary of State to make regulations setting out what information and materials must be included and submitted in a proposal from authorities for a new CCA.

82. Further requirements for the making of these regulations are set out at clause 44. The Secretary of State must consider that the establishment of a CCA is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area; has regard to the need to secure effective local government and to reflect the identities and interests of local communities; that the proposal will achieve its purpose; the constituent councils of the CCA consent; and public consultation on the proposal has been carried out.

Justification for delegation

83. CCAs are a new local government institution which will be available to areas for the excise of combined and/or devolved powers, as agreed in a bespoke devolution deal agreed with Government, as per the ambition set out in the Levelling Up White Paper. The Secretary of State will need to be able to establish individual CCAs. As this is a new model, what is required in a proposal may need to be iterated over time when lessons are learnt from the initial establishment of CCAs.

Justification for procedure selected

84. We consider that the affirmative resolution procedure provides a suitable level of Parliamentary scrutiny of the requirements to establish a CCA, to allow for flexibility in determining the necessary criteria.

Clause 45(9) power for Secretary of State to make further provision about the matters which must be addressed by a proposal for changes to the existing arrangements of a CCA under this section; and to make provision about material which must be included in or submitted with a proposal under this section.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

85. Clause 45(9) allows for the Secretary of State to make regulations setting out what information and materials must be included and submitted in a proposal from authorities for changes to the existing arrangements of a CCA. Further requirements for the making of these regulations are set out at clause 46. The Secretary of State must undertake a public consultation on the changes to the arrangements of the CCA unless they are satisfied that no further public consultation is necessary following a proposal has been prepared under clause 44, a public consultation undertaken on it and the summary of responses provided to the Secretary of State.

Justification for delegation

86. CCAs are a new local government institution which will be available to areas for the excise of combined and/or devolved powers, as agreed in a bespoke devolution deal agreed with Government, as per the ambition set out in the Levelling Up White Paper. The Secretary of State will need to be able to make changes to CCAs once they are established. As this is a new model, what is required in a proposal may need to be iterated over time when lessons are learnt from the initial establishment of CCAs.

Justification for procedure selected

87. We consider that the affirmative resolution procedure provides a suitable level of Parliamentary scrutiny of the requirements to make changes to a CCA, to allow for flexibility in determining the necessary criteria.

Clause 49(1) power for Secretary of State to make provision preventing CCAs from doing under section 47(1) anything which is specified, or is of a description specified, in the regulations.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative*

Context and Purpose

88. Clause 47(1) confers on a CCA a functional power of competence to do anything it considers appropriate for the purposes of the carrying out of any of its functions. Specifically, it gives powers to a CCA to do (a) anything it considers appropriate to its functions, (b) anything incidental to those functions, (c) anything indirectly incidental (however indirectly incidental that might be) and (d) anything it considers to be connected with its functions or anything it may do under (a), (b) or (c). It also confirms in paragraph (e) that anything that it now has the power to do for a non-commercial purpose, it may also do for a commercial purpose. Clause 48(1) further provides that the new power is subject to pre-existing limitations and express post commencement limitations. This power is in line with those provided for combined authorities under section 113A of the 2009 Act.

89. Clause 49(1) gives the Secretary of State power to by regulations prevent CCAs from doing something under the new power, or to make its use subject to conditions.

Justification for delegation

90. The power in clause 49(1) mirrors the equivalent provision for combined authorities in section 113C of the 2009 Act. The Secretary of State will need to be able to impose conditions or limitations on how CCAs exercise their functional power of competence once they are established, when lessons are learnt from the initial establishment of CCAs.

Justification for procedure selected

91. We consider that the affirmative resolution procedure provides a suitable level of Parliamentary scrutiny of the conditions or limitations imposed on a CCA in the exercise of their functional power of competence.

Clause 50(1) power for Secretary of State to make provision for the general power of competence to apply to particular CCAs

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative*

Context and Purpose

92. Clause 50(1) enables the Secretary of State to make provision for the general power of competence at Chapter 1 of Part 1 of the Localism Act 2011 to apply to a particular CCA as it does to local authorities. The regulations may only be made with the consent of the appropriate authorities. Where an order under section clause 50(1) is contained in the same instrument as an order made under clause 28(3)(b), the non-consenting constituent council is not to be treated as an appropriate authority for the purposes of providing consent. This power is in line with those provided to the Secretary of State in relation to combined authorities under section 113D of the 2009 Act.

Justification for delegation

93. The power in clause 50(1) allows for the Secretary of State to confer on a CCA by regulations the same general power of competence that its constituent councils already have under section 1 of the Localism Act 2011. An agreed Devolution Deal with an area may include agreement that the CCA has the same level of flexibility provided for by the general power of competence as the constituent councils, in that the CCA would have the freedom to be able to do anything a real person can do (subject to the limitations in Chapter 1 of Part 1 of the Localism Act 2011) irrespective of the functions that have been conferred on it at any time.

Justification for procedure selected

94. We consider that the affirmative resolution procedure provides a suitable level of Parliamentary scrutiny of the conferral of a full general power of competence on a CCA.

Clause 51(1) power for Secretary of State to make incidental, consequential, transitional or supplementary provision for the purposes of, or in consequence of, regulations under this Chapter or for giving full effect to such regulations.

Powers conferred on: *Secretary of State.*

Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative*

Context and Purpose

95. Clause 51(1) provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of regulations made under this Chapter, excluding amending or disapplying the political balance provisions at sections 15 to 17 of and Schedule 1 to the Local Government and Housing Act 1989. This power is in line with the equivalent power of the Secretary of State in relation to combined authorities under section 114 of the 2009 Act.

96. To provide context as to what such incidental, consequential, transitional or supplementary provision may look like in the context of the Bill, where a function of a public authority is conferred on a CCA the power may be used to modify references in the legislation regarding those functions. For example, where a function of the Mayor of London is conferred of a CCA, the power may be used to modify the references to the Greater London Assembly to replace those references to a committee of the CCA.

Justification for delegation

97. These types of incidental, consequential, transitional or supplementary provision could be needed to ensure a smooth transfer of functions. A regulation-making power allows an appropriate degree of flexibility in identifying what provision is required to make the exercise of the function workable in the context of the individual circumstances of the CCA.

Justification for procedure selected

98. We consider that the affirmative resolution procedure provides a suitable level of Parliamentary scrutiny of the appropriate incidental, consequential, transitional or supplementary provision.

Clause 52(1) power for Secretary of State to make provision for the transfer of property, rights and liabilities (including criminal liabilities)

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative*

Context and Purpose

99. Clause 52(1) provides that the Secretary of State may make provision for the transfer of property, rights and liabilities (including criminal liabilities) for the purposes of, or in consequence of, regulations under this Chapter or for giving full effect to such regulations. This power is in line with the equivalent power of

the Secretary of State in relation to combined authorities under section 115 of the 2009 Act.

100. The conferral on a CCA of a function of a county council or district council, or a function of a public authority may amongst other things, create rights or impose liabilities in relation to property or rights transferred in relation to the exercise of that function. It may make provision for shared ownership or use of property, make provisions about the continuing effect of things done by the transferor in respect of anything transferred.

Justification for delegation

101. It is necessary to delegate the power to make provision for the transfer of property, rights and liabilities, as it would not be practical to make specific provision in primary legislation in each case where a transfer of property and staff, and of the associated rights and liabilities, proves to be necessary.

Justification for procedure selected

102. The affirmative resolution procedure is consistent with the equivalent provision for the transfer of property, rights and liabilities in relation to combined authorities at section 115 of the 2009 Act.

Clause 53(1) power for Secretary of State to issue guidance about anything that could be done by an authority under or by virtue of this Chapter

Powers conferred on: *Secretary of State.*
Powers exercised by: *Guidance*
Parliamentary Procedure: *None*

Context and Purpose

103. Clause 53(1) provides that the Secretary of State may issue guidance about anything which could be done under or by virtue of this Chapter by the bodies specified in subsection (5), namely a county council, a district council, an Integrated Transport Authority, a combined authority or a CCA, to which those authorities must have regard. For example, this could include how to exercise functions conferred on a CCA, appropriate frameworks for joint working, and considerations which should be taken into account in the exercise of a function.

Justification for delegation

104. The bodies specified in subsection (5) may require detailed guidance about the provisions in Chapter 2 of the Bill. The guidance is intended to cover detail as to the practical steps that may be necessary in order for a CCA to appropriately exercise its functions in various circumstances, and recommended best practice when jointly exercising its functions with other

bodies. This is a level of detail which cannot reasonably be provided in primary legislation.

Justification for procedure selected

105. There will be no parliamentary procedure for the publication of guidance. It would be unusual for there to be parliamentary scrutiny of this type of statutory guidance. The Department considers that it will be a sufficient safeguard that any guidance will be amenable to judicial review.

Clause 57 - Amendment to section 104 of the 2009 Act (constitution of combined authority) to amend the consent requirements for orders made under section 106 of the 2009 Act and also as a result of an order under section 106 of the 2009 Act

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

106. This power amends the existing consent requirements for orders made under section 104 of the 2009 Act (constitution and functions: transport) making changes to constitutional arrangements of a combined authority by reason of and also “as a result” of an order under section 106 of the 2009 Act (changes to boundaries of a combined authority's area). As presently drafted, section 104(10) of the 2009 Act requires the unanimous consent of the constituent councils and of the combined authority to orders made under section 104.

107. Clause 57(1) to (9) amends section 104 and section 106 to enable orders made under section 106 to change a CA’s areas to proceed with the consent of the joining/withdrawing council, and the mayor alone (in a mayoral combined authority), and the combined authority through agreement of a simple majority of the members (in a non-mayoral combined authority). This is to be consistent with the amendments to consent requirements for orders made under section 106. The new consent requirements also apply to orders which may be required “as a result” of an order to change a CA’s area.

Justification for delegation

108. This provision amends the requirements of an existing power to make secondary legislation.

Justification for procedure selected

109. This provision amends an existing power to make secondary legislation which is subject to the affirmative procedure.

Clause 58(1) to (4) Amendments to section 104 of the 2009 Act (constitution of combined authority), section 105B (section 105A orders: procedure) and section 107D (functions of mayors: general) to amend requirements for orders to which section 107DA (procedure for direct conferral of general functions on mayor) applies

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

110. This power amends the existing consent requirements for orders made under section 104 of the 2009 Act (constitution and functions: transport) making changes to constitutional arrangements of a combined authority by reason of an order to which section 107DA (procedure for direct conferral of general functions on mayor) applies, and to amend the consent requirements at section 105B (section 105A orders: procedure) and section 107D (functions of mayors: general).

111. The present consent requirements for orders made under section 104 of the 2009 Act are set out at paragraph 106 above.

112. In respect of orders for the conferral of public authority functions on a combined authority under section 105A of the 2009 Act, section 105B(1) (section 105A orders: procedure) requires a proposal for the making of the order in relation to the combined authority by the appropriate authorities, namely a county council or district council within the proposed or existing area of the combined authority and the combined authority, and for the consent of these authorities. Section 107D(9) (functions of mayors: general) requires the consent of the appropriate authorities to orders under that provision to make provision for any function of a mayoral combined authority to be a function exercisable only by the mayor

113. Clause 58(1) to (4) amends sections 105B and 107D to change the local consent needed before the Secretary of State can make an order under sections 105B and section 107D, where a public authority function is to be conferred on a combined authority to be exercisable by the mayor. The required consent in these circumstances is set out at new section 107DA as inserted by clause 58(5). This is designed to support agreement to deepening devolution in areas, to enable Mayors to take on new functions

Justification for delegation

114. This provision amends the requirements of an existing power to make secondary legislation.

Justification for procedure selected

115. This provision amends an existing power to make secondary legislation which is subject to the affirmative procedure.

Clause 58(5) new section 107DA (procedure for direct conferral of general functions on mayor

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

116. This provision is designed to facilitate the mechanism for mayors to take on new functions by amending the procedure for an order which is made under both sections 105A and 107D of the 2009 Act in relation to an existing mayoral combined authority which provides for a function to be a function of a combined authority, and then to be a function exercisable only by the mayor.

117. Where sections 105B and 107D are used in the same order to confer additional functions of a public authority for exercise by the mayor, the new procedure will enable the mayor to directly request the conferral of these additional functions. As these functions do not relate to functions of local authorities and have never been delivered by or funded by them, Government is of the view that these are the appropriate consent arrangements. There is no change to the consent regime or process for local authority functions.

118. While no formal consent is required from the constituent councils or from the combined authority as a whole for the conferral of these functions, the requirements on the mayor to consult the constituent councils and provide a report to the Secretary of State on the results of that consultation process are designed to ensure that there is a strong rationale for the conferral of these functions and that the constituent councils retain an input into any additional functions being taken on by the Mayor.

Justification for delegation

119. This provision amends the requirements of an existing power to make secondary legislation.

Justification for procedure selected

120. This provision amends an existing power to make secondary legislation which is subject to the affirmative procedure.

Clause 59 consent to conferral of police and crime commissioner functions on mayor; amendment to section 107F of the Local Democracy, Economic Development and Construction Act 2009 (functions of mayors: policing)

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

121. This provision is designed to facilitate the mechanism for mayors to take on new police and crime functions by amending the procedure for an order which is made under section 107F(1) of the 2009 Act to provide that an order may be made in relation to an existing mayoral combined authority only with the consent of the mayor of the authority.

Justification for delegation

122. This provision amends the requirements of an existing power to make secondary legislation.

Justification for procedure selected

123. This provision amends an existing power to make secondary legislation which is subject to the affirmative procedure.

Clause 60 – powers for combined authorities and the Secretary of State to designate highways as key route network roads with alternative consent requirements for orders made under both section 104(1)(d) and 107D(1) of the Local Democracy, Economic Development and Construction Act 2009, in so far as the order relates to such roads.

Powers conferred on: Combined authorities and the Secretary of State
Powers exercised by: Written designation
Parliamentary Procedure: No parliamentary procedure

Context and Purpose

124. This clause changes the consent requirements for provisions made by an order under section 104(1)(d) (conferral of a power to direct) and section 107D(1) (functions of mayors: general) of the 2009 Act, in so far as the provision confers on a mayoral combined authority (MCA) a power, to be exercised by the mayor, to give a direction in relation to highways and traffic functions in respect of key route network (KRN) roads.

125. Section 104(10) of the 2009 Act requires the consent of the constituent councils and of the combined authority to orders made under section 104(1)(d) to confer on a combined authority a power to give a direction about the exercise of an eligible power as highway authority under section 1 of the Highways Act 1980, or as a traffic authority under section 121A of the Road Traffic Regulation Act 1984. Section 107D(9) of the 2009 Act requires the consent of the appropriate authorities to orders made under section 107D(1) to make provision for any function of a MCA to be a function exercisable only by the mayor.

126. New subsection 107ZA(7) enables orders made under section 104(1)(d) and 107D(1) to confer a power of direction to be exercisable by the mayor in relation to KRN roads, with the consent of the mayor alone. Before consenting to such an order, the mayor must first consult the constituent councils within the MCA's area and, if they do not all agree to the making of the order, set out the reasons why the mayor considers that the order should nevertheless be made.

127. New subsection 107ZA(1) gives a power to combined authorities to designate highways within their area as KRN roads, with the consent of the council within whose area the highway is and, in the case of a MCA, the mayor. New subsection 107ZA(2) gives a separate power to the Secretary of State to designate highways as KRN roads upon receipt of an application from either the combined authority, mayor or council within whose area the highway is.

Justification for delegation

128. This clause changes the consent requirements for making orders conferring a power of direction on a mayoral combined authority that is to be exercised by the mayor, requiring the consent of the mayor rather than the combined authority and constituent councils. However, a power of direction granted in this way is to be limited to KRN roads within the mayoral combined authority's area. The Government wishes the decision about the roads to which this applies to remain primarily a local decision, and therefore believes the ability to designate roads as KRN roads should be delegated to combined authorities, acting with the consent of the councils within whose area the roads are and, in the case of a MCA, the mayor. This approach allows for flexibility and ensures that the combined authority and mayor are able to adapt to the needs of the area and provide the appropriate governance over the road network.

129. This clause also allows the Secretary of State to designate or remove a road as a KRN road. It is expected that this would only be done where agreement has not been reached locally between the combined authority, mayor and relevant councils. As such, the Secretary of State's power to designate a KRN road is limited to when a combined authority, mayor or local council requests this, to ensure that designation remains locally driven.

Justification for procedure selected

130. Orders to confer a power of direction on an MCA to be exercised by the mayor will remain subject to the affirmative procedure. Therefore, the granting of the power of direction will be subject to parliamentary oversight. However, each authority's governance arrangements will be unique to that authority and it is important that they have flexibility to determine locally the roads within their area that the power of direction applies to, in order to adapt as the road network and needs of the area change over time.

131. The ability to designate a KRN road has the safeguard that a combined authority will only be able to make a designation with the consent of the council

within whose area the road is and, in the case of a MCA, the mayor. Similarly, as the designation of KRN roads is intended to primarily be a local decision, the Secretary of State would only be able to make a designation upon request from either the combined authority, the mayor or the relevant council.

132. For these reasons, the Government considers that it is appropriate to have no Parliamentary procedure in respect of the designation of a road as a KRN road.

Clause 61(8) new section 104C of the 2009 Act to make further provision by regulations about the arrangements for the appointment of associate and non-constituent members of a combined authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

133. This power allows for the Secretary of State to make further provision about the process for the designation of an nominating body for non-constituent and associate members or the removal of such a designation, the number of nominating bodies that may be designated by a combined authority, the number of non-constituent members and associate members that may be appointed by an nominating body of a combined authority, the appointment, disqualification, resignation or removal of a non-constituent member or an associate member, the maximum number of non-constituent members or associate members of a combined authority, the things which may or may not be done by, or in relation to, a non-constituent member or an associate member, and the making by the nominating body of a combined authority of payments towards the costs of the authority.

Justification for delegation

134. We consider that an enabling power to make further provision about the appointment of associate and non-constituent members will allow provision to be made about the operational arrangements of such appointments in combined authorities and for those arrangements to be varied in the light of changing or different circumstances (e.g. reflecting the functions of the combined authority). Such provision may include, for example, which meetings of the cabinet or committees these members could attend, and what (if any) matters they may vote upon. Given the key role of associate and non-constituent members in allowing individuals with relevant expertise and neighbouring areas to participate in combined authorities, it is considered right that whilst there should be flexibility in their operational arrangements, these arrangements at any time may need to contain certain mandatory requirements. Hence the approach of a power to make further provision by regulations.

Justification for procedure selected

135. We consider that the affirmative resolution procedure at section 117(2) of the 2009 Act is appropriate for these regulations. We consider that the affirmative procedure will provide the appropriate level of Parliamentary scrutiny, given that the appointment of constituent council members is through secondary legislation that is subject to affirmative resolution procedure.

Clause 62(3) new section 109A(8) and (9) of the 2009 Act to make further provision by regulations about the matters which must be addressed by a proposal to establish a combined authority, the material which must be included in or submitted with a proposal, and to make incidental, supplementary, consequential, transitional, transitory or saving provision.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure (first exercise); negative procedure (subsequent exercises)*

Context and Purpose

136. This power allows the Secretary of State to make further provision about a proposal under new section 109A to establish a combined authority. This is to allow the Secretary of State to prescribe requirements for what is to be included in a devolution proposal by an authority to whom section 109A applies (a county council, a district council, an economic prosperity board or an integrated transport authority). New section 109A replaces the existing provision in sections 108 and 109 of the 2009 Act for an authority within the proposed area of the combined authority to carry out a review of statutory functions in that area and produce a scheme for establishing a combined authority.

Justification for delegation

137. We consider that the regulation-making power is necessary to ensure consistency and flexibility in the processes for making a proposal to establish a combined authority.

Justification for procedure selected

138. We consider that the affirmative resolution procedure affords an appropriate level of Parliamentary scrutiny for the initial general regulations setting out the requirements for the content of a proposal to establish a combined authority.

139. We anticipate that subsequent amendments to these general regulations will be administrative or technical in nature, and accordingly the negative procedure would be appropriate.

Clause 62(5) to (8) amendment of the requirements at section 110(1) of the 2009 Act for the Secretary of State in exercising his power to make an order establishing a combined authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

140. Section 110(1) of the 2009 Act enables the Secretary of State to make an order to establish a combined authority if they consider that doing so is likely to improve: (a) the exercise of statutory functions relating to transport in the area; (b) the effectiveness and efficiency of transport in the area; (c) the exercise of statutory functions relating to economic development and regeneration in the area; and (d) economic conditions in the area.

141. Clause 62(5) to (8) amends the existing requirements at section 110(1)(a) of the 2009 Act to require that where a proposal for the making of the order has been submitted under section 109A for a new combined authority, the Secretary of State considers that making the order will achieve the purposes specified in that proposal.

Justification for delegation

142. We consider that it is appropriate to amend the requirements for the Secretary of State when considering whether to exercise his order-making power, to ensure that the specified purpose of the proposal are considered.

Justification for procedure selected

143. As clause 62(5) amends requirements in connection with an existing order-making power, we consider that it is appropriate to retain the affirmative resolution procedure.

Clause 63(3) new section 112A(10) and (11) of the 2009 Act to make further provision by regulations about the matters which must be addressed by a proposal to make changes to combined arrangements in an existing combined authority, the material which must be included in or submitted with a proposal, and to make incidental, supplementary, consequential, transitional, transitory or saving provision.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure (first exercise); negative procedure (subsequent exercises)*

Context and Purpose

144. This power allows the Secretary of State to make further provision about a proposal under new section 112A to make changes to combined arrangements in an existing combined authority. This is to allow the Secretary of State to prescribe requirements for what is to be included in a devolution proposal by combined authority. New section 112A replaces the existing provision in sections 111 and 112 of the 2009 Act for a combined authority or a county council or district council within the proposed area of the combined authority to carry out a review of combined matters, namely a matter in relation to which an order may be made under section 104, 105, 105A, 106, 107, 107A, 107D or 107F of the 2009 Act or a matter concerning the combined authority or the executive body that the combined authority has power to determine, and produce a scheme relating to the exercise of the power or powers in question.

Justification for delegation

145. We consider that the regulation-making power is necessary to ensure consistency and flexibility in the processes for making a proposal to make changes to an existing combined authority.

Justification for procedure selected

146. We consider that the affirmative resolution procedure affords an appropriate level of Parliamentary scrutiny for the initial general regulations setting out the requirements for the content of a proposal to make changes to a combined authority.

147. We anticipate that subsequent amendments to these general regulations will be administrative or technical in nature, and accordingly the negative procedure would be appropriate.

Clause 63(5) to (9) amendment of the requirements at section 113(1) of the 2009 Act for the Secretary of State in exercising his power to make an order changing the arrangements in an existing combined authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

148. Section 113(1) (requirements in connection with changes to existing combined arrangements) of the 2009 Act enables the Secretary of State to make an order to change the arrangements of an existing combined authority if he considers that doing so is likely to improve: (a) the exercise of statutory functions relating to transport in the area; (b) the effectiveness and efficiency of transport in the area; (c) the exercise of statutory functions relating to economic development and regeneration in the area; and (d) economic conditions in the area.

149. Clause 63(5) to (9) amends the existing requirements at section 113(1) of the 2009 Act to require that where a proposal for the making of the order has been submitted under section 112A for an existing combined authority, the Secretary of State considers that making the order will achieve the purposes specified in that proposal.

Justification for delegation

150. We consider that it is appropriate to amend the requirements for the Secretary of State when considering whether to exercise his order-making power, to ensure that the specified purpose of the proposal are considered.

Justification for procedure selected

151. As clause 63(5) to (9) amends requirements in connection with an existing order-making power, we consider that it is appropriate to retain the affirmative resolution procedure.

Clause 66 amendment of the Secretary of State's regulation-making power at section 23 of the Local Government Act 2003

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

152. Section 23 of the Local Government Act 2003 provides combined authorities with a power to borrow money to fund transport activities; this can be extended, by regulations made by the Secretary of State to enable a combined authority to borrow for other functions. Without a de-hybridising provision, to enable combined authorities to extend their borrowing powers beyond transport, the Secretary of State has had to make Regulations for a "class" of combined authorities, which means the provision is no longer classified as hybrid. This has required the definition of a class of authorities for each set of Regulations, which requires two or more combined authorities to request and agree an extension to their borrowing powers for the secondary legislation to be taken through the House. Furthermore, consent is needed from each combined authority and constituent council which slows down implementation of devolution deals.

153. Clause 66 amends section 23 of the Local Government Act 2003 to provide that such regulations, and equivalent regulations for CCAs are not to be treated as a hybrid instrument.

Justification for delegation

154. We consider that an amendment to section 23 is required to avoid procedural delay in either following the hybrid procedure for Parliament or of

waiting for a group or "class" of combined authorities before making secondary legislation to confer new functions on these authorities. This will mean that when areas have agreed devolution deals with government that include borrowing powers, they are able to implement them quickly and within their own right, rather than having to wait for their counterparts to be in the same position.

Justification for procedure selected

155. As clause 66 amends requirements in connection with an existing order-making power, we consider that it is appropriate to retain the affirmative resolution procedure.

Clause 67(1) amendment of the Secretary of State's order-making power at paragraph 3(2) (power by order to make further provision about overview and scrutiny committees) and paragraph 4(3) (power by order to make further provision about audit committees) of Schedule 5A to the 2009 Act

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

156. Paragraph 3(2) (power by order to make further provision about overview and scrutiny committees) of Schedule 5A to the 2009 Act enables the Secretary of State to make an order to make provision about the overview and scrutiny committees of a combined authority, and paragraph 4(3) of Schedule 5A to the 2009 Act enables the Secretary of State to make an order to make provision about the audit committees of a combined authority. As currently drafted, these powers allow the Secretary of State to make provision about the membership and the appointment of members of these committees.

157. Clause 67(1) amends paragraphs 3(2) and 4(3) of Schedule 5A to the 2009 Act to allow an order to make provision about the payment of allowances to members of an overview and scrutiny committee and to members of an audit committee.

Justification for delegation

158. We consider that an amendment to the enabling powers to make further provision about overview and scrutiny committees and audit committees is an appropriate mechanism to make provision about the allowances payable to members of such committees for combined authorities and for those arrangements to be varied in the light of changing or different circumstances (e.g. reflecting the functions of the combined authority).

Justification for procedure selected

159. As clause 67(1) amends requirements in connection with an existing order-making power, we consider that it is appropriate to retain the affirmative resolution procedure.

Clauses 68(2)(b) and 68(3)(b): new sections 9KC(4F) and 9MF(3F) of the Local Government Act 2000 power for the Secretary of State to make regulations on the matters to be addressed by a proposal from a local authority to disapply section 9KC(4) or section 9MF(1) of the Local Government Act 2000 and how the proposal is to be considered by the Secretary of State

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

160. Clause 68 amends sections 9KC and 9MF of the Local Government Act 2000 ("the 2000 Act") to allow for local authorities to disapply the moratoriums on further governance changes in those provisions in order to 'fast track' the timescales of their governance model change, irrespective of the timescales of a previous change, and access a more comprehensive devolution deal in shorter timescales than would otherwise be possible.

161. Section 9KC of the 2000 Act provides for a local authority to make a resolution if it wants to change its governance arrangements and outlines the steps that the local authority needs to undertake once a resolution to change governance arrangements has been passed. This section also provides a moratorium for a local authority which passes a resolution to change its governance arrangements, in the manner set out in sections 9K and 9KA ('Resolution A'), which means that authority cannot pass another resolution ('Resolution B') that makes such a change until 5 years have elapsed since Resolution A was passed. This is unless Resolution B is approved in a referendum.

162. Section 9MF (further provision with respect to referendums) of the 2000 Act sets requirements where a local authority governance change is effected through a referendum by the local authority. The local authority cannot change their model again for 10 years and must hold a referendum on any new proposed change to their governance model unless the initial referendum was held by the authority by virtue of an order by the Secretary of State under section 9N of the 2009 Act to require, and give effect to, referendum on a change to mayor and cabinet executive, or another referendum is required to be held by virtue of an order made under section 9N.

Justification for delegation

163. The power at new section 9KC(4F) and 9MF(3F) of the 2000 Act is required to allow the Secretary of State to make regulations about matters which must be included in a local authority's proposal to use the "fast track"

procedure to change its governance form and how the Secretary of State is to consider the proposal.

164. These regulations would set out the detailed content or administrative procedure for a local authority to make in relation to a governance change proposal to disapply the required moratorium following a previous change in governance model. The detailed arrangements are more appropriately set out in secondary legislation both for reasons of the detail needed and for modification in future if necessary.

Justification for procedure selected

165. The negative procedure is considered appropriate for these regulations, given that the regulations are to cover administrative procedure.

Clause 72 new section 107K of the 2009 Act

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

166. New section 107K of the 2009 Act confers a power on the Secretary of State to make regulations to add, modify, or remove a reference to an alternative title or description of an alternative title in relation to mayors of combined authorities.

167. The Bill inserts new sections 107H,107I and 107J of the 2009 Act, which specify a number of alternative titles authorities (at 107H(3), 107I(2) and 107J(3)) can resolve to use as an alternative to Mayor. The ability for authorities to choose to use a different title other than mayor for the directly elected role may encourage more areas to take up a directly elected leadership model. This could encourage more areas to come forward for devolution, and others to achieve deeper devolution.

Justification for delegation

168. We consider that secondary legislation is an appropriate mechanism to amend the list of titles in sections 107H,107I and 107J of the 2009 Act, to provide the ongoing flexibility that areas and Government will wish to see to enable this to continue to meet its policy intent.

Justification for procedure selected

169. As clause 72 by adding section 107K provides a power to amend the specified provisions in primary legislation, we consider that it is appropriate to use the affirmative resolution procedure.

Clause 73 – Local authorities in England: alternative mayoral titles.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

170. Clause 73 adds new sections 9HF(9) and 9HG(11) to the Local Government Act 2000 to confer a power on the Secretary of State to make regulations to add, modify, or remove a reference to an alternative title or description of an alternative title in relation to elected mayors of local authorities.

171. The Bill inserts new sections 9HF(1) and 9HG(3) into the Local Government Act 2000, which specify a number of alternative titles local authorities can resolve to use as an alternative to Mayor. The ability for authorities to choose to use a different title other than mayor for the directly elected role may encourage more areas to take up a directly elected leadership model. This could encourage more areas to come forward for devolution, and others to achieve deeper devolution.

Justification for delegation

172. We consider that secondary legislation is an appropriate mechanism to amend the list of titles, to provide the ongoing flexibility that areas and Government will wish to see to enable this to continue to meet its policy intent.

Justification for procedure selected

173. As clause 73 by adding section 107K provides a power to amend the specified provisions in primary legislation, we consider that it is appropriate to use the affirmative resolution procedure.

Schedule 1 paragraph 3(1): power for the Secretary of State to make regulations to make further provision by regulations about the arrangements for the overview and scrutiny committees of a CCA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

174. This power allows for the Secretary of State to make further provision about the overview and scrutiny committees of a CCA. This may make provision about the membership of an overview and scrutiny committee; the voting rights of such members; the person who is to be chair of such a committee; the

appointment of a scrutiny officer of an overview and scrutiny committee; the circumstances in which matters may be referred to an overview and scrutiny committee; obligations on persons to respond to reports or recommendations made by an overview and scrutiny committee; the publication of reports, recommendations or responses; the information which must, or must not, be disclosed to an overview and scrutiny committee; and the payment of allowances to members of the committee.

Justification for delegation

175. We consider that an enabling power to make further provision about overview and scrutiny committees will allow provision to be made about the operational arrangements of such committees for CCAs and for those arrangements to be varied in the light of changing or different circumstances (e.g. reflecting the functions of the CCA). Such provision may include, for example, requiring the chair of the committee not to be a member of the majority party of the CCA's membership and the arrangements for publication of the committees' reports and recommendations. Given the key role of overview and scrutiny committees in ensuring effective and transparent accountability, it is considered right that whilst there should be flexibility in their operational arrangements, these arrangements at any time may need to contain certain mandatory requirements. Hence the approach of a power to make further provision by regulation, mirroring the approach for combined authorities in the 2009 Act.

Justification for procedure selected

176. The affirmative procedure is considered appropriate for these regulations, to be consistent with the equivalent provision for combined authorities in paragraph 3 of Schedule 5A to the 2009 Act.

Schedule 1 paragraph 4(3): power for the Secretary of State to make regulations to make further provision by regulations about the arrangements for the audit committees of a CCA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

177. This power allows for the Secretary of State to make further provision about the audit committees of a CCA. This may make provision about the membership of an audit committee; the appointment of such members; and the payment of allowances to members of the committee.

Justification for delegation

178. We consider that an enabling power to make further provision about audit committees will allow provision to be made about the operational arrangements of such committees for CCAs and for those arrangements to be varied in the light of changing or different circumstances. Given the key role of audit committees in ensuring effective and transparent accountability, it is considered right that whilst there should be flexibility in their operational arrangements, these arrangements at any time may need to contain certain mandatory requirements. Hence the approach of a power to make further provision by regulation, mirroring the approach for combined authorities in the 2009 Act.

Justification for procedure selected

179. The affirmative procedure is considered appropriate for these regulations, to be consistent with the equivalent provision for combined authorities in paragraph 4(3) of Schedule 5A to the 2009 Act.

Schedule 2 paragraph 3: power for the Secretary of State to make regulations to make further provision by regulations about the dates on which and years which elections for the return of an elected mayor may or must take place, the intervals between elections for the return of an elected mayor, the term of office of an elected mayor, and the filling of vacancies in the office of elected mayor

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

180. This power allows the Secretary of State to make provision as to mayoral elections for a CCA. This power enables the Secretary of State to provide for the timing of elections and where appropriate for them to be consistent with the different electoral cycles operated by the relevant authorities and to lengthen or reduce the length of the term of office of an elected mayor to bring the electoral cycle into step with other elections where necessary. This power is of particular importance as orders providing for there to be a mayor for a combined county authority area could potentially be made throughout the electoral cycle and the Secretary of State will need to synchronise the timing of elections with other elections.

Justification for delegation

181. This regulation-making provision and the wider provisions in Schedule 2 are consistent with paragraph 3 of Schedule 5B of the 2009 Act which allow the Secretary of State to make regulations to provide for the timing of elections for elected mayors of combined authorities.

Justification for procedure selected

182. Equivalent regulations made under paragraph 3 of Schedule 5B to the 2009 Act are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure for orders made under paragraph 3 as these orders will be an intrinsic element of establishing in any CCA area an elected mayor for that area.

Schedule 2 paragraph 11(1): power for the Secretary of State to make regulations to make further provision about the conduct of elections for the return of mayors of a CCA, and the questioning of elections for the return of mayors and the consequences of irregularities

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

183. This power allows the Secretary of State to make regulations to provide for the conduct of elections for the election of a mayor and before making such regulations the Secretary of State must consult the Electoral Commission. Regulations made under this paragraph may include provision as to the registration of electors, for disregarding alterations in a register of electors, about the limitation of election expenses (and the creation of criminal offences in connection with the limitation of such expenses), and for the combination of polls at elections for the return of mayors and other elections.

Justification for delegation

184. The Government considers it would not be sensible to include on the face of the Bill the level of detail which it would be necessary to provide in relation to the conduct of elections for the return of mayors. To give the Committee some indication as to the likely length of regulations under this provision, the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (S.I. 2007/1024) ("the 2007 Regulations") made under section 41 of the 2000 Act, which contains similar provisions in relation to the conduct of elections for authorities in England and Wales, contain 6 regulations and 4 Schedules. The Schedules in the 2007 Regulations setting out specific provision as to the conduct of elections and providing for the combination of polls at elections both contain 60 separate rules. Those Schedules also deal with administrative matters such as the equipment of polling stations, the appointment of polling and counting agents, the issue of official poll cards and the requirement that ballot papers must be capable of being folded up.

Justification for procedure selected

185. Equivalent regulations made under section 41 of the 2000 Act are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure for orders made under paragraph 11.

Schedule 3 paragraph 2: CCA Mayors: police and crime commissioner functions

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

186. Schedule 3 makes further provision in connection with orders made under clause 30 (functions of mayors: policing). The Secretary of State may provide for the mayor to exercise all PCC functions or a limited number. However, there are certain functions set out in paragraph 2(2) that always must be exercisable by a mayor to whom PCC functions are transferred.

187. Paragraphs 3 to 9 provide for a number of essential matters that the Secretary of State must provide for, by order where an order has been made under section 30 (such an enabling the appointment of a deputy PCC mayor, requiring the establishment of a scrutiny panel, enabling suspension of the mayor by the panel in respect of their PCC functions and providing for financial matters). Where a mayor is to exercise PCC functions, paragraph 10 requires the Secretary of State to apply the same disqualification criteria to a person elected or holding office as mayor as apply currently for PCCs. Paragraph 13 enables the Secretary of State to make any other provision that the Secretary of State thinks appropriate for the purposes of giving full effect to an order under clause 30, including the power to amend, apply (with or without modifications) disapply, repeal or revoke enactments relating to PCCs.

Justification for delegation

188. The powers in new Schedule 3 are necessary so that the Secretary of State can give full effect to the transfer of PCC functions to a CCA mayor. Whilst it is envisaged that all existing functions of the PCC would be transferred to a mayor taking on PCC functions, the power to transfer a limited suite of functions is necessary as there may be some current functions that would not be relevant in the context of a mayor exercising PCC functions. The power is also necessary to provide flexibility in the light of experience and to enable transfer arrangements to be appropriately tailored to the local circumstances of the area concerned.

189. The provision at paragraph (10) in regard to disqualification are needed so that, where a mayor exercises PCC functions, they will be made subject to the enhanced qualification and disqualification criteria that currently exist in relation to PCCs (sections 64 to 69 of the Police Reform and Social Responsibility Act 2011). The powers in paragraph 13 are needed to ensure that, in each individual case where PCC powers are transferred to the mayor, the Secretary of State is able to make all appropriate provision in the circumstances in order to give full effect to the intended transfer.

Justification for procedure selected

190. We consider that the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny for the exercise of these powers, given the nature of the powers and the matters to which they relate.

Schedule 4 paragraph 16(2): power for the Secretary of State to make regulations to specify the circumstances in which a combined authority may borrow money for a purpose relevant to a function of such an authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

191. Paragraph 16(2) of Schedule 4 inserts subsections (8A) to (8D) into section 23 of the Local Government Act 2003 (the 2003 Act), in order to determine the circumstances in which a CCA may borrow money under section 1 of that Act. An agreed Devolution Deal with an area may include agreement that budgets and powers may be conferred on the CCA to undertake in the area some major infrastructure works. The funding of such works might appropriately include some borrowing to cover capital costs. Accordingly, not only should the relevant specific functions be conferred on the CCA, but also the power to borrow appropriately.

Justification for delegation

192. We consider that a regulation-making power is necessary in order to allow flexibility in specifying where the CCA may borrow money, given that the functions will vary depending on the identified needs of the relevant authorities in the CCA in question.

Justification for procedure selected

193. Equivalent regulations for combined authorities made under section 23(5) of the 2003 Act are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure for regulations made in relation to CCAs.

Schedule 4 paragraphs 27 to 29: new section 89B of the Local Transport Act 2008 and amendments to order-making powers for changing the boundaries of an integrated transport area and the dissolution of an integrated transport area

Powers conferred on: *Secretary of State.*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

194. Paragraph 27 of Schedule 4 inserts new section 89B of the Local Transport Act 2008, to provide a power to make an order to transfer functions of a CCA to an ITA.

195. Paragraphs 28 and 29 amend sections 90 and 91 of the 2008 Act to exclude CCAs from authorities which may be designated as an authority to be a local transport authority for the territory for the purposes of section 108(4) of the Transport Act 2000 in the event of a change to the boundaries of an integrated transport area, or the dissolution of an integrated transport area.

Justification for delegation

196. This order-making power is consistent with equivalent powers to transfer functions of a combined authority to an ITA. We consider that as with combined authorities, CCAs may also exercise transport functions, it is appropriate to make provision for an equivalent order-making power.

Justification for procedure selected

197. The existing orders under chapter 2 of Part 5 to the Local Transport Act 2008 are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure for orders made in relation to CCAs.

Schedule 4 paragraphs 32 and 33: amendments to order-making powers in Part 6 of the 2009 Act for establishing an economic prosperity board and establishing a combined authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

198. Paragraphs 32 and 33 of Schedule 4 amend sections 88 and 103 of the 2009 Act to exclude CCAs from authorities which may form part of the area of a combined authority.

Justification for delegation

199. This order-making power is consistent with equivalent powers in relation to existing combined authorities, which may not form part of the area of an of a new combined authority.

Justification for procedure selected

200. The existing orders under sections 88 and 103 of the 2009 Act are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure for orders made in relation to CCAs.

Schedule 4 paragraphs 34 and 35: amendments to order-making powers for changing the boundaries of a combined authority and the dissolution of a combined authority

Powers conferred on: *Secretary of State.*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

201. Paragraphs 34 and 35 amend sections 106 and 107 of the 2009 Act to exclude CCAs from authorities which may be designated as an authority to be a local transport authority for the territory for the purposes of section 108(4) of the Transport Act 2000 in the event of a change to the boundaries of a combined authority, or the dissolution of a combined authority.

Justification for delegation

202. This order-making power is consistent with equivalent powers to transfer functions of a combined authority to an ITA. We consider that as with combined authorities, CCAs may also exercise transport functions, it is appropriate to make provision for an equivalent order-making power.

Justification for procedure selected

203. The existing orders under sections 106 and 107 of the 2009 Act are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure.

Schedule 4 paragraph 38: amendments to section 18 of the Cities and Local Government Devolution Act 2016

Powers conferred on: *Secretary of State.*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

204. Section 18 of the Cities and Local Government Devolution Act 2016 ("the 2016 Act") requires that regulations under section 16 of the 2016 Act to confer public authority functions to a local authority, or an order under section 115A of the 2009 Act to confer public authority functions on a combined authority, must not transfer any of the Secretary of State's core duties in relation to the health service as set out in the National Health Service Act 2006 and the NHS constitution.

205. The amendment to section 18 of the 2016 Act extends this requirement to regulations under clause 17 of the Bill to transfer public authority functions to a CCA.

Justification for delegation

206. This amendment is consistent with equivalent requirements for the conferral of public authority functions on a local authority or a combined authority. We consider that as with combined authorities and local authorities, CCAs may also exercise functions to which the Secretary of State's core duties in relation to the health service as set out in the National Health Service Act 2006 and the NHS constitution, and so it is appropriate to make provision to apply the equivalent requirement.

Justification for procedure selected

207. The existing orders under section 18 of the 2016 Act and section 105A of the 2009 Act are subject to the affirmative resolution procedure, and we consider it appropriate to use the same procedure for orders made in relation to CCAs.

Local Government Capital Finance

Clause 74(2): provision for the Secretary of State to issue a direction to a local authority for the purpose of reducing financial risk where a "trigger event" takes place

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

208. Clause 74(2) inserts new section 12A into the Local Government Act 2003. This clause will enable the Secretary of State to give one or more "risk-mitigation directions" to a particular local authority ("LA") where a "trigger event" has occurred in relation to that authority.

209. A trigger event is an event listed in subsection (2) of new section 12A. These are where a "risk threshold" is breached by the authority; or the chief financial officer ("CFO") of an authority issues a report under section 114(3) of the Local Government Finance Act 1988[1]; or where the Secretary of State provides financial assistance to that authority for the purpose of preventing the circumstances arising in which the CFO of that authority would be required to make such a report.

[1] A report must be made where the relevant authority's chief financial officer considers that the expenditure of the authority is likely to exceed available resources to meet it in that financial year.

210. Subsection (3) of new section 12A provides that the "risk-mitigation" directions may include directions which limit the amount that authority may borrow, or to require that authority to take specified action. Subsection (6) of section 12A provides that "specified action" may include requiring that authority to take steps to divest itself of a particular asset.

211. Risk-mitigation directions may only be given for the purpose of reducing or mitigating the financial risk to that authority. Subsection (7) of new section 12A defines financial risk as the risk that the expenditure of that authority exceeds, or further exceeds, that authority's resources available to meet that expenditure in the current financial year or a future financial year.

Justification for delegation

212. This power is required to ensure that where a local authority presents an unsustainable level of financial risk, that the Secretary of State is able to intervene for the purpose of reducing or mitigating that risk.

213. Since 2016, there has been a growing trend for some authorities to take on very high levels of debt, often to pursue commercial investments. In 2020, the National Audit Office reported that the sector had spent 14.4 times more on commercial property acquisitions during 2016-17 to 2018-19 compared to the prior three years (estimated at £6.6bn)[2]. The report further noted that income from commercial property is uncertain over the long term and authorities may be taking on high levels of long-term debt with associated debt costs, or may become significantly dependent on commercial property income to support services. Some authorities also invest in novel activities e.g. energy companies, which are outside their experience, and which can lead to financial loss when mismanaged, or become over reliant on commercial income to balance their budgets – such income is susceptible to economic shocks.

214. Decisions to give a direction under this power and the content of such a direction would need to be considered on a case-by-case basis. They will be dependent on the particular circumstances of an authority, including the level of its financial risk and the nature of its activities which gave rise to that level of risk, including the type of assets it holds and its overall debt level.

215. Therefore, it would not be possible to set out the specific conditions of a particular direction on the face of the Bill itself.

Justification for procedure selected

216. Each authority's financial situation will be unique to that authority. Where a trigger event occurs in relation to an authority, the Secretary of State's actions will depend on the specific financial situation of that authority, without wider application to other authorities.

[2] https://www.nao.org.uk/report/local-authority-investment-in-commercial-property

217. The power to issue a risk-mitigation direction has a number of safeguards. It will only be exercisable where a trigger event has occurred in relation to an authority and where the Secretary of State is satisfied that the direction is appropriate and proportionate to the level of financial risk to that authority. The Secretary of State will be required to have regard to the likely impact of the direction on the provision of services to the public by or on behalf of the authority and to the authority's best-value duty under section 3(1) of the Local Government Act 1999. The Secretary of State will also be required to give the authority an opportunity to make representations on the proposed direction, and to consider those representations before issuing the direction.

218. The Secretary of State is not required to issue a direction in all circumstances where a trigger event occurs but has discretion to do so. The Secretary of State is also required to issue a 'cessation notice' under new section 12C, in the circumstances prescribed under that section. Where a cessation notice is given, the Secretary of State's power to issue risk-mitigation directions to that authority will cease. Thereafter the Secretary of State could only issue further directions were another trigger event to occur in relation to that authority.

219. For these reasons, we consider that it is appropriate to have no Parliamentary procedure for the use of the power. This is consistent with other powers to issue directions under Part 1 of the 2003 Act.

Clause 74(2): provision for the Secretary of State to make Regulations specifying further categories of capital risk metrics

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

220. Clause 74(2) inserts new section 12B(2)(e) into the Local Government Act 2003 ("the 2003 Act"). This clause enables the Secretary of State to specify "capital risk metrics".

221. A "capital risk metric" is, broadly, a measure used to assess the level of financial risk in relation to an authority. Where an authority breaches the specified threshold for a capital risk metric, that will constitute a trigger event under section 12A(1) and enable the Secretary of State to issue risk-mitigation directions, as discussed above.

222. Paragraphs (a) to (d) of new section 12B(2) specify four separate capital risk metrics. Paragraph (e) will enable the Secretary of State to specify further metrics in Regulations.

223. Before making such Regulations, the Secretary of State will be required to consult all local authorities[3].

Justification for delegation

224. The Department has sought to provide as much detail as possible on the face of the Bill and has identified four separate capital risk metrics in new section 12B(2)(a) to (d) of the 2003 Act. These metrics identify the types of risk that arise from local authority borrowing and investment practices.

225. However, local authority practices change relatively quickly as authorities adopt new trends and practices, which can create new types of financial risk. Therefore, specific risk behaviour and the most appropriate means of identifying risks may change more frequently than Parliament would likely be able to legislate in response to in an effective way.

226. Identifying the appropriate metrics for addressing financial risk depends on the prevailing accounting practices or other frameworks by which authorities categorise and record their financial transactions, which are also subject to change. Therefore, while the Department has identified the risk metrics that we are currently aware of on the face of the Bill, we consider that we require a power to establish further metrics in secondary legislation, so that we can adapt the legislative framework flexibly and swiftly to address changes in sector behaviour and practices.

Justification for procedure selected

227. Regulations under new section 12B(2)(e) of the 2003 Act will be subject to the negative procedure. Before making regulations under this power the Secretary of State will be required to consult all local authorities. We consider that the choice of negative procedure provides the appropriate level of scrutiny in Parliament and is consistent with other powers to make regulations under Part 1 of the 2003 Act.

Clause 74(2): provision for the Secretary of State to make Regulations specifying thresholds for capital risk metrics

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

228. Clause 74(2) inserts new section 12B(3)(a) and (b) into the Local Government Act 2003. Section 12B(3)(a) will enable the Secretary of State to set specified thresholds in relation to each capital risk metric.

[3] Within the meaning of section 23 of the 2003 Act

229. For certain capital risk metrics the 'threshold' for an authority may be determined by the authority itself in accordance with statutory guidance. For example, section 12B(2)(d) lists "minimum revenue provision" ("MRP") as a capital risk metric. Local Authorities are required to charge a "prudent amount" of MRP to a revenue account each financial year[4]. The meaning of "prudent" is set out in statutory guidance[5], as opposed to Regulations. Subsection (6) of new section 12B provides that the Secretary of State can specify thresholds as being determined having regard to statutory guidance.

230. A 'capital risk metric' as set out above, is broadly, a measure used to assess the level of financial risk in relation to an authority. Regulations made under section 12B(3)(b) will specify how those metrics themselves will be calculated for the purpose of determining whether a risk threshold has been breached.

231. For example, section 12B(2)(a) lists as a metric, an authority's debt compared to its financial resources. Regulations under section 12(3)(b) will be able to specify what precisely is meant by an authority's 'financial resources' and how they are to be calculated.

Justification for delegation

232. Local authority practices change relatively quickly as authorities adopt new trends and practices, which can create new types of financial risk. Therefore, specific risk behaviour and the most appropriate means of measuring them may change more frequently than Parliament would likely be able to legislate in response to in an effective manner.

233. For example, in measuring proportionality of debt (the level of debt compared to the size of an authority), a common measurement of the 'size' of the authority must be used. Currently, this tends to be Core Spending Power (a measure of the financial resources they have available), but this is a construct that may change as local authority funding is reformed. Similarly, the measure of debt may need to adapt if authorities use different financing arrangements. Thresholds may also depend on the prevailing accounting practices or other frameworks by which authorities categorise and record their financial transactions, which are also subject to change.

234. In order for the policy to be effective the Secretary of State will need to be able to adapt to changes in sector behaviour and to changes in the financial and accounting framework which authorities operate to.

Justification for procedure selected

[4] See regulations 27 and 28 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146).

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678868/Statutory_guidance_on_minimum_revenue_provision.pdf

235. Regulations made under new section 12B(3)(a) and (b) of the 2003 Act will be subject to the negative procedure. The negative procedure is considered appropriate for these regulations in line with other regulations made under Part 1 of the 2003 Act.

Council Tax Premiums

Clause 75(1) for the Secretary of State to issue guidance to which billing authorities must have regard in exercising their functions

Powers conferred on: *Secretary of State.*
Powers exercised by: *Guidance*
Parliamentary Procedure: *None*

Context and Purpose

236. Clause 75 amends section 11B of the Local Government Finance Act 1992 ("the 1992 Act") to change the definition of a "long term empty dwelling" ("empty home") under section 11B(8) to a dwelling which has been unoccupied and substantially unfurnished for at least 1 year rather than 2 years. Section 11B enables a billing authority in England to make a determination for any financial year that the amount of council tax payable in respect of long term empty dwellings may be increased by a percentage of not more than 100 to 300 (depending on how long the dwelling has been unoccupied) as it may so specify, and that the discount under section 11(2)(a) of the 1992 Act shall not apply to those dwellings.

237. New section 11B(1D) (inserted by sub-section (1)(a)) enables the Secretary of State to issue guidance to which billing authorities must have regard in exercising their functions under section 11B.

Justification for delegation

238. This power is required to enable the Secretary of State to issue statutory guidance where he considered that would help billing authorities in exercising their functions. Billing authorities are likely to find it helpful to have guidance to assist them in making their decision on whether to make a determination in relation to dwellings which have been empty for at least 1 year. The guidance may be used to set out a framework of factors that billing authorities may take into account when making their decision on whether to apply the charge. Guidance will be helpful, both to billing authorities and council taxpayers who may be subject to the charge. It is possible that the Department may wish to include illustrative scenarios within the guidance, which would not be suitable for inclusion within the primary legislation.

Justification for procedure selected

239. There will be no Parliamentary procedure for the publication of guidance. This guidance will be administrative and operational in nature and will not impose strict legal requirements. It would be unusual for there to be parliamentary scrutiny of this type of statutory guidance. The Department considers that it will be a sufficient safeguard that any guidance will be amenable to judicial review.

Clause 76(2) for the Secretary of State to issue guidance to which billing authorities must have regard in exercising their functions

Powers conferred on: *Secretary of State.*
Powers exercised by: *Guidance*
Parliamentary Procedure: *None*

Context and Purpose

240. Clause 76 inserts new sections 11C and 11D into the Local Government Finance Act 1992 ("the 1992 Act"). This enables a billing authority in England to make a determination for any financial year that the amount of council tax payable in respect of dwellings occupied periodically (such as "second homes") may be increased by a percentage of not more than 100 as it may so specify, and that the discount under section 11(2)(a) of the 1992 Act shall not apply to those dwellings.

241. New section 11C(4) (inserted by sub-section (2)) enables the Secretary of State to issue guidance to which billing authorities must have regard in exercising their functions under section 11C.

Justification for delegation

242. This power is required to enable the Secretary of State to issue guidance where he considered that would help billing authorities in exercising their functions. Billing authorities are likely to find it helpful to have guidance to assist them in making their decision on whether to make a determination. It is possible that the Department may wish to include illustrative scenarios within the guidance, which would not be suitable for inclusion within the primary legislation.

Justification for procedure selected

243. There will be no Parliamentary procedure for the publication of guidance, which will be administrative and operational in nature and will not impose strict legal requirements. It would be unusual for there to be parliamentary scrutiny of this type of statutory guidance. The Department considers that it will be a sufficient safeguard that any guidance will be amenable to judicial review.

Clause 76(2) for the Secretary of State to make regulations in relation to prescribing classes of dwelling for which a determination to charge a premium may not be made

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

244. Clause 76 inserts new sections 11C and 11D into the Local Government Finance Act 1992 ("the 1992 Act"). This enables a billing authority in England to make a determination for any financial year that the amount of council tax payable in respect of dwellings occupied periodically (such as "second homes") may be increased by a percentage of not more than 100 as it may so specify, and that the discount under section 11(2)(a) of the 1992 Act shall not apply to those dwellings.

245. New section 11D(1) (inserted by sub-section (2)) enables the Secretary of State to prescribe one or more classes of dwelling in relation to which a billing authority may not make a determination under new section 11C(1) of the 1992 Act.

Justification for delegation

246. This power is required to enable exceptions to be prescribed where matters relating to the dwelling or other circumstances (depending on housing or other factors) mean that it would not be suitable for an increased council tax payment to be levied in respect of the periodically occupied dwelling. The Department recognises that there may be certain circumstances where it would not be appropriate to apply the premium, for example, if the property is being actively marketed for sale or if the dwelling is an annex forming part of, or being treated as part of, the main dwelling. The level of complexity and detail would not be suitable for the face of the Bill and regulations are considered a better tool to allow the Secretary of State to set out the relevant classes of exemptions. The Department considers that it is appropriate to use regulations for these purposes as this approach will provide flexibility to ensure that if circumstances change over time or if a need for further exceptions is identified in the future this can be easily addressed by adding, amending or removing exceptions.

Justification for procedure selected

247. The negative procedure is considered appropriate for these regulations, in line with other similar powers in this part of the 1992 Act such as the power in section 11B(2) to prescribe classes of dwellings for which billing authorities may not make a determination to apply a higher amount of council tax for long term empty dwellings.

Clause 76(2) for the Secretary of State to make regulations in relation to specifying a different percentage limit by which council tax may be increased pursuant to a determination

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure (House of Commons only)*

Context and Purpose

248. Clause 76 inserts new sections 11C and 11D into the Local Government Finance Act 1992 ("the 1992 Act"). This enables a billing authority in England to make a determination for any financial year that the amount of council tax payable in respect of dwellings occupied periodically (such as "second homes") may be increased by a percentage of not more than 100 as it may so specify, and that the discount under section 11(2)(a) of the 1992 Act shall not apply to those dwellings.

249. New section 11D(3) (inserted by subsection (2)) enables the Secretary of State to specify in regulations a different percentage limit for the 100% maximum limit in section 11C(1)(b) by which council tax for a periodically occupied dwelling may be increased pursuant to a determination.

Justification for delegation

250. This power is required to enable the maximum level of the premium to be adjusted if that proves necessary or desirable to reflect housing and social circumstances. This is necessary to ensure that the premium continues to operate effectively over time and to provide the Government with flexibility to specify a different maximum level at which the premium may be applied if the maximum level is either too high or too low. The Department considers that flexibility is important to ensure that the legislation may respond quickly to changing circumstances, for example, where the impact of second homes increases or decreases to a significant degree after the power for billing authorities to apply the premium is in place.

Justification for procedure selected

251. The department considers that the affirmative procedure will provide the appropriate level of Parliamentary scrutiny. The draft regulations will be scrutinised by the House of Commons, which is consistent with other affirmative procedure statutory instruments under the 1992 Act.

Clause 77 for the Secretary of State to make regulations specifying the way or ways in which a local authority can establish that an alteration to a street name has sufficient local support

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

252. Clause 77(2) gives local authorities the power to alter street names if the alteration has 'the necessary support'. Clause 77(6) then provides that 'necessary support' includes 'sufficient local support'.

253. 'Sufficient local support' is not defined. The purpose of clause 77(7) is to allow the Secretary of State to prescribe through regulations the way(s) in which local authorities can establish whether an alteration has sufficient local support.

254. The purpose of clause 77(8) is to clarify matters which the Secretary of State may make provision for in prescribing the way(s) of establishing sufficient local support.

Justification for delegation

255. The primary legislation enshrines the principle that any alteration to a street name will need sufficient local support.

256. The Government believes it is more appropriate to provide for the means for ascertaining sufficient local support through regulations given there are a number of detailed matters to enshrine this principle, such as defining the electorate, the process for engaging with the electorate and other procedural matters.

257. The procedural matters include the conduct and timing of the referendum, and the thresholds which need to be met in any referendum before sufficient local support is established.

258. There may also need to be alternative mechanisms which apply to a variety of circumstances which may arise. For example, in the case of public squares there might be no, or only a negligible, "electorate" for the square, meaning a referendum might not be practical.

259. There is also a policy concern of preventing local authorities from re-running referendums in quick succession where they have failed to establish sufficient local support, which may require setting minimal intervals between referendums. This may need to be dealt with in the procedural rules.

260. There is a significant amount of detail which is required around these matters and the Government considers it would be excessive to include this amount of detail on the face of the Bill.

261. The Government would like feedback from the public and local authorities on these matters, given the potential impact on them, as well as other representative bodies and businesses, before deciding on how they are dealt with in the detail of the regulations.

262. A consultation on alterations to street names (Technical consultation on street naming - GOV.UK (www.gov.uk)), was carried out in May 2022 and asked questions related to the content of the regulations.

Justification for procedure selected

263. The primary legislation enshrines the principle that any alteration to a street name will need sufficient local support. The more detailed matters which arise from establishing sufficient local support are lower-level matters which will continue to honour this principle, and are more procedural in nature rather than allowing the Government to change this policy. As such, it is considered that the affirmative procedure would be excessive, given the technical nature of the considerations involved.

264. Many of the matters to be dealt with in the regulations will also be mechanisms for dealing with more complex scenarios for establishing sufficient local support, such as the situation with public squares.

Clause 77(6) and 77(7) for the Secretary of State to make regulations specifying the way(s) in which other support may be established as a pre-condition for alterations of a specified kind

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Affirmative procedure

Context and Purpose

265. Clause 77(2) gives local authorities the power to alter street names if the alteration has 'the necessary support'. Clause 77(6) then provides that 'necessary support' includes other support specified as a pre-condition for alterations of a specified kind.

266. The purpose of clause 77(7) is to allow the Secretary of State to prescribe through regulations the way(s) in which local authorities can establish this other support.

Justification for delegation

267. The Government recognises that the circumstances of streets and the public interest in their name can vary significantly.

268. Whilst the principle enshrined in the primary legislation is that any alteration to a street name will need sufficient local support, there may be other support which is needed before an alteration can be made to a street name. An example would be the consent of an individual (or their family) whose name is being used on the proposed street name.

269. The Government would like feedback from the public and local authorities on these matters, given the potential impact on them, as well as other representative bodies and businesses, before deciding on how they are dealt with in the detail of the regulations.

270. Again, a consultation on alterations to street names (Technical consultation on street naming - GOV.UK (www.gov.uk)), was carried out in May 2022 and asked questions related to the content of the regulations.

Justification for procedure selected

271. The Government anticipates there may be other support needed to alter a street name in certain circumstances, even where the alteration has sufficient local support. This need for other support, which is intended to be a pre-condition of any alteration, moves away from the principle enshrined in statute that any alteration to a street name will need sufficient local support and therefore it is considered these regulations will need a greater level of scrutiny, which justifies the use of the affirmative procedure.

Clause 77(9) for the Secretary of State to issue guidance which local authorities must have regard to in taking steps to establish if an alteration has sufficient local support, or in exercising other functions conferred by the provisions

Powers conferred on: Secretary of State
Powers exercised by: Published document
Parliamentary Procedure: None

Context and Purpose

272. The purpose of clause 77(9) is to give the Secretary of State the power to issue statutory guidance which local authorities must have regard to in taking steps to establish an alteration has sufficient local support, as well as other functions prescribed by the Provisions.

Justification for delegation

273. It is appropriate that these powers are delegated to the Secretary of State to ensure local authorities have clarity on how to follow the new rules around street name alterations. This guidance will help promote consistency between local authorities in the application of the new rules. It should also allow members of the public to understand the process more clearly

274. There is currently a public consultation on the matters to be dealt with in the guidance (Technical consultation on street naming - GOV.UK (www.gov.uk)), which closes on 22 May 2022 and asks questions related to the content of the statutory guidance. There is also likely to be further engagement with local authorities and government bodies to ascertain those matters which it would be most helpful to have guidance on. The regulations can take into account any practical matters which are raised through this process.

Justification for procedure selected

275. The matters dealt with in guidance are largely procedural and/or of practical importance. They will not affect the principle enshrined in primary legislation that any alteration to a street name will need sufficient local support. The guidance will primarily be developed for and through engagement with, local authorities, and for these reasons it is considered that Parliamentary oversight is not required.

PART 3 – Planning

Clause 78(1) and (3) power for the Secretary of State to make regulations to require a relevant planning authority in processing such planning data as is specified or described in the regulations, to comply with approved data standards.

Powers conferred on: *the Secretary of State*
Powers exercised by: *Regulations made by statutory instrument (clause 78(1)) and publication (clause 78(3)).*
Parliamentary Procedure: *Negative procedure in respect of the power in clause 78(1)), no procedure in relation to the power in clause 78(3).*

Context and Purpose

276. Chapter 1 of Part 3 creates new duties and powers regarding planning data and planning software. At present, the planning system is reliant on information contained in documents. Officials, developers and the public can struggle to find and make use of relevant information. In addition, local and national planning authorities rely on multiple IT systems that are not interoperable.

277. Information technology has the potential to transform aspects of the planning system. The ambition of the policy is to stimulate the development of new software and services for the planning sector, whose take-up should result in a more efficient and effective planning system. Digital tools and services should help to better engage citizens with the planning process by facilitating their understanding of planning and development proposals in their local communities. Access to reliable data should drive-up efficiency in planning authorities, whose planning and development decision-making should benefit from the context and understanding provided by the up-to-date picture of their area derived from the latest available planning data.

278. Clause 78 provides that the Secretary of State may require planning authorities, within the definition of clause 84, to process their planning data (information) to applicable standards. Those standards will be published from time to time. A flow of reliable and consistent data is the cornerstone of new innovative planning software, and its widespread adoption. The purpose of

setting national data standards is to facilitate the creation of data that is consistently held and processed by all planning authorities.

Justification for delegation

279. The power in clause 78(1) is being taken to ensure that different categories of planning data can be subject to processing in accordance with approved data standards, when the standards to process that data is developed and available. Because the building of standards to support the digitisation of the planning system will take time and will develop over time, it would be premature at this stage to specify categories of planning data on the face of the Bill. In addition, wider policy development such as streamlining local plans evidence base, will establish new requirements for data standards. For this reason, a power is needed so that categories of planning data can be added incrementally to the regime. A second reason is that the readiness of planning authorities to process planning data to any approved data standards will be key. It is envisaged therefore that the commencement of the various powers and duties in these measures will be phased in terms of the addition of categories of data.

280. The power in clause 78(3) of the Secretary of State to publish approved data standards from time to time is being taken in line with other powers in planning legislation, which allow the Secretary of State to publish data standards. For example, the power in section 36(3) of the Planning and Compulsory Purchase Act 2004 which was inserted by section 11 of the Neighbourhood Planning Act 2017. The setting of data standards is not suitable for legislation as the standards will comprise highly technical specifications for how information (data) is to be published in a file format structure so that software applications can easily identify, recognise and extract specific data to permit its re-use. The standards themselves are likely to be presented in a number of formats that will not necessarily be compatible with the requirements for the publication of secondary legislation. The standards may also need to change to respond to feedback from planning authorities and users of the planning system.

281. The Department previously took a power in the Housing and Planning Act 2016 which inserted a new section 14A of the Planning and Compulsory Purchase Act 2004 to provide for the establishment of registers of brownfield land. Section 14A(4)(e) allowed the Secretary of State to prescribe through regulations subject to the negative resolution procedure, information to be given in such registers about areas of brownfield land. This power was used to prescribe various data standards in regulation 15 of and Schedule 2 to the Town and Country Planning (Brownfield Land Register) Regulations SI 2017/403. Such data standards included matters such as: (i) location co-ordinates to identify a point on the land expressed as an east/west component and a north/south component; (ii) the co-ordinate reference system used for (i) and the uniform resource identifier "URI" of the local authority expressed in the form http://opendatacommunities.org/id/ followed by the relevant type of authority and name of the local authority.

282. The experience of the Department was that planning authorities misinterpreted some of the data requirements and, because the data standards were set in regulations, , the Department were unable to react sufficiently quickly to ensure the data was created consistently across planning authorities. There must be no ambiguity over any data standard in order to protect the consistency of data between different planning authorities. The most expedient way to ensure such consistency will be for the Secretary of State to be able to continue to set such data standards by publication, rather than in secondary legislation. Where appropriate the government will meaningfully engage with relevant stakeholders.

Justification for procedure selected

283. In relation to the power in clause 78(1) for the Secretary of State to prescribe planning data, which must then be processed by planning authorities in accordance with approved data standards, the Government considers that this level of scrutiny is appropriate. The categories of planning data in scope will be added to incrementally over time. Further, those categories are not of such import that Parliament should need to debate each exercise of the power. Therefore, the negative procedure is justified.

284. In relation to the power in clause 78(3) for the Secretary of State to publish approved data standards from time to time, adopting standards without Parliamentary scrutiny is justified because the standards relate only to the *form* in which information is processed. The information will already be required under the planning Acts and standards will be technical matters, such as the descriptors for distances or geolocational data, which are not matters that require parliamentary oversight. So, this power builds on the approach in section 36(3) of the Planning and Compulsory Purchase Act 2004 and also setting these standards by way of publication by the Secretary of State is the most appropriate way to disseminate this information.

Clause 79(1) and 79(8) power for the Secretary of State to make regulations to empower planning authorities to, by notice, require persons to provide prescribed data in accordance with applicable standards (clause 79(1) and to prescribe how that power may be exercised (clause 79(8))

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument for empowering planning authorities to require persons to provide planning data to applicable standards and how that power may be exercised (clause 79(1) and (8))*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

285. Clause 79(1) empowers planning authorities to require that any planning data prescribed under clause 79(1) is provided to applicable standards. This provision is the corollary of requiring planning authorities to process data to applicable standards under clause 78(1). Without this additional power, the cost

and time to convert planning data to applicable standards must fall entirely to publicly funded planning authorities. Further, the regular conversion of planning data introduces the risk of error, and steps to address or mitigate the likelihood or consequence of those errors will add to the complexity and duration of planning processes. That is likely to hamper the full implementation of the policy and would place an unreasonable burden on the resources of planning authorities. The eventual aim of the policy is that the technology will be sufficiently user friendly and embedded in the planning process that the provision of any relevant planning data to a standard will be less burdensome than not to that standard. The power will be rolled out in line with clause 78 so that categories of planning data will be added incrementally by planning process and policy area.

286. Regulations will prescribe the data and standards within scope of this power and, in exercising the power in relation to any data, planning authorities must notify the public in advance of the requirement. Under clause 78(2) the power to require data to an applicable standard cannot be exercised against data provided by the Crown (including the devolved administrations), a court or Tribunal or in connection with proceedings at a Court or Tribunal.

287. Where a third party fails to provide planning data to an applicable standard there is a discretionary power under clause 79(5) for a planning authority to reject that data by service of a notice on that party. That rejection must specify the planning purposes for which that data is rejected. In addition to reasons of fairness, that is intended to capture the rejection of mixed data, where only part of the data is provided incorrectly and/or the planning authority is able to make use of data for some purposes but not others. Where rejected data is subsequently correctly provided there is discretion pursuant to clause 79(7) for the planning authority to accept it as if it had been received correctly originally.

288. Clause 79(4) allows planning authorities to accept any data provided by third parties where those parties have a reasonable excuse not to provide it to that standard. This is to address the position, for example, of those unexpectedly without internet access or who are digitally excluded by reason of a protected characteristic. In those cases, clause 79(3) means that the current notice requirements in planning enactments, such as s.329 Town and Country Planning Act 1990, will apply to that data.

289. To address associated procedural matters clause 79(8) provides a delegated power for the Secretary of State to prescribe how the powers delegated to planning authorities in subsections (1), (5) and (7) may be exercised. There is in particular the option of a grant of a discretionary power to planning authorities over the form and content of notices or other associated documents, see clause 79(8)(b).

Justification for delegation

290. As set out above in this memorandum, the development of data standards to support the digitisation of the planning system is on-going and will

be updated from time to time as the technology and data in scope advances. It is premature to detail the data in scope on the face of the legislation and a legislative approach that is responsive to changes in technology over time is needed.

291. As to the local discretion over the final selection of data in scope of the power, each planning authority is expected to take an individual approach depending on the standards available to them and the planning process they wish to prioritise, which in turn will depend on their local circumstances. Localised procedures and policies are in keeping with other parts of the planning system such as local plans and local application information requirements. Therefore, the public and planning professionals will be familiar with the principle of these arrangements and it is in keeping with the planning regime more widely. This approach also aligns with the roll out of the policy to planning authorities by planning process. The data standards have not been developed yet for every data set.

292. A delegated power to prescribe how these powers may be exercised, and a subdelegated power over the form and content of notices and other associated documents, under clause 79(8) is also appropriate. It is a narrow power. It is also in keeping with the wider planning regime where procedural matters are often contained in delegated legislation, see for example s.62 Town and Country Planning Act 1990 providing the vires for the Town Country Planning (Development Management Procedure) Order SI 2015/595). The public and planning professionals will also be familiar with this legislative approach and it is an appropriate manner to publicise binding legal requirements to them.

Justification for procedure selected

293. The matters settled by these powers, the data in scope of the power and procedure associated with notices under clause 76(8), are not appropriate for the level of scrutiny afforded by affirmative resolution. These are procedural and technical details. A negative resolution will allow the data in scope to be updated in line with advances in technology, which will be an efficient process, without burdening parliamentary time unnecessarily.

Clause 80(1) and (3) power for the Secretary of State to make Regulations to require planning authorities to make their planning data available to the public under an approved open licence and to set the content and form of that open licence

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument in the case of the power under clause 80(1); no procedure for the power under clause 80(3)*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

294. At present, planning authorities publish certain planning data online, sometimes as a result of an express legislative requirement, for example as an electronic version of their planning register pursuant to s.69 Town and Country Planning Act 1990. That data is however published in an inconsistent manner and in formats that are not machine-readable. This position hinders the development of innovative digital tools and services for planning because of the inconsistency of the standards of that data and its publication. Further, these artificial barriers to the flow and exchange of data restricts local and central government access to timely information and hampers faster and better-informed planning decisions which better meet the needs of local communities.

295. The power therefore requires planning authorities to publish prescribed planning data on an open licence to facilitate the creation and operation of those tools and services. There is a limitation at subsection (2) to ensure no confidential information or information that has a restriction on making it publicly available, however imposed, is published. This limitation ensures no new data will be required to be created or published under these regulations that is not otherwise capable of publication. This includes personal information safeguarded under data protection legislation so the regulations cannot make personal data available that is not made available under other planning enactments.

296. Within that limitation, published data must be made available on an open licence, under which the Secretary of State will set the terms of use and re-use of that data by the public free of charge. An example of an open licence is the Open Government Licence, which is frequently used to licence public sector information although that is not appropriate in this case because it permits the exploitation of information for commercial purposes. Under clause 80(3) the Secretary of State may publish the content and form of that licence.

Justification for delegation

297. As set out above in connection with the power at clause 78, prescribing the data in scope is not amenable to control by primary legislation alone. The development of data standards to support the digitisation of the planning system is not complete so it is premature to detail the data in scope on the face of the legislation. This demands a legislative approach that is responsive to changes in technology over time.

298. Setting the licence used by planning authorities will ensure planning data is published on a consistent basis within the planning system. It is not possible or appropriate to specify the applicable licence in the Bill because the terms of that licence may change in future in a manner that causes difficulties for the publication of planning data by planning authorities. Public accessibility free of charge are core features of an open licence and are listed in the clause. Licences impose restrictions on the use of data and restrictions will be necessary over the planning data in scope of these clauses. The restrictions will be informed by and linked with the data that is published and, as it is impossible to know at present what data is in scope, it would be premature to prescribe in the Bill the full terms and conditions of the licence.

Justification for procedure selected

299. The regulations will prescribe the data in scope and the type or characteristics of the open licence. The limitation at clause 80(2) provides an appropriate safeguard so that regulations may only prescribe data for publication which is otherwise be lawfully published. Therefore, the data for publication are technical details and they will need to be updated more frequently than primary legislation will allow. This procedure is a more efficient and flexible process to update the legislation in line with the technology and planning policy, without using Parliamentary time unnecessarily. It is not appropriate for these regulations to have a higher level of scrutiny than the negative resolution procedure.

300. As to the form and content of the licence, the licence will be updated from time to time because of changes to the data in scope and their associated restrictions. The principal licence for the use and re-use of public sector information is the Open Government Licence which is maintained by the National Archives without direct parliamentary oversight. Publication of the terms and content of a licence by the Secretary of State is therefore in keeping with the wider public sector approach.

Clause 81 power for the Secretary of State to make Regulations in relation to requiring a relevant planning authority only to use, create or have a right in planning data software if the software is approved in writing by the Secretary of State

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

301. Planning authorities rely on systems which are operated by the private sector. These can be expensive and are sometimes outdated. Further, information essential to decision-making in the planning system, and the decisions themselves, can be dispersed amongst a number of public authorities. At present the same data is having to be re-entered at several different points in the planning process because of the lack of interoperability between existing systems.

302. This has contributed towards reducing the efficiency of the planning system. This clause therefore provides a power to ensure different software selected by individual planning authorities facilitates and progresses the Secretary of State's policy ambition of digitising the planning system. Specifically, regulations will enable the Secretary of State to restrict or prevent the use of, creation or having rights in relation to specified or described planning data software that is not approved in writing. In this way, once implemented, the Secretary of State will control the availability of planning software to

planning authorities and ensure that software complies with their policy. To future proof against advances in software, planning data software is defined broadly to capture software which is capable of being used for the purposes of enabling or facilitating the provision of planning data to, or its processing by, planning authorities. In considering the compatibility of software with digital policy, the clause would permit the Secretary of State to have regard to matters including compliance with the applicable standards.

303. The clause therefore operates as an important safeguard akin to an enforcement mechanism should clauses 78-80 fail to reach any prescribed data or software used to process and generate it. Software developers will need to respond to the policy by updating existing software or developing new software that is capable of being approved by the Secretary of State. Failure by planning authorities to use approved software, or software which supports the Secretary of State's digital policy, will lead to the policy failing and not having its intended effect. For planning authorities to create, process and publish planning information whilst meeting other requirements established through planning data regulations, they will need to have appropriate software that enables them to do this in an efficient manner. Without planning authorities having the right software in place, the burden on planning authorities who will need to process planning data in various formats will increase, diminishing the speed and efficiency of the planning system.

Justification for delegation

304. Not delegating this power, by imposing a requirement that planning software of a prescribed type should be approved on the face of the bill, has the potential to create an unnecessary approval mechanism that is not needed for the purposes of the policy and it would diminish the intended persuasive effect of the clause, given ultimately the aim is not to introduce such an approval mechanism if possible.

305. It would be premature to put on the face of the bill further detail about the software caught by the approval mechanism. As explained previously in this memorandum, the applicable standards are in the process of development and is likely to change in future as the technology advances, not least in response to the introduction of these clauses over prescribed data. Delegation therefore provides the flexibility to respond to advances and changes in software. Further, the Department must be in a position to quickly stop and reverse any scope for divergent software that hinders planning authorities' ability to receive or process planning data to applicable standards.

Justification for procedure selected

306. The content of the regulations will establish an obligation that certain specified or described software must be approved before its use by planning authorities. The government will work with planning authorities and software suppliers to explore and trial modernising planning software. This exploratory work will help shape the descriptions of software that would be set out in subordinate legislation. The identity of the software or its description are

matters that do not warrant the higher degree of parliamentary scrutiny afforded by the affirmative procedure.

Clause 84 power for the Secretary of State to make Regulations to prescribe the public authorities within the definition of "relevant planning authority" and planning enactments within the definition of "relevant planning enactment"

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

307. A data-driven planning system requires the actors within the planning system and the information that is produced and processed in connection with planning and development to comply with the new digital provisions. We have listed in the definition of 'relevant planning authority' the planning authorities that will be caught by the roll out of the policy and the definition of 'relevant planning enactment' provides for their planning and development related functions in relation to which data and standards may be set.

308. This regulation making power will allow the Secretary of State to bring into the scope of the policy additional planning authorities and planning enactments to ensure standards and software can be extended to other public authorities and other functions. The current definitions will ensure the policy may be implemented for the next foreseeable stages of policy development and its roll out. As the technology develops and it is introduced to the sector, it may be necessary or desirable to introduce the reforms to other planning authorities or to cover other enactments related to planning which, because those developments are unknown at present, it is impossible to identify.

Justification for delegation

309. The digital planning system will be implemented incrementally by planning policy area, once planning software has been developed. These powers will enable the requirements under clauses 78-81 to evolve and to be imposed on planning authorities or data under additional planning enactments in line with the evolution of that technology and changes to wider planning policy and legislation. The power is expressly limited to enactments, and public authorities with functions, related to planning or development in England and nationally significant infrastructure projects, as defined by the Planning Act 2008. Having to amend the list in future primary legislation would delay the roll out of the imposition of the standards and publication duties to those new authorities or data whilst a suitable opportunity to amend in other primary legislation is awaited. This is likely to hold up the expansion of the policy to new planning authorities and planning policy data, and impose an artificial break on the speed with which technology could innovate to provide novel services to, and assist, planning processes.

Justification for procedure selected

310. Including new planning authorities and functions once those authorities and functions have bedded in will enable a more targeted approach to the imposition of data standards on those bodies and functions. The powers will not impose a requirement to create new information or alter the functions of planning authorities set in legislation. Identifying new, additional planning authorities or planning enactments that will be in scope of the clauses will be uncontroversial because of the technical nature of the clauses. The power is also limited to planning authorities and enactments. Therefore, the level of scrutiny afforded by the negative procedure a proportionate use of Parliamentary time.

Clause 87 inserting new section 38ZA of the PCPA 2004

Power for the Secretary of State to designate a policy in relation to the development or use of land in England as a national development management policy

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

311. In the new approach to local plans, certain planning policies are to be identified as National Development Management Policies ("NDMPs"). This is intended to ensure that core policies have a consistent wording nationally, to avoid the current situation where local planning authorities each create their own versions. These multiple versions have inconsistent wording and lead to varying interpretations, which reduces certainty for developers attempting to determine whether a development is policy compliant. In addition, having common wording for core policies will reduce the number of policies which need to be included in local plans, making them shorter and easier to prepare.

312. Amendments made to section 38 of the Planning and Compulsory Purchase Act 2004 ("PCPA") by clause 86 provide that, where regard is to be had to both the development plan and any national development management policies, the determination must be made in accordance with those documents (unless material considerations strongly indicate otherwise). If there is a conflict between the development plan and any NDMP, the conflict must be resolved in favour of the NDMP.

313. Clause 87 inserts a new section 38ZA after section 38 of the PCPA 2004, to allow the Secretary of State to make and revoke directions designating certain policies as NDMPs, and to modify a NDMP.

Justification for delegation

314. At present, statute and case law confer weight upon national planning polices made by the Secretary of State. Much of planning decision making relies upon the interpretation of policies made at a local and national level, however the interactions between national and local policy, although both acknowledged as properly fulfilling a role in the planning system, are ambiguous. This creates the potential for conflict and duplication, undermining clarity as to the applicable policies in is area. Confirming the status of national polies in the system through a formal delegation to make national development management policy is intended to resolve this in a manner compatible with the manner in which the planning system more widely operates in relation to policy

Justification for procedure selected

315. National policy is intended to fit within the wider architecture of the planning system by providing for national level considerations to have common effect across England in a manner which allows a sufficiently strong local or national matter to override both the policies in an area's development plan and the complementary national development management policies. Consequently, policy is considered to be the appropriate vehicle rather than primary or secondary legislation, whilst the technical and highly complex nature of those policies, and their interactions, in dealing with operational and practical considerations in the planning system, suggest that a parliamentary procedure would not be suitable for dealing with them

Clause 88 amends section 334 of the Greater London Authority Act 1999 to provide that the Secretary of State may make Regulations under section 343 of that Act in relation to prescribing further matters that the spatial development strategy ("SDS") may, or must, deal with.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: *Negative procedure*

Context and Purpose

316. Part 8 of the Greater London Authority Act 1999 ("GLAA 1999") makes provisions in respect a requirement for the Mayor of London to prepare and publish an SDS. Part 8 of the GLAA 1999 is applied, with modifications, to the Greater Manchester Combined Authority, the Liverpool City Region Combined Authority and the West of England Combined Authority.

317. Section 343 of the GLAA 1999 currently contains a power for the Secretary of State to make regulations with respect to:

a. the form and content of the SDS;
b. the documents (if any) which he requires to accompany the SDS;
c. the procedure to be followed in connection with the preparation, withdrawal, publication, making, review, alteration or replacement of the SDS or in connection with any review.

318. The power to make regulations under s.343 of the GLAA 1999 is subject to the negative procedure – see s.420(7).

319. Clause 88 amends s.334 of the GLAA 1999 to provide further detail as to the required, and permitted, content of the SDS (see new s.334(2A) to (2C). Clause 85 also inserts new s.334(2E) of the GLAA 1999 which provides that regulations made under s.343 may prescribe further matters the SDS may, or must, deal with.

320. This power is limited by new s.334(10) which provides that a SDS must not be inconsistent with, or in substance repeat, any national development management policy or specify particular sites where development should take place.

Justification for delegation

321. It is likely that as the new plan making system becomes established, the Secretary of State may wish to prescribe new matters that the London SDS should deal with. This could be to reflect changes in national planning policy or reflect changes in what is considered a strategic issue. Delegation is consistent with this approach.

322. The Secretary of State may need also to set out matters which a SDS needs to cover, or which should not be covered, in more detail than is specified by the general principles set out in the Bill. It is also conceivable that these could vary in different geographical areas, which would not be covered by the general principles set out in the Bill. Variance between different geographical areas is likely to grow as more areas are potentially granted SDS powers through devolution deals.

323. Delegation is also consistent with the planning regime more widely where many procedural requirements are set by delegated legislation, and a broadly similar power already exists within the GLAA 1999 (section 343(1)(a) which allows for provision to be made about the form and content of the SDS).

Justification for procedure selected

324. The bill sets out what an SDS must or may contain and sets a definition for what a strategy for spatial development is. Any further matters that an SDS must or may deal with that may be set out in regulations will be restricted by this. Anything additional that an SDS may or must deal with is therefore likely to be relatively minor in nature and therefore uncontroversial.

325. Given this, and since existing powers to make similar provisions are appropriate in using the negative procedure, we consider that procedure to be appropriate in this case.

Clause 90 introduces schedule 7 of the Bill which substitutes new provisions for sections 15 to 37 of the PCPA 2004 and make provision for, amongst other things, joint spatial development strategies

New section 15A(2)(c) PCPA 2004 for the Secretary of State to prescribe ineligible local authorities who will not be able to agree to prepare a joint spatial development strategy ("joint SDS")

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

326. New section 15A of the PCPA 2004 makes provision for two or more eligible local planning authorities to agree to prepare a joint SDS. Subsection (2) provides a definition of which local planning authorities are eligible for these purposes.

327. London borough councils and local planning authorities who are within the area of a combined authority are not eligible to agree to prepare a joint SDS. This is because in London the Mayor has a duty to produce an SDS under the GLAA 1999 (commonly known as the London Plan). This London Plan is intended to provide a spatial strategy for the greater London area, so will cover the area of London borough councils. Furthermore, combined authorities established under the Local Democracy, Economic Development and Construction Act 2009 have, in some circumstances, been conferred the duty to create an SDS under the GLAA 1999 (mirroring the position in London).

328. New section 15A(2)(c) provides a power for the Secretary of State to prescribe that other local planning authority are ineligible to agree to prepare a joint SDS.

329. Subsection (3) provides that the Secretary of State may only prescribe an authority under subsection (2)(c) if it is appropriate to do so because of an

exercise (or contemplated exercise) of powers in section 16 of the Cities and Local Government Devolution Act 2006 or under clause 17 of the Bill (powers to transfer etc. Public authority functions to certain local authorities).

Justification for delegation

330. Like with the introduction of combined authorities, there may be future changes to local government devolution and structures. Where there are changes to local government, the Secretary of State may wish to make provision in regulations to prevent certain local planning authorities from preparing a joint SDS – for instance, where they are subject to a similar overlapping duty or requirement (such is the case with London and some combined authorities).

331. It is considered that a delegated power to prescribe certain local planning authorities is the most appropriate mechanism to do this as it provides the Secretary of State with adequate flexibility combined with suitable parliamentary oversight.

Justification for procedure selected

332. It is considered that the affirmative parliamentary procedure is appropriate for this power since it would remove a planning tool from a local planning authority's arsenal.

New section 15AA(5) PCPA 2004 for the Secretary of State to make regulations to prescribe further matters a joint SDS may, or must, deal with and subsection (6) to prescribed diagrams, illustrations or other descriptive or explanatory matter relating to its contents that a joint SDS must contain

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: *Negative procedure*

Context and Purpose

333. New section 15A PCPA 2004 makes provision for two or more eligible local planning authorities to agree to prepare a joint SDS. New section 15AA makes provision for the content of a joint spatial development plan.

334. Subsection (1) provides that a SDS must include a statement of the policies of the participating authorities in relation to the development and use of land in the joint strategy area. These policies must be of strategic importance to that area and be designed to achieve objectives that relate to the particular characteristic or circumstances of that area. Subsection (2) provides that a strategy may specify or describe infrastructure that the authorities consider to be necessary or expedient for the purposes of supporting of facilitating development; mitigating, or adapting to, climate change; or promoting or improving the economic, social or environmental well-being of the joint strategy area.

335. Subsection (4) provides that, for the purposes of subsections (1) to (3), a matter may be of strategic importance to the joint area if it doesn't affect the whole area, but must be of strategic importance to the area of more than one of the participating authorities.

336. Subsection (8) further provides that a joint SDS must be designed to secure that the use and development of land in the joint strategy area contribute to the mitigation of, and adaption to, climate change.

337. Subsection (9) lists matters that a joint SDS must not do, including specifying particular sites where development should take place or be inconsistent with (or repeat) national development management policy.

338. Subsection (5) provides that the Secretary of State may prescribe further matters the joint SDS may, or must, deal with. Furthermore, subsection (6) provides that a joint SDS must contain such diagrams, illustrations or other descriptive or explanatory matter relating to its contents as may be prescribed by the Secretary of State.

Justification for delegation

339. It is likely that as the new plan making system becomes established, the Secretary of State may wish to prescribe new matters that a joint SDS should deal with. This could be to reflect changes in national planning policy or reflect changes in what is considered a strategic issue. Delegation is consistent with this approach.

340. The Secretary of State may need also to set out matters which a joint SDS needs to cover, or which should not be covered, in more detail than is specified by the general principles set out in the Bill. It is also conceivable that these could vary in different geographical areas, which would not be covered by the general principles set out in the Bill. Variance between different

geographical areas is likely to grow as more areas take up the opportunity to agree to prepare a joint SDS.

341. Delegation is also consistent with the planning regime more widely where many procedural requirements are set by delegated legislation, and a broadly similar power already exists within the GLAA 1999 (section 343(1)(a) which allows for provision to be made about the form and content of the SDS).

Justification for procedure selected

342. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the powers are not such that Parliament should have the opportunity to debate each exercise.

343. Similar requirements in the GLA Act 1999, which set out SDS powers for Greater London, currently take the negative procedure, and it would be inconsistent for these new powers to take a different approach.

344. The bill already sets out what a joint SDS must or may contain and sets a definition for spatial development. Any further matters for a joint SDS to deal with set out in regulations will be restricted by this. Most policy will continue to be set nationally and joint SDSs are intended to be restricted in what they can and cannot contain to reduce their length and detail. The Secretary of State is therefore unlikely to greatly increase the matters they may or must deal with. Anything additional that an SDS may or must deal with is therefore likely to be relatively minor in nature and therefore uncontroversial.

New section 15AB PCPA 2004 for the Secretary of State to make regulations under section 15LE in relation to consultation on a draft joint SDS

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

345. New section 15AB(1) provides that, authorities participating in the preparation of a joint SDS can adopt a strategy, they must complete various consultation requirements.

346. Section 15AB(1) provides that regulations can contain a number of provisions related to these requirements. These regulations can:

a. prescribe the places where the participating authorities must make copies of a proposed strategy available for inspection (15AB(1)(b));
b. prescribe persons and bodies to whom copies of the proposed strategy must be sent (15AB(1)(c) and (2)(d));
c. set out the 'prescribed period' within which representations can be made (clause 15AB(7)).

Justification for delegation

347. Delegation of this power is consistent with the planning regime more widely where many procedural requirements are set by delegated legislation.

348. At present the list of bodies and persons participating authorities must send copies of their draft joint SDS to are other local authorities and the Secretary of State (new section 15AB(2). New forms of authority or public bodies may be established in the future so this list may need expanding. If more bodies are required to be sent copies, then the prescribed period representation can made in may correspondingly need increasing.

349. New section 15AB(2)(e) also gives participating authorities discretion to send copies to other bodies that they consider appropriate. The list in legislation could be considered a "core" list that is unlikely to be expanded with the onus remaining on authorities to choose whom they send copies.

350. Given that much of the public participating will be done electronically we do not anticipate that any further requirements that may be imposed by regulations in future will be burdensome on participating authorities. Likewise, given the broader push towards digital plan-making and hosting plans online it is unlikely that the list of prescribed places that copies must be held will be expanded.

Justification for procedure selected

351. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as additional procedural detail in respect of consultation requirements for joint SDSs are likely to be minor procedural requirements that would not warrant Parliamentary scrutiny.

New section 15AC PCPA 2004 for the Secretary of State to direct that an examination in public need not be held prior to the adoption of a joint SDS

Powers conferred on: Secretary of State
Powers exercised by: Direction
Parliamentary Procedure: *None*

Context and Purpose

352. New section 15AC of the PCPA 2004 sets out the requirement for a joint SDS to be subject to an examination in public. Subsection (1) provides that such an examination is required unless the Secretary of State directs otherwise.

Justification for delegation

353. If a new SDS is essentially a minor update of an existing one, it may not be necessary to undergo full examination. What constitutes a minor update is subjective and a matter for the Secretary of State. This power ensures that the Secretary of State can decide whether examination is needed in a particular case.

Justification for procedure selected

354. It would not be practicable for Parliament to consider whether an individual SDS requires examination. This is consistent with the existing power for the London SDS in section 338(1) of the GLAA 1999.

New section 15AD(6) to (8) PCPA 2004 for the Secretary of State to give directions to participating local planning authorities in respect of the adoption of a joint SDS

Powers conferred on: Secretary of State
Powers exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

355. New section 15AD(6) to (8) makes provision for the Secretary of State to give a direction to participating authorities not to adopt a joint SDS unless modifications are made.

356. The Secretary of State can give such a direction where it appears to him to be expedient to do so for the purposes of avoiding: (a) any inconsistency with current national policies; or (b) any detriment to the interests of an area outside the joint strategy area.

357. The participating authorities receiving such a direction will be able to adopt the joint SDS in a form which includes modifications which remove any inconsistency and/or avoid any detriment to areas outside the joint strategy area (as appropriate). The authorities are required to satisfy the Secretary of State that they have made the necessary modifications to comply with the direction.

Justification for delegation

358. To ensure that SDSs are consistent with national policy and are not detrimental to the interests of adjoining areas, adjudication over this may be necessary prior to a joint SDS being adopted. The power of the Secretary of State to make directions on the adoption of a joint SDS is constrained by there being only two criteria for which they may do so.

359. This delegation is consistent with the existing power in section 337(6) to (8) of the GLAA 1999 in respect of the London Plan.

Justification for procedure selected

360. It would not be practicable for Parliament to consider whether an individual SDS is consistent with national policy and/or detrimental to the interests of adjoining areas. This is a matter for the Secretary of State to decide.

New section 15AE(5) PCPA 2004 for the Secretary of State to direct participating local planning authorities to review their strategy within such time as may be specified

Powers conferred on: Secretary of State
Powers exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

361. New section 15AE provides that it is the duty of the participating local planning authorities to keep under review their strategy. Subsection (5) provides that the Secretary of State may direct that the authorities to review the strategy (or ay part of it) within a given timeframe.

Justification for delegation

362. Once participating authorities have voluntarily chosen to produce a joint SDS, it will be important that it is kept up to date. This is partly because the joint SDS will be a consideration in the determination of planning applications, but more significantly any local plan within the strategic area must be in general conformity with the joint SDS. Therefore, if the joint SDS has become out of date, this could have adverse implications for local plans.

363. As joint SDSs also need to be consistent with national policy, they may also need reviewing to reflect any changes in national policy.

364. Participating authorities have a duty to keep a joint SDS under review. Should they fail to meet this duty it may be necessary for the Secretary of State to direct a review. However, given that joint SDSs can set key requirements for local plans, notably housing requirements, there is a strong incentive for participating authorities to review their joint SDS. For example, the London Plan SDS has been regularly reviewed and updated since the first London Plan was published in 2004. The power in s.15AE(5) for the Secretary of State to direct review is therefore likely to be little used.

365. Delegation of this direction power is consistent with the similar power available for the London Plan in section 340(2) of the GLAA 1999.

Justification for procedure selected

366. It would not be practicable for Parliament to consider whether an individual joint SDS should be reviewed.

New section 15AF(2) PCPA 2004 for the Secretary of State to direct participating local planning authorities to prepare and adopt alterations of a joint SDS

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

367. New section 15AF provides that participating local planning authorities may, at any time, prepare and adopt alterations of a strategy. Subsection (2) provides that the Secretary of State may direct that the authorities exercise this power to prepare and adopt alterations.

Justification for delegation

368. This power complements the power of the Secretary of State to direct a review of an SDS, as detailed above. If there are changes in national policy or a joint SDS has not been reviewed in some time and is out of date, it may be necessary to alter certain policies in a joint SDS.

369. This power is only likely to be used if participating authorities have been unable to agree to update their joint SDS amongst themselves.

370. Delegation of this direction power is consistent with the similar power available for the London Plan in section 341(2) of the GLAA 1999.

Justification for procedure selected

371. It would not be practicable for Parliament to consider whether an individual joint SDS requires alterations.

New section 15AH(6) PCPA 2004 for the Secretary of State to direct participating local planning authorities to withdraw their joint SDS

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

372. The participating authorities may agree to withdraw a strategy at any time. The Secretary of State may direct the participating authorities to withdraw the strategy if he thinks that the strategy is unsatisfactory.

Justification for delegation

373. Giving the power to direct that a joint SDS is withdrawn where he/she thinks it is unsatisfactory helps avoid a situation where something significant has happened to make the SDS out of date, but the LPAs won't all agree to its withdrawal. Given that local plans need to be in general conformity with the joint SDS, this could create issues for LPAs.

374. Given that joint SDSs are sent to the Secretary of State for comment before they are adopted, it is highly unlikely that the Secretary of State would exercise this power after they are adopted unless they are considered out-of-date but LPAs cannot agree to its withdrawal themselves.

Justification for procedure selected

375. It would not be practicable for Parliament to consider whether an individual SDS requires withdrawal.

New section 15B(5) PCPA power for the Secretary of State to prescribe the form and content of the local plan timetable and further matters which the local plan timetable must deal with

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

376. New section 15B introduces the concept of a local plan timetable, which all LPAs are required to prepare and maintain. Section 15B(2) sets out various pieces of information that are required to be specified in the local plan timetable, including (but not limited to) the geographical area to which the local plan relates, whether the LPA is participating in a joint plan, any supplementary plans which are to be prepared, and a timetable for the preparation of the local plan and any supplementary plans, which is consistent with Part 2 of the PCPA 2004 and any regulations made under this Part. Section 15B(5) allows the Secretary of State to prescribe the form and content of the local plan timetable and further matters which the local plan timetable must deal with.

Justification for delegation

377. This clause sets out the information that local plan timetables will be expected to include. The form and content of the local plan timetable are detailed administrative matters that are appropriate for secondary legislation. It is also possible that in future once the Bill has passed, the Government may wish to add further requirements for local plan timetables, where such information would be helpful to relevant stakeholders. This power enables this to happen through regulations rather than primary legislation, given that such changes may be required more often than Parliament can be expected to legislate through primary legislation.

Justification for procedure selected

378. Should the Government wish to require that local plan timetables include additional information to that set out in section 15B(2), then these changes are likely to be relatively minor in nature and therefore uncontroversial. The requirements for the form and contents of a local plan timetable are also unlikely to be controversial. The Government considers that it is therefore not necessary or practicable to bring such decisions before Parliament for a debate each time a minor change to the timetable provisions is required.

New section 15B(6) and (7) PCPA 2004 for the Secretary of State, or Mayor of London to prepare a local plan timetable for an authority and direct the authority to bring it into effect; and to direct an authority to make amendments to the local plan timetable

Powers conferred on: Secretary of State and Mayor of London
Powers exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

379. Section 15B(6) and (7) provide powers for the Secretary of State or the Mayor of London to intervene in the preparation of local plan timetables by local planning authorities. Section 15B(6) provides that, if a local planning authority have not prepared a local plan timetable, the Secretary of State or the Mayor of London may prepare a timetable for the authority and direct that the authority brings it into effect. Furthermore, section 15B(7) provides that where a local planning authority has prepared a local plan timetable, the Secretary of State and the Mayor of London have a power to direct that the authority to make amendments for the purpose of ensuring full and effective coverage (both geographically and with regard to subject matter) of the authority's area by the development plan for that area.

Justification for delegation

380. This power forms part of the overall package of tools available to the Secretary of State (and in this case the Mayor of London) to intervene in local plans. The timetable sets out when the different stages of plan making will take place. This gives the local community and other stakeholders an indication of when they will be able to get involved in the plan making process. This power therefore enables local planning authorities to be directed to prepare a timetable where they have not done so. The Government considers that the power is justified on the basis that being able to direct individual local authorities to prepare timetables, taking account local circumstances as appropriate, is vital to achieving the overall aspiration of delivering as many up to date local plans as possible. Decisions to intervene will need to be taken on a case by case basis in response to the inaction of any particular LPA once the Bill has been passed, and it will not be feasible to bring each decision before Parliament.

Justification for procedure selected

381. The powers largely replicate those that already exist in Section 15 of the PCPA 2004 and are unlikely to be considered controversial. Where the Secretary of State or the Mayor of London makes directions in relation to a timetable, it is important that they are able to act swiftly in order to ensure that a timetable is produced as quickly as possible to provide certainty to local communities and other stakeholders. It would therefore not be practicable to bring the decision to Parliament each time. On that basis, the Government considers that it is appropriate that this clause may be enacted without Parliamentary scrutiny.

New section 15B(10) PCPA 2004 power for the Secretary of State to by regulations make provision as to when, or the circumstances in which, a local planning authority must revise their local plan timetable (and that provision may confer a power to direct that a local plan timetable is to be revised).

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

382. As described above, new section 15B makes provision regarding local plan timetables, which all LPAs are required to prepare and maintain. Section 15B(10) provides that the Secretary of State may set out in regulations when (for example, annually), or the circumstances in which a LPA is required to revise their local plan timetable (for example, when each gateway checkpoint is reached, in terms of plan preparation). There is also a power for those regulations to confer a power on the Secretary of State to direct that the timetable is revised. This sub-delegation would be administrative, since the directions would be addressed to specific LPAs. These powers are similar to the existing powers in section 15 of the PCPA 2004 which are being repealed, which provide that LPAs are required to prepare and maintain a local development scheme, which specifies the timetable for preparation and revision of development plan documents.

Justification for delegation

383. As noted above, the local plan timetable is important in setting out to the local community and other interested stakeholders when key milestones in plan making will be reached. It is important that these timetables are kept up to date. This power enables the Secretary of State to set out the circumstances when a timetable will need updating and to direct an LPA to revise a timetable where one already exists. It is likely these requirements would need to be updated relatively frequently, taking account of experience of the new planning system after the Bill has passed.

Justification for procedure selected

384. The powers largely replicate those that already exist in section 15 of the PCPA 2004. On that basis, the Government considers that it is appropriate that regulations under this clause are enacted without Parliamentary debates. Any additional circumstances that the Government wishes to set out where a timetable revision is required would be minor in nature and uncontroversial. It is therefore not necessary for Parliament to debate such decisions each time a change is required.

New section 15BA(1)(b) power for the Secretary of State to issue guidance to which the Mayor of London must have regard

Powers conferred on: Secretary of State
Powers exercised by: *Guidance*
Parliamentary Procedure: *None*

Context and Purpose

385. Section 15BA makes further provision in relation to directions made under 15B(6) and (7). Directions may only be given by the Mayor of London to a local planning authority that is a London borough council. The Mayor of London, in considering whether to give such a direction, and which amendments to include in the direction, must have regard to any guidance issued by the Secretary of State (section 15BA(1)).

Justification for delegation

386. The local plan timetable is important in setting out to the local community and other interested stakeholders when key milestones in plan making will be reached. It is important that these timetables are kept up to date. This power enables the Secretary of State to provide guidance to the Mayor of London with regards to exercising the powers set out in section 15B(6) and (7). The guidance would be administrative in nature and could for instance set out how the Mayor of London might consider preparing or revising a specific Local Plan timetable in conformity with the legislation. The fact that guidance can be updated quickly is vital as it ensures that the Government can respond quickly to changing circumstances.

Justification for procedure selected

387. The guidance intended to be issued under this power will generally be administrative in nature and as such, is appropriate to be guidance rather than primary or secondary legislation. In addition, guidance often needs to be prepared swiftly in order to respond to changing circumstances or particular issues that arise. It would not be possibly to act quickly if Parliamentary scrutiny was required. Further, guidance provides an explanation for and adds detail to existing policy. It would not be practicable for Parliament to debate all changes to guidance.

New section 15BA(3) PCPA 2004 power for the Secretary of State to prescribe the time at which a direction given by the Mayor of London under section 15B(6) or (7) shall be given effect

Powers conferred on: Secretary of State
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

388. Section 15BA(3) provides that directions given by the Mayor of London must be sent to the Secretary of State and cannot come into effect until the prescribed time. This is to ensure that the Secretary of State retains oversight of the local plans process.

Justification for delegation

389. The Secretary of State will determine when a direction to prepare or revise a local plan timetable should take effect. The time period when such directions should take effect will vary depending on local circumstances and therefore cannot be subject to a standard approach in legislation.

Justification for procedure selected

390. Where directions are made to prepare or revise a local plan timetable, these may need to take effect quickly to help enable rapid progress on plan preparation. It would therefore not be appropriate to require Parliamentary debate of each decision as to when such directions shall be given effect.

New section 15BA(4) PCPA 2004 power for the Secretary of State to direct an LPA to disregard or give effect to, with such modifications as may be specified in the Secretary of State's direction, a direction by the Mayor of London

Powers conferred on: Secretary of State
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

391. Under section 15BA(4), the Secretary of State may direct the local planning authority to disregard a direction of the Mayor of London under section 15B(6) or (7), or to give effect to the directions with such modifications as may be specified in the Secretary of State's direction. The Secretary of State is required, under new subsection (5), to provide reasons for giving such a direction.

Justification for delegation

392. The Secretary of State should retain oversight of the local plan process and therefore retains the right to direct local planning authorities to disregard any such directions or to give effect to them (with such modifications as the Secretary of State may consider are required). Such decisions by Secretary of State would need to be taken on a case-by-case basis depending on the circumstances at the time.

Justification for procedure selected

393. Where directions are made using this power, it may be important that such action can be undertaken swiftly to help ensure that plan production continues without delay. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken.

New section 15BA(4) PCPA 2004 power for the Secretary of State to prescribe times within which a direction to an LPA about a Mayor of London's direction must be given

Powers conferred on: Secretary of State
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

394. Under section 15BA(4), the Secretary of State may, within such time as may be prescribed, direct the local planning authority to disregard the Mayor of London's direction, or give effect to it with modifications (see above). The time would be prescribed in regulations (section 122 PCPA).

Justification for delegation

395. The Secretary of State should retain oversight of the local plan process and therefore retains the right to direct local planning authorities to disregard any such directions. Such decisions by the Secretary of State would need to be taken on a case-by-case basis depending on the circumstances at the time, including the prescribed time period for giving a direction. The time period when such directions should be given may vary depending on local circumstances and therefore cannot be subject to a standard approach in legislation.

Justification for procedure selected

396. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the times within which such directions must be given is a point of procedural detail that would not warrant Parliamentary debate.

New section 15C(5) PCPA 2004 for the Secretary of State to prescribe further matters to those set out in section 15C(3) and (4) which the local plan may, or must, deal with.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

397. New section 15C introduces the concept of a local plan, which all LPAs are required to prepare. Section 15C(3) provides that the local plan must set out policies in relation to the amount, type and location of, and timetable for, development in the LPA's area. Section 15C(4) then sets out other matters which the local plan may include.

398. Section 15C(5) allows the Secretary of State to prescribe further matters which the local plan may, or must, deal with. This power is broadly similar to the existing power in section 17(7)(b) of the PCPA 2004 which allows the Secretary of State to, by regulations, prescribe the content of local development documents.

Justification for delegation

399. It is likely that as the new plan making system becomes established, the Secretary of State may wish to prescribe new matters that a local plan should deal with. It is therefore important to retain this power that provides flexibility to ensure that local plans address any change in circumstances that may arise.

Justification for procedure selected

400. The power is broadly similar to an existing power in section 17(7)(b) of the PCPA 2004, which is subject to the negative resolution procedure. On that basis, the Government considers that it is appropriate that regulations under this clause are enacted without Parliamentary debates.

New section 15CA(3) PCPA 2004 power for the Secretary of State to prescribe times at which the LPA must seek observations or advice in relation to a proposed local plan from a person appointed by the Secretary of State.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

401. New section 15CA deals with the plan preparation process. Section 15CA(3) sets out that the Secretary of State may prescribe times at which the LPA must seek observations or advice in relation to the proposed local plan

from a person appointed by the Secretary of State. This power is intended to ensure that the Secretary of State can select certain points in the plan preparation process at which a LPA is required to submit particular documents or information to a person appointed by the Secretary of State (in practice, an examiner from the Planning Inspectorate), as part of the gateway process.

Justification for delegation

402. This clause enables the introduction of mandatory local plan gateway checks by an independent person during the preparation of the local plan. The intention is to introduce, via regulations, three gateway checks, that will take place before a local plan is submitted for examination: the first at the beginning of the plan making process; the second prior to consultation on the draft plan; and the third prior to examination. It is possible that some of the prescribed timings and stages of plan making will be influenced by experience gained as LPAs pass through the new system. For instance, it is possible that it may be necessary to reduce the number of gateway checks during the plan making process if it transpires that the procedure is too onerous and likely to risk compliance with the mandatory plan making timescales. Any changes to the prescribed timings and stages would need to be made more swiftly than would be possible through primary legislation to help ensure that plan making can continue at pace.

Justification for procedure selected

403. Any changes to the stages of plan making where a local authority is required to seek advice would be about detailed points of process and would be uncontroversial.

New section 15CA(5)(d) power for the Secretary of State to issue guidance which LPAs must have regard to in preparing their local plan

Powers conferred on: Secretary of State
Powers exercised by: Guidance
Parliamentary Procedure: None

Context and Purpose

404. Section 15CA(5) sets out a list of matters that a LPA must have regard to when preparing its local plan. These include responses received in relation to a consultation that has been carried out, national development management policies and under subsection (5)(d), other national policies and advice contained in guidance issued by the Secretary of State. This clause provides the Secretary of State with a power to issue such guidance and is a re-enactment of the existing power in section 19(2)(a) of the PCPA 2004.

Justification for delegation

405. The preparation of local plans is a pivotal stage of the new plan-making process. The preparation of guidance is essential in order to assist LPAs in preparing their local plan. Under section 15CA(5), LPAs must have regard to national development management policies. Guidance will be prepared in order to explain other national policies and provide advice to LPAs, supporting them in meeting the requirements set out in legislation. It is vital that guidance can be updated quickly in order to reflect any policy changes or developments and in order for the Government to respond quickly to changing circumstances. Delegation is also consistent with the existing power in section 19(2)(a) of the PCPA 2004.

Justification for procedure selected

406. Guidance often needs to be prepared swiftly in order to respond to changing circumstances or particular issues that arise. It would not be possibly to act quickly if Parliamentary scrutiny was required. Further, guidance provides an explanation for and adds detail to existing policy. It would not be practicable for Parliament to debate all changes to guidance.

New section 15CA(5)(i) power for Secretary of State to prescribe other matters to which the LPA must have regard in preparing the local plan.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

407. Section 15CA(5)(i) provides that the Secretary of State may prescribe any other matters, additional to those already listed within section 15CA(5), to which an LPA must have regard when preparing its local plan.

Justification for delegation

408. It is likely that following the passing of the Bill, additional matters will be identified that local authorities should have regard to. This could for instance, be as a result of policies implemented in other Government departments. It is therefore important for the Government to have the ability to amend the list of matters swiftly, without waiting for Parliamentary time for primary legislation.

Justification for procedure selected

409. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the list of issues or factors that LPAs must have regard to during the plan preparation stage is a point of detail that would not require Parliamentary debate.

New section 15CA(7) PCPA 2004 power for the Secretary of State to make regulations about local plan preparation.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

410. Section 15CA(7) contains a range of powers for the Secretary of State to delegate in secondary legislation various details in relation to local plan preparation, including the form and content of a local plan, further documents which must be prepared by a LPA, the nature of the observations or advice that must be sought under section 15CA(3), documents or information which must be provided by the LPA to a person appointed by the Secretary of State under subsection (3), and the form or content of the observations or advice provided. The powers are broadly similar to the existing powers in section 17(7) of the PCPA 2004, which are to be repealed, but the new powers in section 15CA(7) update the language to reflect the move away from the terminology of local development documents and development plan documents.

411. There are also some additional powers, such as the power in section 15CA(7)(c), to prescribe the nature of the observations or advice that must be sought under section 15CA(3), where observations or advice are provided to a LPA at certain stages before the local plan is submitted for examination, as part of the new gateway checks, and the power in section 15CA(7)(e) to prescribe the form and content of observations or advice that is provided (for example, whether it should take the form of a checklist or a report, and whether it should be provided electronically). Section 15CA(7)(d) also contains a new power, to support the new gateway process, by enabling the Secretary of State to prescribe the documents or information which must be provided by the LPA to a person appointed by the Secretary of State under section 15CA(3). Section 15CA(7)(f) is another additional power, to prescribe when (in terms of the circumstances and/or timings) the LPA is to have regard to one or more of the things set out in 15CA(5). A further additional power is found at section 15CA(7)(h), allowing the Secretary of State in regulations to make provision as to when, or in what circumstances, a new local plan is to be prepared to replace the existing one.

Justification for delegation

412. It is likely the issues listed in the clause will need to be amended or added to over time. This could be because of a change in policy for issues such as any further documents that an authority must prepare in connection with the preparation of a local plan. Or it could be due to a need to make changes as a result of lessons learnt as the new planning system establishes itself. For instance, local plans are intended to be digital products in terms of form and content and the consideration of how this could be delivered will be likely to evolve over time. In addition, the requirements, all of which add vital detail to

the local plan process, may need to be changed swiftly which would not be possible if needing to introduce primary legislation.

Justification for procedure selected

413. The clause provides a power to prescribe the form and content of local plans. Amending the matters that a plan should address, or amending the form that a plan should take, are points of detail that should not require Parliamentary debate. The form and content of local plans are currently prescribed by the Town and Country Planning (Local Planning) (England) Regulations 2012 and are subject to the negative procedure.

New section 15CB(4) power for the Secretary of State to prescribe further matters relating to minerals and waste development which the minerals and waste plan may, or must, deal with.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure

Context and Purpose

414. New section 15CB(1) requires each minerals and waste planning authority to prepare one or more documents which are to be known collectively as their "minerals and waste plan", in respect of their relevant area. Under the current legislation, there is a requirement for a minerals and waste development scheme and plans that result from that scheme would be local development documents relating to minerals and waste. The minerals and waste plan must, under section 15CB(2), set out policies of the minerals and waste planning authority in relation to the amount, type and location of, and timetable for, minerals and waste development, in the relevant area. Section 15CB(3) then sets out various pieces of information that the minerals and waste plan may also include, including other policies about minerals and waste development, development other than minerals and waste development, and details of any infrastructure requirements.

415. Section 15CB(4) sets out that the Secretary of State may prescribe further matters relating to minerals and waste development which the minerals and waste plan may, or must, deal with.

Justification for delegation

416. It is likely that following the passing of the Bill, additional issues will be identified that local authorities should have regard to when preparing their minerals and waste plan. This could, for instance, be as a result of policies implemented in other Government departments. It is therefore important for the Government to have the ability to amend the list of matters swiftly, without waiting for Parliamentary time for primary legislation.

Justification for procedure selected

417. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the list of issues or factors that LPAs must have regard to during plan making is a point of detail that would not require Parliamentary debate.

New section 15CB(8) PCPA 2004 power for the Secretary of State to by regulations prescribe modifications to Part 2 of the PCPA 2004 as it applies in relation to a minerals and waste plan

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

418. As set out above, new section 15CB provides for minerals and waste plans. Existing section 16(3) of the PCPA provides that Part 2 of the PCPA 2004 applies to a minerals and waste development scheme as it applies to a local development scheme. New section 15CB(7) continues to set out that Part 2 applies, updating the language to, for example, refer to local plans and minerals and waste plans, and also providing that for that purpose, references to a LPA's area include reference to a minerals and waste planning authority's relevant area. Section 15CB(8) then additionally allows the Secretary of State to set out in regulations modifications to Part 2 of the PCPA 2004, as it applies in relation to a minerals and waste plan, so that the provisions for minerals and waste plans may be different from the provisions for local plans in Part 2 of the PCPA 2004.

Justification for delegation

419. Part 2 of the PCPA 2004 applies to a minerals and waste plan in the same way as it applies to a local plan. This power in subsection (8) allows the Secretary of State to prescribe modifications that would relate to minerals and waste plans only. Circumstances which may result in modifications needing to be made will only become apparent as the new plan making system is embedded, and this power is likely to be exercised simply in order to ensure that Part 2 of the PCPA 2004 makes sense insofar as it applies to minerals and waste plans. Delegation is consistent with this approach.

Justification for procedure selected

420. Regulations made under this delegated power will be subject to the negative procedure. Any such modifications in relation to minerals and waste plans, such as the matters that such plans should (or should not) address, are issues of specialist planning detail, and may need to take effect quickly in order to allow for rapid progress to be made on plan preparation. The Government therefore considers that the level of scrutiny provided for is appropriate.

New section 15CC(6) power for the Secretary of State to prescribe further matters which a supplementary plan may include.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

421. New section 15CC makes provision regarding supplementary plans, which are a new legal concept being introduced with these reforms. Under the current regime, there are "supplementary planning documents" which are one of the two main forms of "local development documents" governed by existing section 17 PCPA 2004. However, specific provision is not currently made about supplementary planning documents in the PCPA 2004 and they do not form part of the development plan, nor are they examined under section 20 of the PCPA 2004. Rather, under the current regime, provisions relating to local developments documents apply in respect of supplementary planning documents.

422. Under new section 15CC, supplementary plans are their own distinct concept in law and their policies have the same status as local plans. Each relevant plan-making authority may prepare one or more supplementary plans. Section 15CC(2), (3) and (5) then set out what a supplementary plan may include, depending upon whether it is prepared by the Mayor of London, a LPA, or a minerals and waste planning authority. Section 15CC(6) provides the Secretary of State with a power to prescribe, by regulations, further matters which a supplementary plan may include. This power is broadly similar to the existing power in section 17(7)(b) PCPA 2004, whereby the Secretary of State may, by regulations, prescribe the content of the local development documents (and therefore may prescribe the content of supplementary planning documents).

Justification for delegation

423. Supplementary plans are a new construct in the planning system. Section 15CC sets out the matters that a supplementary plan may address. However, as the new planning system establishes itself, it may become apparent that the potential scope of supplementary plans should be widened to address other matters. This power provides Secretary of State with the ability to do that. Delegation is also consistent with the planning regime more widely where many procedural requirements are set by delegated legislation, and a broadly similar power already exists in section 17(7)(b) of the PCPA 2004.

Justification for procedure selected

424. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate. This power is broadly similar to the existing power in section 17(7)(b) PCPA 2004, whereby the Secretary of State may, by regulations, prescribe the content of the local development documents (and therefore may prescribe the content of supplementary planning documents). The existing power currently takes the negative procedure.

New section 15CC(11) power for the Secretary of State to, by regulations, make provision about the preparation, withdrawal or revision of supplementary plans.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

425. As described above, new section 15CC makes provision regarding supplementary plans. Section 15CC(11) provides that the Secretary of State may by regulations make provision about the preparation, withdrawal or revision of supplementary plans (for example, setting out times or circumstances when they must be prepared, withdrawn or revised). Section 15CC(12) then provides that regulations under subsection (11), (a) may apply, or make provision corresponding to, any provision made by or under this Part in relation to the preparation, withdrawal or revision of a local plan, with or without modifications, and (b) must require a proposed supplementary plan to be the subject of consultation with the public.

Justification for delegation

426. Supplementary plans are a new construct in the planning system. It is likely that as the new plan making system becomes established, the Secretary of State may wish to amend the way in which such plans are prepared or revised. This could be to reflect changes in national planning policy. Delegation is consistent with this approach and also consistent with the planning regime more widely, where many procedural requirements are set by delegated legislation.

Justification for procedure selected

427. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the process for preparing, withdrawing or revising a supplementary plan is a point of detail that does not require Parliamentary debate. For instance, such a change may involve requiring local authorities to have regard to a particular matter when preparing a supplementary plan. Such issues are matters of specialist planning detail.

New section 15D(1) PCPA2004 power for the Secretary of State to prescribe requirements to be met before the LPA submits their local plan for examination.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

428. This section replaces existing section 20 of the PCPA 2004, which deals with the process of independent examination of the local plan. Section 15D(1) provides that the LPA must submit their proposed local plan to the Secretary of State for independent examination if a person appointed by the Secretary of State (i.e. the person appointed to undertake the gateway checks under section 15CA(3)) advises that the prescribed requirements are met in relation to the plan. This new subsection (1) gives the Secretary of State the power to prescribe those requirements, which will help ensure that plans have met certain basic requirements before they are subject to examination.

Justification for delegation

429. It is likely that, as the new system becomes established, the Government may wish to update the list of requirements that must be satisfied before a plan is submitted for examination. It is therefore considered appropriate to set out these requirements through regulations rather than primary legislation.

Justification for procedure selected

430. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the list of requirements is a point of specialist planning detail within the overall local plan process.

New section 15D(2) and (3) power for the Secretary of State to prescribe other documents (or copies of documents) and information (in addition to the local plan) which a local authority must send or make available to the Secretary of State, and the manner in which the local plan or any document or information under section 15D(2) is to be sent, in relation to examination of a local plan.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

431. Section 15D(2) sets out that when submitting the local plan for examination, the LPA must also send or make available to the Secretary of State such other documents (or copies of documents) and information as the Secretary of State prescribes (this replicates an existing delegated power in section 20(3) of the PCPA 2004). New section 15D(3)) allows the Secretary of State to prescribe the manner in which any such document or information is to be sent (for example, whether the information can be submitted electronically through a website).

Justification for delegation

432. The requirement to submit documents or information by certain means is likely to require amendment in future as technology changes and lessons are learnt from practice. It is therefore considered appropriate to set out these requirements through regulations rather than primary legislation.

Justification for procedure selected

433. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the power in subsection (2) replicates an existing power in section 20(3) of the PCPA 2004 and it would therefore be inconsistent for these new powers to take a different approach. Further, the submission requirements are a point of detail within the overall local plan process. In particular, the list of documents to be submitted, and the way in which they are submitted, is a matter of specialist planning detail.

New section 15D(8)(a) PCPA 2004 power for the Secretary of State to, by notice to the examiner, direct the examiner not to take any step, or any further step, in connection with the examination of the local plan, or of a specified part of it, until a specified time or until the direction is withdrawn.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

434. As set out above, new section 15D replaces existing section 20 of the PCPA 2004, which deals with the process of independent examination of the local plan. Section 15D(8) allows the Secretary of State to intervene in the

process of independent examination of local plans. Under section 15D(8)(a), once an examiner has been appointed under subsection (4), the Secretary of State may by notice to the examiner, direct them not to take any step, or any further step, in connection with the examination of the local plan, or of a specified part of it, until a specified time or until the direction is withdrawn. In subsection (8) “specified” means specified in the notice. This power is a re-enactment of the power contained in existing section 20(6A)(a) of the PCPA 2004, with the language having been updated to refer to the local plan rather than the development plan document. The power to direct is not legislative as it is for specific local plan examinations.

Justification for delegation

435. For any individual local plan, the Secretary of State should retain the ability to 'temporarily suspend’ an examination in order to consider certain matters, including whether to provide directions to the examiner under section 15D(7)(b). This power mirrors that already contained in existing section 20(6A)(a) of the PCPA 2004.

Justification for procedure selected

436. This clause is a re-enactment of the power contained in existing section 20(6A)(a), which is not subject to any parliamentary procedure. Further, where directions are made in relation to the examination of a specific local plan, it may be important that such action can be undertaken swiftly to adequately address any issues that have arisen. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken.

New section 15D(8)(b) PCPA 2004 power for the Secretary of State to require the examiner of a local plan to do certain things

Powers conferred on: *Secretary of State*
Powers exercised by: *Notice*
Parliamentary Procedure: *None*

Context and Purpose

437. Under section 15D(8)(b), the Secretary of State may by notice require an examiner to consider specified matters, give specified persons an opportunity to be heard, or take any specified procedural step in connection with the examination. This power is a re-enactment of the power contained in existing section 20(6A)(b) of the PCPA 2004, with the language having been updated to refer to the local plan rather than the development plan document. The power is not legislative as it is for specific local plan examinations.

Justification for delegation

438. The Secretary of State should retain the ability to oversee local plan preparation, including when a plan is at examination. For any individual local

plan, it may be necessary for Secretary of State to require an examiner to take such steps as are contained in the clause.

Justification for procedure selected

439. This clause is a re-enactment of the power contained in existing section 20(6A)(b), which is not subject to any Parliamentary procedure. Further, where directions are made in relation to the examination of a specific local plan, it may be important that such action can be undertaken swiftly to adequately address any issues that have arisen. Requiring Parliamentary scrutiny each time a notice is given could prevent swift action being taken.

New section 15DA(3) PCPA 2004 power for the Secretary of State to prescribe how long the pause period may be, where an examiner decides under section 15D(7) that the examination under that section be paused for further work to be carried out

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

440. New section 15DA deals with pauses of independent examination for further work to be carried out, and under subsection (1), applies if the examiner decides under subsection (7) of section 15D that the examination be paused for further work to be carried out. Section 15D(7) allows an examiner to decide that an examination is to be paused at any time before they make a recommendation under any of the following subsections in section 15D, if they consider that (a) certain matters need to be dealt with in order for it to become reasonable to conclude that the local plan is sound, and (b) those matters could be dealt with by a pause of the examination under section 15DA for further work to be carried out. Under new section 15DA(2), the examiner must notify the LPA and the Secretary of State that they have taken that decision, of the matters which the examiner considers need to be dealt with, and of the period for which the examination under section 15D is to be paused under section 15DA ("the pause period").

441. New section 15DA(3) then provides the Secretary of State with a power to set out in regulations how long the pause period may be, therefore allowing for the prescription of a maximum length of time that a pause may run for.

Justification for delegation

442. This power complements the provision in section 15D(7), which allows an examiner to decide to pause an independent examination in certain circumstances. This power is necessary to ensure that there is a set maximum length of time that such a pause may run for. Without such delegation, there would be no limit to how long a pause period could continue for, which could

result in significant delays to the plan-making process. Time periods for other elements of the local plan process will be set out through regulations (see Section 15LE). It would therefore not be appropriate to identify the length of the examination pause until the timings for the rest of the local plan process have been set out through regulations. In addition, the maximum length of the pause may need to be amended after the new local plan process has been introduced and it would not be possible to do so at pace if primary legislation was required.

Justification for procedure selected

443. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the length of time that a pause may run for is a point of procedural detail that would not warrant Parliamentary debate.

New section 15DB(4) PCPA 2004 power for the Secretary of State to prescribe, by regulations, other documents (or copies of documents) and information which a relevant plan-making authority must send or make available to an examiner (in addition to the supplementary plan)

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

444. New section 15DB deals with independent examination of supplementary plans. Under subsection (1), a relevant plan-making authority must submit each supplementary plan that they propose to adopt for independent examination. Subsection (4) then sets out that the authority must also send or make available to the examiner (in addition to the supplementary plan) such other documents (or copies of the documents) and such information as is prescribed. This therefore provides the Secretary of State with a power to set out in regulations the documents and information which a relevant plan-making authority must provide in addition to the supplementary plan. This is broadly similar to the power in existing section 20(3) of the PCPA 2004, which allows the Secretary of State to prescribe other documents (or copies of documents) and information that an LPA must send when they submit a development plan document for independent examination.

Justification for delegation

445. Supplementary plans are a new legal concept being introduced as part of these reforms which are subject to independent examination in the same way as local plans are. As such, it is important that as the new system establishes itself, the list of documents and information which must be provided to an examiner when a supplementary plan is submitted for independent examination can be updated swiftly to ensure an effective examination can take place. Delegation is also consistent with the broadly similar power in existing section

20(3) of the PCPA 2004, which is being re-enacted by new section 15D(2) in relation to local plans.

Justification for procedure selected

446. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the power is broadly similar to the existing power in section 20(3) of the PCPA 2004, and is being introduced to reflect the fact that supplementary plans are a new legal concept being introduced as part of these reforms. Further, the documents and information which must be submitted is a matter of specialist planning detail.

New section 15E(2) PCPA 2004 power for the Secretary of State to direct that a local plan is, or is not, to be withdrawn.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

447. New section 15E replaces sections 21(9A) and 22 of the PCPA 2004, which deal with the withdrawal of development plan documents and local development documents. An LPA may, under section 15E(1), at any time before they are required to submit a local plan for independent examination under section 15D, withdraw the plan. Subsection (2) then sets out the position in respect of withdrawal where a local plan has already been submitted for independent examination. In such circumstances, the LPA may only withdraw the plan, (a) if the person appointed to carry out the examination recommends that they do so and the Secretary of State has not directed that it is not to be withdrawn, or (b) the Secretary of State directs that the plan is to be withdrawn. This new subsection (2) therefore gives the Secretary of State power to direct that a local plan is, or is not, to be withdrawn. The power in section 15E(2)(b) is broadly similar to the power in existing section 21(9A) of the PCPA 2004, which allows the Secretary of State to direct a LPA to withdraw a development plan document at any time after it has been submitted for independent examination, but before it is adopted. The power is not legislative as it is for specific local plans at a particular time.

Justification for delegation

448. This power is vital to achieving the overall aspiration of delivering as many up to date local plans as possible. This power means that LPAs cannot themselves withdraw a local plan, once it has been submitted for independent examination without such a recommendation or direction, which could otherwise result in unnecessary delay in the implementation of local plans, whilst ensuring that there is not a complete prohibition on withdrawal which may be appropriate in specific cases. Once a local plan has been submitted for

independent examination, decisions whether or not to allow the plan to be withdrawn will need to be taken on a case by case basis, and it will not be feasible to bring each decision before Parliament.

Justification for procedure selected

449. Where directions are made in relation to specific local plans, it may be important that such action can be undertaken swiftly to adequately address any issues that have arisen. It would not be practicable for Parliament to consider whether or not an individual local plan should be withdrawn after it has been submitted for independent examination. There is a similar power in existing section 21(9A) of the PCPA 2004, which is not subject to any Parliamentary procedure.

New section 15E(3) PCPA 2004 power for the Secretary of State to direct that a local plan be withdrawn after it has been submitted for independent examination but before it is adopted

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: None

Context and Purpose

450. As set out above, section 15E deals with withdrawal of a local plan, replacing existing sections 21(9A) and 22 of the PCPA 2004. Under section 15E(3), the Secretary of State may at any time after a local plan has been submitted for independent examination under section 15D, but before it is adopted under section 15EA, direct the LPA to withdraw the plan. This is re-enactment of the power in existing section 21(9A) of the PCPA 2004, with the language having been updated to refer to local plans rather than a development plan document. This power is not legislative as it is for specific local plans at a particular time.

Justification for delegation

451. This power forms part of the overall package of tools available to the Secretary of State and allows for decisions to be taken on a case by case basis. It would not be possible to set out in primary legislation a definitive list of circumstances which might call for the withdrawal of a local plan, and it will not be feasible to bring each decision before Parliament. Delegation of this direction power is consistent with the existing power contained in section 21(9A) of the PCPA 2004.

Justification for procedure selected

452. It would not be practicable for Parliament to consider whether an individual local plan should be withdrawn, and such a requirement could result in significant delays to the plan making process. This is a re-enactment with

slight modifications of the power in existing section 21(9A) of the PCPA 2004, which is not subject to any Parliamentary procedure.

New section 15G(2) power for the Secretary of State to by regulations prescribe descriptions of supplementary plans which may be revoked by the relevant plan-making authority themselves.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

453. New section 15G deals with the revocation of local plans and supplementary plans. Under subsection (1), a local plan will automatically be revoked upon a new local plan for the LPA's area being adopted or approved under Part 2 of the PCPA 2004. Subsection (2) then provides that the Secretary of State may, (a) revoke a local plan at the request of the LPA, (b) revoke a supplementary plan at the request of the relevant plan-making authority, and (c) prescribe descriptions of supplementary plan which may be revoked by the relevant plan-making authority themselves. This is therefore a power for the Secretary of State to make regulations setting out descriptions of supplementary plans which LPAs do not need to request the Secretary of State himself to revoke under section 15G(2)(b), as they may be revoked by LPAs themselves. This replicates an existing power contained within section 25 of the PCPA 2004, with the language updated to refer to local plans and supplementary plans rather than local development documents.

Justification for delegation

454. The Secretary of State has a power to set out matters that a supplementary plan can address. As such, this is a corresponding power that enables the Secretary of State to revoke a supplementary plan at the request of the relevant plan-making authority or identify descriptions of supplementary plans that can be revoked by the relevant plan-making authority themselves. This section also enables the Secretary of State to revoke a local plan at the request of the LPA.

Justification for procedure selected

455. This replicates an existing power contained within section 25 of the PCPA 2004, which is subject to the negative resolution procedure, with the language updated to refer to local plans and supplementary plans rather than local development documents. It is therefore not considered necessary to require Parliamentary debate through an affirmative procedure.

New section 15GA(2) PCPA 2004 power for the Secretary of State to direct an LPA to prepare a revision of the local plan and the timetable in which it must be revised.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

456. New section 15GA replaces existing section 26 of the PCPA 2004, which deals with the revision of local development documents. Existing section 26(2) sets out that a LPA must prepare a revision of a local development document, (a) if the Secretary of State directs them to do so, and (b) in accordance with such timetable as he directs. New section 15GA(2) replicates this provision, merely updating the language to refer to the local plan rather than local development documents. The power is not legislative as it is for specific LPAs' local plans at a particular time.

Justification for delegation

457. Where a local plan has come into effect, changes in national policy or a particular change in circumstance may require that the plan be revised. This power enables the Secretary of State to direct that a local plan be revised where necessary and delegation of this power is consistent with the existing power in section 26(2) of the PCPA 2004.

Justification for procedure selected

458. This provision is a re-enactment of the power contained in existing section 26(2), which is not subject to any parliamentary procedure. Where directions are made using this power, it may be important that such action can be undertaken swiftly to help ensure that revisions to particular plans can commence without delay. Requiring Parliamentary debate each time a direction is made could prevent swift action being taken.

New section 15GA(7) power for the Secretary of State to prescribe modifications to how Part 2 of the PCPA 2004 applies in relation to a revision of a local plan.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

459. Existing section 26 of the PCPA 2004 deals with the revision of local development documents and existing subsection (3) sets out that Part 2 of the PCPA 2004 applies to the revision of a local development document as it

applies to the preparation of the document. New section 15GA(7) continues to set out that Part 2 applies, updating the language to refer to local plans, and additionally allows the Secretary of State to set out in regulations modifications to Part 2 as it applies in relation to a revision of a local plan, so the provisions for revision of a local plan may be different from the provisions for preparation in Part 2 of the PCPA 2004.

Justification for delegation

460. The Government may wish to modify the circumstances in which a local plan should be revised based on experience gained following implementation of the new system. It is therefore considered appropriate to set out these requirements through regulations rather than primary legislation.

Justification for procedure selected

461. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the requirements relating to the update of a plan, including specific matters that would trigger the need to update a plan, are a point of detail within the overall local plan process.

Section 15H(1) and (2) powers for the Secretary of State to direct, at any time before a proposed local plan or a proposed supplementary plan is adopted, that the plan (or any part of it) be submitted to the Secretary of State for approval.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

462. New section 15H deals with the power to require Secretary of State approval. Subsection (1) re-enacts section 21(4) of PCPA 2004 with only changes to reflect the new terminology. Subsection (1) sets out that at any time before a proposed local plan is adopted, the Secretary of State may direct the LPA to submit the plan (or any part of it) to the Secretary of State for approval. Subsection (2) then allows the Secretary of State to direct a relevant plan-making authority to submit a proposed supplementary plan (or any part of it) to the Secretary of State for approval at any time before it is adopted. Subsection (2) is broadly similar to section 21(4) of the PCPA 2004 and has been introduced to reflect the fact that supplementary plans are a new legal concept being introduced as part of these reforms.

463. Section 15H(3) then re-enacts section 21(5)(a)-(c), with some minor modifications to the language used. The power is not legislative as it is for specific LPAs and local plans.

Justification for delegation

464. The power enables the Secretary of State to retain oversight of the local plan process by directing that a plan is submitted to the Secretary of State for approval. The Secretary of State may then approve the plan, approve it with modifications or reject it. This delegation is consistent with the existing power in section 21(4) of the PCPA 2004.

Justification for procedure selected

465. These powers are a re-enactment of the powers contained in existing section 21(4), which are not subject to any Parliamentary procedure. Where directions are made using this power, it may be important that such action can be undertaken swiftly to help ensure that the Secretary of State can consider whether or not to approve the plan, or whether modifications are required. Requiring Parliamentary debate each time a direction is made could prevent swift action being taken.

Section 15HA(2)(c) and (3)(b) power for the Secretary of State and local plan commissioner to give directions about the preparation, adoption, revocation or revision of a local or supplementary plan

Powers conferred on: *Secretary of State and local plan commissioner*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

466. New section 15HA makes provision as to the Secretary of State's powers where the Secretary of State thinks that, (a) a LPA are failing to do anything it is necessary or expedient for them to do in connection with the preparation, adoption or revision of a local plan, (b) a local plan or supplementary plan is, is going to be or may be unsatisfactory, or (c) a proposed revision of a local plan or supplementary plan will, or may, result in the plan becoming unsatisfactory. Where any of these apply, new subsection (2) provides that the Secretary of State may, (a) if the plan has not come into effect, take over preparation of the plan from the relevant authority, (b) if the plan has come into effect, revise the plan, (c) give directions to the relevant authority in relation to the preparation or adoption of the plan (including a direction requiring modification in accordance with the direction), or give directions to the relevant authority in relation to the revocation or revision of the plan (including a direction requiring the plan to be revised in accordance with the direction or a direction revoking the plan).

467. Section 15HA combines the substance of the existing section 21(1)-(3) and section 27 PCPA 2004, and makes some small changes to the powers. In section 21, the trigger for the power is the Secretary of State considering a local development document unsatisfactory; and the power is to direct an LPA to modify the unsatisfactory document. In section 27, the trigger for the power is the Secretary of State thinking that an LPA is failing to do anything it is

necessary for them to do in connection with preparation, revision or adoption of a local development document, and the power is to prepare, revise, or direct the LPA to prepare revise the document.

468. This means the new provision gives the Secretary of State new powers regarding preparation and revision of a local plan that is unsatisfactory but where an LPA is not failing to do what is necessary (those powers are already in section 27 for cases where the LPA is failing and these are now in new section 15HA(1) of the PCPA 2004). There is also a change of tense which slightly changes the power: the wording in section 15HA(1)(b) "is, is going to be or may be unsatisfactory" contrasts with section 21(1)'s "is unsatisfactory". This means that the unsatisfactory nature of the local plan or supplementary plan that triggers the intervention power may be in the future or possible as well as in the present.

469. Section 15HA(3) provides that the Secretary of State may appoint a person, to be known as a "local plan commissioner", to (a) investigate and report back to the Secretary of State, or (b) do any of the things that may be done under subsection (2), on the Secretary of State's behalf. Therefore, the power in subsection (2)(c) to give directions may be exercised by either the Secretary of State or a local plan commissioner appointed by the Secretary of State to exercise that power on the Secretary of State's behalf.

470. The powers are not legislative as they are for specific situations where a plan-making authority are not complying with their obligations.

Justification for delegation

471. These powers provide the Secretary of State with the ability to intervene in plan making where the tests set out above have been met. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that the Secretary of State maintains oversight of the local plan process, can act swiftly and respond to individual local circumstances, and that full and effective plan coverage is delivered.

Justification for procedure selected

472. Where directions are made using this power, it may be important that such action can be undertaken swiftly to address any problems that may exist. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken. In addition, any directions would be made in relation to a specific local plan which is unlikely to be of wider Parliamentary interest. Further, similar powers in existing section 21(1)-3) and section 27 of the PCPA 2004 are not subject to any Parliamentary procedure.

Section 15HA(6) power for the Secretary of State to direct a local plan commissioner or a plan-making authority to submit a local plan or supplementary plan for independent examination

Powers conferred on: *Secretary of State*

Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

473. New section 15HA(6), read in conjunction with new subsection (4) and (11), applies where preparation of a local plan or supplementary plan is taken over under subsection (2)(a) or (3)(b), or the Secretary of State or local plan commissioner revises the plan under subsection (2)(b) or (3)(b). In these circumstances, the Secretary of State must hold an independent examination of the plan or direct the local plan commissioner to submit the plan for independent examination, or direct the relevant authority to submit the plan for independent examination under section 15D or (as the case may be) 15DB. New subsection (6) therefore gives the Secretary of State the power to make such directions. These powers are broadly similar to the power in existing section 27(3)(b) of the PCPA 2004, which enables the Secretary of State to direct a LPA to which section 27 applies to submit a development plan document for independent examination. This existing power has been re-enacted and modified so as to allow the Secretary of State to also direct a local plan commissioner to submit a plan for independent examination, in light of new subsection (3) which allows the Secretary of State to appoint a local plan commissioner to do any of the things that may be done under subsection (2) on his behalf. The power is not legislative as it will be used to direct specific authorities or local plan commissioners to do a particular action.

Justification for delegation

474. New section 15HA provides the Secretary of State with the ability to intervene in plan making where the stated tests have been met. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that the Secretary of State maintains oversight of the local plan process and that full and effective plan coverage is delivered. Delegation is also consistent with the planning regime more widely, and similar powers already exist within section 27(3)(b) of the PCPA 2004.

Justification for procedure selected

475. Where directions are made using this power in relation to the examination of a plan, it may be important that such action can be undertaken swiftly. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken and result in delays in the plan preparation process. In addition, any directions would be made in relation to a specific local plan or supplementary plan which is unlikely to be of wider Parliamentary interest. The exercise of a similar power in existing section 27(3)(b) of the PCPA 2004 is not subject to any Parliamentary procedure.

Section 15HA(9)(b) PCPA 2004 power for the Secretary of State to give directions to the relevant authority or local plan commissioner in relation to

publication of the recommendations and reasons of the person appointed to hold an examination under section 15HA(6).

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

476. Where an independent examination is held in accordance with section 15HA(6), section 15HA(9) sets out that the Secretary of State must either, (a) publish the recommendations and reasons of the person appointed to hold the examination, or (b) give directions to the relevant authority or local plan commissioner in relation to publication of those recommendations and reasons. New subsection (9) is broadly similar to existing section 27(4) of the PCPA 2004, which allows the Secretary of State to publish the recommendations and reasons of the person appointed to hold an independent examination under section 27, or to give directions to the authority in relation to the publication of those recommendations and reasons. This existing power has been re-enacted and modified so as to allow the Secretary of State to also give directions to a local plan commissioner, in order to take account of the new concept of local plan commissioners which are being introduced as part of these reforms. The power is not legislative as it is to be used in relation to particular plans.

Justification for delegation

477. These powers provide the Secretary of State with the ability to intervene in plan making where the stated tests have been met. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that Secretary of State maintains oversight of local plan process and that full and effective plan coverage is delivered. This delegation is consistent with the existing power in section 27(4) of the PCPA 2004

Justification for procedure selected

478. Where directions are made using this power in relation to the adoption of a plan, it may be important that such action can be undertaken swiftly. It would not be practicable for Parliament to give directions to the relevant authority or local plan commissioner, each time an independent examination is held in accordance with section 15HA(6), as to the publication of the recommendations and reasons of the person appointed to hold the examination.

Section 15HA(10)(b) power for the Secretary of State or local plan commissioner to direct the relevant authority to consider adopting a local plan or supplementary plan.

Powers conferred on: *Secretary of State and local plan commissioner*
Powers exercised by: *Direction*

Parliamentary Procedure: *None*

Context and Purpose

479. As set out above, amongst other things section 15HA makes provision for the preparation of a local plan or supplementary plan to be taken over by the Secretary of State or a local plan commissioner appointed by the Secretary of State, and for the Secretary of State or a local plan commissioner to revise a plan. In such circumstances, once an independent examination is held in accordance with subsection (6), and subsection (9) is also complied with, subsection (10) then sets out that the Secretary of State or local plan commissioner may then, (a) approve the plan or approve it subject to modifications, (b) direct the relevant authority to consider adopting the plan, or (c) reject the plan. Subsection (10)(b) therefore provides the Secretary of State or local plan commissioner with a power to direct a relevant authority to consider adopting a local plan or supplementary plan where the preparation or revision of the plan was taken over by the Secretary of State or local plan commissioner. This power is broadly similar to that contained in existing section 27(5)(b) of the PCPA 2004, and has been modified to allow a local plan commissioner to also exercise the power and to update the language used. The power is not legislative as it is for specific plans at particular times.

Justification for delegation

480. These powers provide Secretary of State with the ability to intervene in plan making where the stated tests have been met. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that Secretary of State maintains oversight of local plan process and that full and effective plan coverage is delivered. This delegation is consistent with the broadly similar power in existing section 27(5)(b) of the PCPA 2004.

Justification for procedure selected

481. Where directions are made using this power, it may be important that such action can be undertaken swiftly in relation to the adoption of a plan. It would not be practicable for Parliament to consider whether an individual local plan or supplementary plan should be considered by a relevant authority for adoption.

Section 15HB(2) power for the Secretary of State to give directions to a LPA as to the steps they must take to comply with the requirement in section 15F(1).

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

482. New section 15HB deals with Secretary of State powers where the Secretary of State considers that a LPA are unlikely to comply, or have not complied, with the requirement in section 15F(1). In new section 15F(1), there is a requirement on all LPAs to ensure that, for every part of their area, the development plan includes requirements with respect to design that relate to development, or development of a particular description, which the authority consider should be met for planning permission for the development to be granted.

483. Where the Secretary of State considers that a LPA are unlikely to comply, or have not complied, with the abovementioned requirement in section 15F(1), section 15HB(2) sets out that the Secretary of State may give directions to the LPA as to the steps they must take to comply with that requirement, including directions as to the preparation, adoption or revision of their local plan or one or more supplementary plans. Subsection (3) then requires the Secretary of State to give reasons for any directions given under this section. The purpose behind this power is intended to ensure that the Secretary of State can make sure that LPAs are meeting their requirement to have a design code, given their importance in setting the design requirements which development in an LPA's area must follow. The power is not legislative as it is for particular instances where an LPA has failed to comply with requirements.

Justification for delegation

484. These powers provide Secretary of State with the ability to intervene where a design code has not been produced. Delegation is required as retaining the ability to intervene in plan making is vital to ensuring that Secretary of State maintains oversight of local plan process and that full and effective plan coverage is delivered. Whether or not a LPA has complied with the requirement to ensure a design code, and if they have not, the steps that must be taken to comply with the requirement, is subjective and a matter for the Secretary of State. This power ensures that the Secretary of State can decide whether steps need to be taken in a particular case.

Justification for procedure selected

485. Where directions are made using this power, it may be important that such action can be undertaken swiftly to help ensure that a design code is prepared for a particular area in a timely manner. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken, and it would not be practicable for Parliament to consider whether an individual development plan ensures a design code.

Section 15HE(1) power for the Secretary of State to direct a LPA or relevant plan-making authority not to take any step, or not to take a step specified in the direction, in connection with a local plan or supplementary plan, (a) until a time or event (if any) specified in the direction, or (b) until the direction is withdrawn.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

486. New section 15HE replaces existing section 21A of the PCPA, which deals with temporary directions pending possible use of intervention powers. New section 15HE(1) sets out that if the Secretary of State is considering whether to take action under section 15H, 15HA or 15HB or Schedule A1 in relation to a local plan or a supplementary plan, the Secretary of State may direct the LPA or (as the case may be) the relevant plan-making authority not to take any step, or not to take a step specified in the direction, in connection with the plan, until a time or event (if any) specified in the direction, or until the direction is withdrawn. Section 15HE(2) then sets out that a plan to which a direction under this section relates has no effect while the direction is in force, and subsection (3) sets out various circumstances in which a direction given under this section ceases to have effect.

487. Subsection (1) therefore provides the Secretary of State with a power to make such a direction. This provision re-enacts section 21A PCPA 2004 and extends it to actions taken under the equivalent of section 27 too. It has been modified to refer to new sections 15H, 15HA and 15HB, which set out the Secretary of State's intervention powers. The new provision also refers to Schedule A1, which makes provision as to default powers exercisable by the Mayor of London, combined authority or county council and has effect by virtue of new section 15HD. The language has also been updated so as to refer to local plans and supplementary plans rather than development plan documents or local development documents. The power is not legislative as it concerns possible intervention in specific cases of default.

Justification for delegation

488. These powers provide the Secretary of State with the ability to provide a holding direction in order to allow consideration of further powers related to intervening in plan making where the stated tests have been met. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that the Secretary of State maintains oversight of local plan process and that full and effective plan coverage is delivered. This delegation is consistent with the existing power in section 21A of the PCPA 2004.

Justification for procedure selected

489. Where directions are made using this power, it may be important that such action can be undertaken swiftly to ensure that a local authority does not continue work on a plan prior to the Secretary of State considering whether any directions are necessary. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken. In addition, it would not be practicable for Parliament to consider in each individual case whether any such directions should be made. The existing power in section 21A of the

PCPA 2004 does not require any form of Parliamentary scrutiny in order to be exercised.

Section 15I(3) power for the Secretary of State to direct two or more planning authorities to prepare a joint local plan.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: None

Context and Purpose

490. New section 15I replaces existing sections 28 and 28A of the PCPA 2004, which set out provisions in relation to joint local development documents and the power to direct preparation of joint development plan documents. The concept of "joint local development documents" is being replaced as part of these reforms with a new concept of "joint local plans", which are local plans prepared jointly by two or more LPAs for their combined areas. Two or more LPAs may agree to prepare a joint local plan or, under new section 15I(3), the Secretary of State also has a power to direct two or more LPAs to prepare a joint local plan. New section 15I(5) makes clear that the Secretary of State may give a joint local plan direction only if the Secretary of State considers that do so will facilitate the more effective planning of the development and use of land in the area of one or more of the LPAs in question. Under new subsection (6), the joint local plan direction may specify the timetable for preparation of the joint local plan, and subsection (9) provides that the Secretary of State may modify or withdraw a joint local plan direction by notice in writing to the authorities to which it was given.

491. The power in new section 15I(3) replicates an existing power in section 28A(1) of the PCPA 2004, simply updating the language so as to refer to a joint local plan rather than a joint development plan document. Section 15I(5) then replicates existing section 28A(3) of the PCPA 2004, making clear that the Secretary of State may only give a joint local plan direction if the Secretary of State considers that to do so will facilitate the more effective planning of the development and use of land in the area of one or more of the LPAs in question. The power is not legislative as it is to be used to direct particular sets of LPAs.

Justification for delegation

492. These powers provide the Secretary of State with the ability to intervene in plan making and to direct two or more LPAs to prepare a joint local plan. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that Secretary of State maintains oversight of local plan process and that full and effective plan coverage is delivered. This delegation is consistent with the existing power in section 28A(3) of the PCPA 2004.

Justification for procedure selected

493. Where directions are made using this power, it may be important that such action can be undertaken swiftly to ensure that work on any joint plan can commence in a timely manner. It would not be practicable for Parliament to consider whether specific LPAs should be directed to prepare a joint local plan. This is consistent with the existing power in section 28A(3) of the PCPA 2004.

Section 15I(8) power for the Secretary of State to direct LPAs to amend their local plan timetables to take account of a joint local plan direction.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

494. As set out above, new section 15I deals with joint local plans by agreement or direction and replaces sections 28 and 28A of the PCPA 2004. Where the Secretary of State gives a joint local plan direction under section 15I(3), subsection (8) additionally provides the Secretary of State with a power to direct the LPAs to which the joint local plan direction is given to amend their local plan timetable to take account of the direction. This is broadly similar to existing section 28A(4)(c) of the PCPA 2004, which provides that a direction given by the Secretary of State under that section may specify the timetable for preparation of that the joint development plan document. The power is not legislative as it concerns particular LPAs' local plan timetables.

Justification for delegation

495. This power complements the power of the Secretary of State to direct two or more LPAs to prepare a joint local plan, as detailed above. If such a direction is made, it will be important to ensure that the relevant LPAs' local plan timetable is updated to take account of the direction. This power will therefore only be used in circumstances where a joint local plan direction has been given, and delegation of this direction power in consistent with the similar power in existing section 28A(4)(c) of the PCPA 2004.

Justification for procedure selected

496. Where directions are made using this power in relation to amending a local plan timetable, it may be important that such action can be undertaken swiftly to ensure that work on a joint local plan can continue in a timely manner. It would not be practicable for Parliament to consider whether an individual local plan timetable requires alterations and requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken.

Section 15IA(4) power for the Secretary of State to prescribe modifications to Part 2 of the PCPA 2004, as it applies to joint local plans.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

497. New section 15IA replaces existing section 28B of the PCPA 2004, which deals with the application of Part 2 of the PCPA 2004 to joint development documents. New section 15IA(1) sets out that this section applies in a case where, (a) a joint local plan agreement is made, or (b) a joint local plan direction is given. "Joint local plans" is a new term, replacing the current concept of "joint local development documents" governed by existing sections 28 to 28C of the PCPA 2004.

498. Section 15IA(2) provides that Part 2 of the PCPA 2004 applies for the purposes of any step which may be, or is required to be, taken in relation to the joint local plan as it applies for the purposes of any step which may be, or is required to be, taken in relation to a local plan. Subsection (3) then sets out that, for the purposes of subsection (2), anything which must be done by or in relation to a LPA in connection with a local plan must be done by or in relation to each of the relevant authorities in connection with the joint local plan. Section 15IA(4) additionally allows the Secretary of State to set out in regulations modifications to Part 2 of the PCPA 2004, as it applies in relation to joint local plans. This power will therefore allow modifications to be made so that the provisions for joint local plans may differ from the provisions for local plans set out in Part 2 of the PCPA 2004.

Justification for delegation

499. Part 2 of the PCPA 2004 applies to a joint local plan in the same way as it applies to a local plan. This power allows the Secretary of State to prescribe modifications that would relate to joint local plans only. Such circumstances which may call for modifications to be made will only become apparent as the new plan making system is embedded and this power is likely to be exercised in order to ensure that Part 2 of the PCPA 2004 makes sense insofar as it applies to joint local plans. Delegation is consistent with this approach.

Justification for procedure selected

500. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as any such modifications to the way in which a joint local plan is produced, or the matters to be addressed by such a plan, is a point of specialist planning detail.

Section 15IB(4) power for the Secretary of State to prescribe the period within which a relevant authority may request that the Secretary of State direct that, (a) a suspended independent examination of the joint local plan is resumed in

relation to, (i) any corresponding local plan prepared by a relevant authority, or (ii) any corresponding joint local plan prepared by two or more of the relevant authorities, or (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative procedure

Context and Purpose

501. New section 15IB sets out provisions relating to the withdrawal or modification of joint local plan agreements or direction, replacing existing section 28C of the PCPA 2004. Section 15IB(1) provides that this section applies if, (a) a relevant authority withdraw from a joint local plan agreement, (b) the Secretary of State withdraws a joint local plan direction, or (c) the Secretary of State modifies a joint local plan direction so that it ceases to apply to one or more of the relevant authorities to which it was given. Under subsection (3), any independent examination of the joint local plan must be suspended where section 15IB applies.

502. Section 15IB(4) then provides that if, before the end of the period prescribed for the purposes of this subsection, a relevant authority request the Secretary of State to do so, the Secretary of State may direct that, (a) the examination is resumed in relation to, (i) any corresponding local plan prepared by a relevant authority, or (ii) any corresponding joint local plan prepared by two or more of the relevant authorities, or (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination. This new subsection (4) gives the Secretary of State the power to prescribe the period within which a relevant authority may make such a request. This provision is a re-enactment of the power contained in current section 28C(6), and has simply been modified slightly to reflect the updated language (for example, to refer to local plans and joint local plans).

Justification for delegation

503. The section complements the provisions in section 15IB, allowing the Secretary of State to take certain steps where an examination of a joint local plan has been suspended. This power is necessary to ensure that there is a set timeframe within which a relevant authority may themselves request that the examination is resumed. Without such delegation, there would be no limit to how long a relevant authority could wait to make such a request, which could result in significant delays in the plan-making process. Delegation of this direction power is consistent with the existing power in section 28C(6) of the PCPA 2004.

Justification for procedure selected

504. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is

appropriate as the period within which a relevant authority can request that an examination is resumed is a minor procedural detail that would not warrant Parliamentary debate. Further, this provision is a re-enactment of the power contained in current section 28C(6), which is subject to the negative resolution procedure.

Section 15IB(4) PCPA 2004 power for the Secretary of State to direct resumption of a suspended examination of a joint local plan in relation to any corresponding local plan or corresponding joint local plan, and that any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

505. New section 15IB deals with withdrawal from or modification of joint local plans agreements or directions. Subsection (3) requires that in those circumstances any independent examination of the joint local plan must be suspended. Subsection (4) gives the Secretary of Stage power to direct that an examination be resumed in relation to any corresponding local plan prepared by a relevant authority, or any corresponding joint local plan prepared by two or more of the relevant authorities, and that any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination, if an authority involved requests it. This re-enacts existing section 28(9) of the PCPA 2004 with minor modifications. The power is not legislative as it is for particular authorities in particular relationships and is to be used only at the request of the authority concerned.

Justification for delegation

506. This power complements the requirement in section 15IB(3) that any independent examination of a joint local plan must be suspended where subsection (1) applies. The power is necessary to allow examination to resume in relation to a corresponding local plan or corresponding joint local plan where the relevant authority requests this, and for any steps taken for the purposes of the suspended examination to have effect for the purposes of the resumed examination, in order to avoid any delays if steps had to be retaken. Delegation of this direction power is consistent with the power available in existing section 28(9) of the PCPA 2004.

Justification for procedure selected

507. Where a relevant authority makes a request, it may be important that such action can be undertaken swiftly to ensure that examination can be resumed in a timely manner. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken and it would not be

practicable for Parliament to consider whether a suspended examination of an individual joint local plan should be resumed.

Section 15IB(5) power for the Secretary of State to by regulations make provision as to what is a corresponding local plan or a corresponding joint local plan for the purposes of this section.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

508. As set out above, new section 15IB makes provision as to the withdrawal or modification of joint local plan agreements or directions, replacing existing section 28C of the PCPA 2004. Section 15IB(5) provides the Secretary of State with a power to by regulations make provision as to what is a "corresponding local plan" or a "corresponding joint local plan" for the purposes of this section; concepts which are referred to in subsections (2) and (4). This provision is a re-enactment of the power in current section 28C(7) of the PCPA 2004, and has simply been modified slightly to update the language so as to refer to corresponding local plans and corresponding joint local plans, rather than corresponding documents and corresponding joint development plan documents.

Justification for delegation

509. This section allows the Secretary of State to set out in regulations what is a corresponding local plan or corresponding joint local plan This allows the Secretary of State to deal with the situation where one of the parties to a joint local plan agreement withdraws from that agreement. It also covers the situation where the Secretary of State withdraws or modifies a joint local plan direction. This is a point of detail which is more suited to regulations than to be set out in the primary legislation and delegation of this power is consistent with the similar power available in section 28C(7) of the PCPA 2004

Justification for procedure selected

510. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the power is not such to require Parliamentary debate. This provision is a re-enactment of the power in current section 28C(7) of the PCPA 2004, which is subject to the negative resolution procedure.

Section 15IC(5) power for the Secretary of State to prescribe modifications to Part 2 of the PCPA 2004, as it applies to joint supplementary plans.

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

511. New section 15IC deals with joint supplementary plans by agreement. As set out above, supplementary plans are a new legal concept being introduced with these reforms. Section 15IC(1) and (2) respectively provide that two or more LPAs may agree to prepare a joint supplementary plan under section 15CC, and two or more minerals and waste planning authorities may agree to prepare a joint supplementary plan under section 15CC. Section 15IC(3) provides that Part 2 of the PCPA 2004 applies for the purposes of any step which may be, or is required to be, taken in relation to the joint supplementary plan as it applies for the purposes of any step which may be, or is required to be, taken in relation to a supplementary plan. Section 15IC(4) then sets out that for the purposes of subsection (3) anything which must be done by or in relation to a LPA or (as the case may be) a minerals and waste planning authority in connection with a supplementary plan must be done by or in relation to each of the relevant authorities in connection with the joint supplementary plan.

512. Section 15IC(5) provides that subsections (3) and (4) are subject to such modifications of this Part, as it applies to joint supplementary plans, as may be prescribed. Thus, this section allows the Secretary of State to set out in regulations modifications to Part 2 of the PCPA 2004, so that the provisions for joint supplementary plans may differ from the provisions for supplementary plans set out in this Part.

Justification for delegation

513. Part 2 of the PCPA 2004 applies to joint supplementary plans in the same way as it applies to a local plan. This power allows the Secretary of State to prescribe modifications that would relate to joint supplementary plans only. Such circumstances which may call for modifications to be made will only become apparent as the new plan making system is embedded and this power is likely to be exercised in order to ensure that Part 2 of the PCPA 2004 makes sense insofar as it applies to joint supplementary plans. Delegation is consistent with this approach

Justification for procedure selected

514. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate, as any such modifications to the way in which a joint supplementary plan should be prepared, or the matters that such a plan should address.

Section 15IC(10) power for the Secretary of State to prescribe the period within which any of the relevant authorities may request that the Secretary of State direct that, (a) the examination is resumed in relation to, (i) any corresponding supplementary plan prepared by any of the relevant authorities, or (ii) any corresponding joint supplementary plan prepared by two or more of the relevant authorities, or (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

515. As set out above, new section 15IC deals with joint supplementary plans by agreement. Section 15IC(7) provides that subsections (8) to (10) apply if one of the relevant authorities withdraw from an agreement mentioned in subsection (1) or (2). Under section 15IC(9), any independent examination of the joint supplementary plan must be suspended where one of the relevant authorities withdraw from such an agreement. Section 15IC(10) then provides that if, before the end of the period prescribed for the purposes of this section, any of the relevant authorities request the Secretary of State to do so, the Secretary of State may direct that, (a) the examination is resumed in relation to, (i) any corresponding supplementary plan prepared by any of the relevant authorities, or (ii) any corresponding joint supplementary plan prepared by two or more of the relevant authorities, or (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination. This new subsection (10) gives the Secretary of State the power to prescribe the period within which the relevant authorities may make such a request.

Justification for delegation

516. The section allows the Secretary of State to set a time period for submitting a request to resume an examination where one has been suspended. The power is necessary to ensure that such requests cannot be made once a reasonable period of time has elapsed. It is possible that the Secretary of State may wish to amend this time period as the new plan preparation process becomes embedded, and also in response to changing circumstances and so it is appropriate for the time period to be set out in secondary legislation.

Justification for procedure selected

517. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as this provision mirrors the power contained in current section 28C(6) relating to local plans, which is subject to the negative resolution procedure.

Section 15IC(10) PCPA 2004 power for the Secretary of State to direct resumption of a suspended examination of a joint supplementary plan in relation to any corresponding supplementary plan or corresponding joint supplementary plan, and that any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

Powers conferred on: Secretary of State
Powers exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

518. New section 15IC deals with joint supplementary plans by agreement. Subsection (9) requires that if an authority withdraws from the agreement, any independent examination of the joint supplementary plan must be suspended. Subsection (10) gives the Secretary of State power to direct that an examination be resumed in relation to any corresponding supplementary plan prepared by any of the relevant authorities, or any corresponding joint supplementary plan prepared by two or more of the relevant authorities, and that any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination, if an authority involved requests it. This is similar to existing section 28(9) of the PCPA 2004 but for supplementary plans. The power is not legislative as it is for particular authorities in particular relationships and is to be used only at the request of the authority concerned.

Justification for delegation

519. This power complements the requirement in section 15IC(9) that any independent examination of a joint supplementary plan must be suspended if an authority withdraws from the agreement. This power is necessary to allow examination to resume in relation to a corresponding supplementary plan or corresponding joint supplementary plan where a relevant authority requests this, and for any steps taken for the purposes of the suspended examination to

have effect for the purposes of the resumed examination, in order to avoid any delays if steps had to be retaken. Delegation of this direction power is consistent with the broadly similar power in existing section 28(9) of the PCPA 2004.

Justification for procedure selected

520. Where a relevant authority makes a request to the Secretary of State under section 15IC(10), it may be important that such action can be undertaken swiftly to ensure that examination can be resumed in a timely manner. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken and it would not be practicable for Parliament to consider whether a suspended examination of an individual joint supplementary plan should be resumed.

Section 15IC(11) power for the Secretary of State to by regulations make provision as to what is a corresponding supplementary plan or a corresponding joint supplementary plan for the purposes of this section.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

521. As set out above, new section 15IC deals with joint supplementary plans by agreement. Section 15IC(7) provides that subsections (8) to (10) apply if one of the relevant authorities withdraw from an agreement mentioned in subsection (1) or (2). Section 15IC(11) then provides the Secretary of State with a power to by regulations make provision as to what is a "corresponding supplementary plan" or a "corresponding joint supplementary plan" for the purposes of this section; concepts which are referred to in subsections (8) and (10). This is broadly similar to the power in existing section 28C(7) of the PCPA 2004, which is being re-enacted by new section 15IB(5), and the creation of this power reflects the fact that supplementary plans and joint supplementary plans are new legal concepts being introduced as part of these reforms.

Justification for delegation

522. This section allows the Secretary of State to set out in regulations what is a corresponding supplementary plan or corresponding joint supplementary plan. This is a point of detail which is more suited to regulations than to be set out in the primary legislation. Delegation of this power is also consistent with the broadly similar power available in existing section 28C(7) of the PCPA 2004, and is being introduced to reflect the fact that supplementary plans and joint supplementary plans are new legal concepts being introduced as part of these reforms.

Justification for procedure selected

523. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate as the power is not such to require Parliamentary debate. This provision is broadly similar to the power in current section 28C(7) of the PCPA 2004, which is subject to the negative resolution procedure.

Section 15J(2) power for the Secretary of State to by regulations constitute a joint committee to be the local planning authority for a specified area in respect of specified purposes.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

524. New section 15J replaces existing section 29 of the PCPA 2004, which deals with joint committees. Section 15J(1) replicates existing section 29(1) and sets out that this section applies if one or more LPAs agree with one or more county councils in relation to any area of such a council for which there is also a district council to establish a joint committee to be, for the purposes of Part 2 of the PCPA 2004, the LPA for the area specified in the agreement, in respect of such purposes as are so specified. Section 15J(2) then provides the Secretary of State with a power to by regulations constitute a joint committee to be the LPA, (a) for the area, (b) in respect of those purposes (as specified in

accordance with subsection (1)). This is a re-enactment of the power in existing section 29(2) of the PCPA 2004, with a slight modification in that the new power is to be exercised by regulations rather than by order. Section 15J(3) and (4) then sets out what regulations made under subsection (2) must specify and may make provision as to.

525. New section 15JB, which deals with dissolution of joint committees, sets out in subsection (1) that, if a constituent authority requests the Secretary of State to revoke regulations constituting a joint committee as the LPA for any area or in respect of any purpose, this section applies. Subsection (2) then provides that the Secretary of State may revoke the regulations, thus allowing for the dissolution of a joint committee at the request of a constituent authority. This re-enacts existing section 31(1) and (2) of the PCPA 2004, with slight modifications to the language used to refer to regulations rather than orders.

Justification for delegation

526. This power is necessary to enable the Secretary of State to establish an individual joint committee in response to individual requests, and it would not be appropriate for this to be achieved through primary legislation. Delegation is consistent with this approach and also with existing section 29(2) of the PCPA 2004, which currently provides the Secretary of State with the same power.

Justification for procedure selected

527. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate. This provision re-enacts the power contained in current section 29(2) of the PCPA 2004. Whilst the existing power is exercised by order, such exercise is subject to the negative resolution procedure.

Section 15JB(6) power for the Secretary of State to prescribe the period within which a successor authority falling within subsection (4)(a) may request that the Secretary of State direct that, (a) the examination is resumed in relation to the corresponding plan, or (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

528. New section 15JB deals with dissolution of joint committees, replacing existing section 31 of the PCPA 2004. Under section 15JB(1), this section applies if a constituent authority requests the Secretary of State to revoke regulations constituting a joint committee as the LPA for any area or in respect of any purpose. Section 15JB(2) then provides that the Secretary of State may revoke the regulations. If such revocation takes effect at any time when an independent examination is being carried out in relation to a local plan or supplementary plan in relation to which the joint committee is the LPA, then section 15JB(5) sets out that the examination must be suspended.

529. Section 15JB(6) then provides the Secretary of State with a power to prescribe the period within which a successor authority falling within subsection (4)(a) may request that the Secretary of State direct that, (a) the examination is resumed in relation to the corresponding plan, (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination. This is a re-enactment of the power contained within existing section 31(6) of the PCPA 2004. A "successor authority" is defined in section 15JB(4) as, (a) a LPA which were a constituent authority of the joint committee, (b) a joint committee constituted by regulations under section 15J for an area which does not include an area which was not part of the area of the joint committee mentioned in subsection (1).

Justification for the delegation

530. This section allows the Secretary of State to set a time period for submitting a request that examination in relation to the corresponding plan be resumed, and that any step taken for the purposes of the suspended examination have effect for the purposes of the resumed examination, where examination has been suspended. The power is necessary to ensure that such requests cannot be made once a reasonable period of time has elapsed.

Justification for procedure selected

531. Regulations made under this delegated power will be subject to the negative procedure. This provision re-enacts the power contained in current section 31(6) of the PCPA, which is subject to the negative procedure and this is considered to be appropriate for this power.

Section 15JB(6) PCPA 2004 power for the Secretary of State to direct that examination is resumed in relation to the corresponding plan and that any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

532. New section 15JB deals with the dissolution of a joint committee which is an LPA (section 15J provides for regulations to constitute joint committees). Subsection (5) requires that if the regulations are revoked, any independent examination of the local plan or supplementary plan in relation to which the joint committee is the LPA, must be suspended. Subsection (6) then gives the Secretary of State power to direct that the examination be resumed in relation to the corresponding plan, and that any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination, if a successor authority requests it. This is similar to existing section 28(9) of the PCPA 2004 but for plans of joint committees. The power is not legislative as it is for particular authorities in particular relationships and is to be used only at the request of the authority concerned.

Justification for delegation

533. This power complements the requirement in section 15JB(5) that any independent examination of a joint committee's local or supplementary plan must be suspended where regulations constituting a joint committee are revoked. This power is necessary to allow examination to resume in relation to a corresponding plan if a successor authority requests it, and for any steps which were taken for the purposes of the suspended examination to have effect for the purposes of the resumed examination, preventing such steps from having to be retaken. Delegation of this direction power is consistent with the broadly similar power available in existing section 28(9) of the PCPA 2004.

Justification for procedure selected

534. Where a successor authority makes a request under section 15JB(6), it may be important that such action can be undertaken swiftly to ensure that examination can be resumed in relation to a corresponding plan in a timely manner. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken, and it would not be practicable for Parliament to consider whether a suspended examination of an individual plan should be resumed.

Section 15JB(7) power for the Secretary of State to by regulations make provision as to what is a corresponding timetable or plan.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

535. As set out above, new section 15JB deals with dissolution of joint committees, replacing existing section 31 of the PCPA 2004. Section 15JB(7) provides the Secretary of State with a power to by regulations make provision as to what is a corresponding timetable or plan; concepts which are referred to in subsections (3) and (6)(a). This provision is a re-enactment of the power in existing section 31(7) of the PCPA 2004, and has simply been modified to update the language so as to refer to "corresponding timetable or plan", rather than "corresponding scheme or document".

Justification for delegation

536. This power enables the Secretary of State to determine what constitutes a corresponding timetable or plan. Delegation is consistent with the existing power in section 31(7) of the PCPA 2004, which allows the Secretary of State to make provision as to what is meant by a corresponding scheme or document.

Justification for procedure selected

537. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate. Further, this provision re-enacts the power contained in current section 31(7), which is subject to the negative procedure.

Section 15LA PCPA 2004 power for the Secretary of State to direct that the provisions of Part 2 of the PCPA 2004, or any particular regulations made under section 14A of that Act, do not apply to the area of an urban development corporation or a New Town Development Corporation.

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

538. Section 33 of the PCPA 2004 currently provides a power for the Secretary of State to direct that provisions of Part 2 of that Act, or particular regulations made under section 14A of that Act, do not apply to the area of an urban development corporation (UDC). This direction power, if exercised, could

provide that a LPA for the area of an UDC will not be required to prepare a local development scheme and local development documents in respect of that area.

539. New section 15LA provides for a similar direction power in respect of both New Town Development Corporations (NTDCs) and UDCs, so that LPAs for their areas can be directed not to prepare plans under Part 2 of the PCPA 2004 in respect of the development corporation's area.

Justification for delegation

540. New section 15LA replaces the direction making power of the Secretary of State in section 33 of the PCPA 2004 to include NTDCs as well as UDCs.

541. Delegation of this matter is appropriate as it will only be relevant when a proposal for an NTDC or UDC comes forward and is designated. It will be important to be able to calibrate which planning functions (if any) the development corporation would need given the context of the local area and project stage. One possible route would be to use existing powers under section 7 of the New Towns Act 1981, or section 148 of the Local Government, Planning and Land Act 1980. This allows the development corporation to submit proposals for the development of land to the Secretary of State, after consultation with the local planning authority or authorities. Those proposals can then be approved with or without modification by the Secretary of State.

542. In such circumstances, it would therefore be reasonable for the LPA not to have to spend time and resources drawing up plans under Part 2 of the PCPA 2004 that covered the same area and for existing plans to not apply.

Justification for procedure selected

543. The Secretary of State's power to make a direction will not be subject to further Parliamentary scrutiny as already is the case for directions made under section 33 of the PCPA 2004 in relation to UDCs. This is considered proportionate because any given direction will only apply to the local planning authority or local planning authorities for the area of a development corporation so would not warrant specific Parliamentary scrutiny.

544. Before using these powers, we would consider any views expressed by the relevant LPA.

Section 15LB(1) and (2) PCPA 2004 power for the Secretary of State to issue guidance to which relevant plan-making authorities must have regard, and duty on the Secretary of State to issue guidance for LPAs on how their local plan and any supplementary plans (taken as a whole) should address housing needs that result from old age or disability.

Powers conferred on: *Secretary of State*
Powers exercised by: *Guidance*
Parliamentary Procedure: *None*

Context and Purpose

545. Under new section 15LB(1), a relevant plan-making authority must have regard to any guidance issued by the Secretary of State when exercising any function conferred by or under Part 2 of the PCPA 2004. The Secretary of State is required, by new section 15LB(2), to issue guidance for LPAs on how their local plan and any supplementary plans (taken as a whole) should address housing needs that result from old age or disability. This section is a re-enactment of existing section 34 of the PCPA 2004, with the language having been updated to refer to local plans and supplementary plans rather than local development documents.

Justification for delegation

546. This power enables the Secretary of State to issue guidance. The preparation of guidance is essential in terms of assisting LPAs when preparing plans. As is the case now, guidance will be prepared to explain the Secretary of State's policy and how the requirements set out in legislation can be met. The fact that guidance can be updated quickly is vital as it ensures that Government can respond quickly to changing circumstances. Delegation is also consistent with the existing power in section 34 of the PCPA 2004.

Justification for procedure selected

547. This is an existing power to issue guidance which is being replicated in the new system. This power is being restated to ensure that the role this guidance appropriately plays in the planning system at present can be continued within the reformed local plan architecture.

Section 15LC(1) and (2) powers for the Secretary of State to prescribe information within section 15LC(3) that each LPA must make available to the public or provide to the Secretary of State. Under new section 15LC(3), information is within this subsection if it relates to (a) the implementation of the LPA's local plan timetable, (b) the implementation of policies in their local plan and any supplementary plans they have prepared, (c) the implementation of any policies which relate to authority's area, in any spatial development strategy that is operative in relation to their area, and (d) the extent to which environmental outcomes (within the meaning of Part 5) are being delivered in relation to the authority's area.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

548. This section replaces existing section 35 of the PCPA 2004, which deals with monitoring reports. New section 15LC(1) reflects the new approach

whereby LPAs are required to make prescribed information available to the public, rather than prescribed reports. Furthermore, section 15LC(2) provides that LPAs are required to provide prescribed information to the Secretary of State. The subject matters that the prescribed information should relate to have also been updated, to refer to the local plan timetable rather than the local development scheme, the implementation of any policies in their local plan and any supplementary plans they have prepared, the implementation of any policies which relate to authority's area, in any spatial development strategy that is operative in relation to their area, and the extent to which environmental outcomes (within the meaning of Part 5 of the Levelling-up and Regeneration Act 2022) are being delivered in relation to the authority's area.

Justification for delegation

549. The purpose of setting out prescribed monitoring information is to clearly set out what information LPAs should be reporting and to make this information more accessible for users of the planning system, and is in line with local planning authorities producing local plans in accordance with common data standards. Therefore, the Government will need to review the prescribed information from time to time in order to keep up with technological developments. Setting these monitoring requirements by way of publication by the Secretary of State is the most appropriate way to disseminate this information.

Justification for procedure selected

550. There are existing powers in section 35(2) and (3) of the PCPA 2004 for the Secretary of State to be able to prescribe the information that Authority Monitoring Reports must contain, and the form and content of Authority Monitoring Reports. The new section 15LC provides that monitoring information should be made publicly available as a data standard, rather than a standalone report, which is in line with local plans being produced in accordance with common data standards. On that basis, the Government considers that it is appropriate that the information that must be made available may be prescribed without Parliamentary debate.

Section 15LC(4) power for the Secretary of State to prescribe the form and manner in which information within section 15LC must be made available or provided.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

551. Section 15LC(4) allows the Secretary of State to prescribe the form that the information within this section must be in (for example, that the information should be produced electronically), and the manner in which it must be made

available or provided. This is broadly similar to the existing power in section 35(3)(c) of the PCPA 2004 for the Secretary of State to prescribe the form in which Authority Monitoring Reports must be in.

Justification for delegation

552. The ability to prescribe the form and manner in which information must be made available or provided is important to ensure that monitoring information is made available in a standardised way that enables all interested stakeholders to freely and easily access such data. Delegation is consistent with this approach and also with the fact that the way in which monitoring information should be made available may change over time, for instance due to changes in digital technology.

Justification for procedure selected

553. Regulations made under this delegated power will be subject to the negative procedure. The Government considers that this level of scrutiny is appropriate. This power is also broadly similar the power contained in current section 35(3)(c), which is subject to the negative procedure.

Section 15LD(2) power for the Secretary of State to prescribe the form and content of maps prepared under section 15LD(1) and the time and/or circumstances in which the map must be revised.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

554. Section 15LD places a requirement on LPAs to ensure that a map, to be known as a "policies map", which illustrates the geographical application of the development plan for the LPA's area, is prepared and kept up to date. Section 15LD(2) allows the Secretary of State to prescribe the form (for example, that the maps should be produced electronically) and the content of such maps, and further to prescribe the time and/or circumstances in which the map must be revised.

Justification for delegation

555. The intention to present data primarily in the form of a digital map rather than a document is a new approach which is likely to be refined over time as experience of the new system is gained. The requirements for the map based presentation of a plan may also need to be updated more rapidly than would be possible if this was set out in primary legislation. Furthermore, it is possible that some of the prescribed timings which would trigger a revision of a map may need to be altered if it transpires that the procedure is too onerous. Any changes

to the prescribed timings would need to be made more swiftly than would be possible through primary legislation.

Justification for procedure selected

556. The requirements relate to the appearance and content of the online map, and the revision of the maps. Any changes would likely be relatively minor in nature but also quite technical. The Government considers that the level of scrutiny provided by the negative procedure is appropriate here.

Section 15LE power for the Secretary of State to by regulations make provision in connection with the exercise by any person of functions under Part 2 of the PCPA 2004 (local development).

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

557. Existing section 36 of the PCPA 2004 contains a broad range of powers for the Secretary of State to make regulations in connection with the exercise of functions under Part 2 of the PCPA 2004, which relates to local development. Amendments are being made to some of these powers to reflect the changes in language, for example to refer to local plans and supplementary plans, rather than local development documents and to refer to a local plan timetable rather than a local development scheme. In particular, the scope of the power in section 36(2)(b) is being extended in the new section 15LE(2)(d), so that the Secretary of State may not only make provision as to the procedure to be followed in the preparation of local plans, but also the procedure to be followed in relation to the adoption, review, revision or withdrawal of local plans or supplementary plans. The power in section 36(2)(e) to make provision in relation to the nature and extent of consultation with and participation by the public is also expanded in the new section 15LE(2)(g), to refer also to consultation with, or participation by, the public or any prescribed body or other person in connection with anything done under Part 2, including provision imposing requirements for consultation or participation or as to the nature and extent of the consultation or participation that may or must take place. The power in section 36(2)(h) is also expanded in scope in new section 15LE(2)(j), so that it applies not only to remuneration and allowances to a person appointed to carry out a public or independent examination under Part 2, but also to a person appointed to provide observations or advice through the gateway process under section 15CA(3), and a person acting as a local plan commissioner under new section 15HA(3).

558. New section 15LE(2) also provides the Secretary of State with a number of new powers in terms of what regulations made under subsection (1) may make provision as to. The power in section 15LE(2)(a) allows the Secretary of State to make provision as to the form of content of a joint spatial development

strategy. The power in section 15LE(2)(b) then allows provision to be made as to the documents (if any) which must accompany a joint spatial development strategy. Section 15LE(2)(c) provides a power to make provision in relation to the procedure to be followed in connection with the preparation, adoption, publication, review, alteration or withdrawal of a joint spatial development strategy or in connection with any review under section 15AE(2). The power in section 15LE(2)(k) then allows provision to be made in relation to the procedure to be followed in the preparation, making, modification, revocation, replacement or publication of a neighbourhood priorities statement.

Justification for delegation

559. The details of the plan making process are already set out within regulations rather than primary legislation. This is to ensure that any amendments can be made rapidly in a way that responds to changing circumstances or lessons learnt as plans progress under the reformed system. Moreover, the addition of new powers under new section 15LE(2) as to what regulations may make provision as to simply reflects the fact that joint spatial development strategies and neighbourhood priorities statements are new features being introduced as part of these reforms.

Justification for procedure selected

560. The regulations represent points of detail within the overall local plan process, and as such, it not considered necessary to seek Parliamentary approval each time such an amendment is made. Further, as the details of the plan making process are already set out in regulations as established by section 36 of the PCPA 2004, it is proposed that this approach is replicated as part of the reforms.

Schedule 7 inserts section 15K into the PCPA 2004 (neighbourhood priorities statements)

New section 15K(2) of the PCPA 2004 for Secretary of State to make Regulations to prescribe which matters are 'local matters' for the purposes of neighbourhood priorities statements

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

561. New section 15K of the PCPA 2004 introduces the ability for a qualifying body (a parish council or an organisation designated as a neighbourhood forum) to prepare a neighbourhood priorities statement. This statement would summarise the principal needs and prevailing views of the community in respect of local matters.

562. Local planning authorities, when preparing their local plan, will need to have regard to the contents of published neighbourhood priorities statements that cover any part of their area.

563. At section 15K(2) there is a power for the Secretary of State to make regulations prescribing the matters which are to be 'local matters' for the purpose of a neighbourhood priorities statement. That section further provides that the matters to be prescribed by the Secretary of State must relate either to:

a. development, or the management or use of land, in or affecting, the neighbourhood area;
b. housing in the neighbourhood area;
c. the natural environment in the neighbourhood area;
d. the economy in the neighbourhood area
e. public spaces in the neighbourhood area;
f. the infrastructure, facilities or services available in the neighbourhood area, or
g. any other features of the neighbourhood area.

Justification for delegation

564. The delegation is needed to give the Secretary of State the option to narrow the scope of matters that can be covered in neighbourhood priorities statements. In addition, the delegation is needed to give the Secretary of State the ability to make further adjustments which are identified as necessary, following a period of operation. This may be used, for example, to provide further clarity on what information a statement can contain, or to prevent the inclusion of information that is deemed inappropriate, that we had not foreseen when drafting the bill clauses.

Justification for procedure selected

565. The power gives the Secretary of State only limited scope to change what information a neighbourhood priorities statement can contain (i.e. within the parameters of the "local matters" prescribed on the face of the bill) and, therefore, we consider that the level of scrutiny that the negative procedure provides is appropriate. The is also consistent with the parliamentary procedure for similar existing delegated powers in the Planning and Compulsory Purchase Act 2004 (as amended) such as the power under Section 38B(4)(b) for the Secretary of State to make regulations that provide for the matters that neighbourhood development plans must include.

New section 15K(6) of the PCPA 2004 for the Secretary of State to: prescribe the form, and content, of a neighbourhood priorities statement; and impose requirements that must be met for a neighbourhood priorities statement to be made or published

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

566. New section 15K(6) provides that the Secretary of State may make regulations to: impose requirements which must be met for a neighbourhood priorities statement, or any modification or revocation of such a statement, to be made or published (including, for example, requirements relating to publicity, notice, consultation, public participation or the provision or publication of information or documentation).

567. Regulations which impose requirements to be met, or which make provision as to the procedure to be followed under s.15LE(2)(k), may provide that these are met by virtue of things done by a parish council or other organisation or body before it becomes a qualifying body – see subsection (7).

568. Regulations made under section 15K(6) and section 15LE must (between them) also include provision in respect of certain publications that must be made – see subsection (8). Such provision must require a qualifying body to publish a proposed neighbourhood priorities statement (or a material modification) in draft for comment. Those regulations must also require a relevant local planning authority to publish a neighbourhood priorities statement (or material modifications) once made.

Justification for delegation

569. This is consistent with the planning regime more widely where many procedural requirements are set by delegated legislation. For example, under the 1990 Act, this includes but is not limited to the procedural requirements for making planning applications, the requirements for making written representations, and the procedure for making and holding planning appeals. Under the Planning Act 2008, which regulates nationally significant infrastructure project applications, the procedures for making applications, consulting interested parties, examining applications and modifying development consent orders are also set out in Regulations. These delegations allow for the requirements to be updated so that procedures operate optimally.

Justification for procedure selected

570. The power does not give the Secretary of State the scope to introduce changes which could adversely affect users of the planning system, and therefore we consider that the level of scrutiny that the negative procedure provides is appropriate. This is also consistent with the parliamentary procedure for similar existing delegated powers in the Planning and Compulsory Purchase Act 2004 (as amended) such as the power under Section 38B(4)(c) for the Secretary of State to make regulations that prescribe the form of neighbourhood development plans.

New section 15K(11) of the PCPA 2004 amending the power in section 61G(11) of the Town and Country Planning Act 1990 to make provision in regulations in connection with the designation of areas as neighbourhood areas

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

571. Part 3 of the Town and Country Planning Act 1990 ("TCPA 1990") makes provision in relation to neighbourhood development orders. These are orders which grant planning permission in relation to a particular neighbourhood area specific in the order.

572. Section 61G of the TCPA 1990 makes provision in relation to the meaning of a "neighbourhood area". Broadly, a neighbourhood area is an area which has been designated by a local planning authority as a neighbourhood area. Subsection (11) provides that the Secretary of State may make provision in relation to the designation of areas as neighbourhood area, and lists the particular provision that could be made.

573. New section 15K(11) of the Bill provides that regulations made under section 61G(11) of the TCPA 1990 may include provision about the consequences of the modification of designations on proposed, or made, neighbourhood priorities statements (and modifications of neighbourhood priorities statements).

Justification for delegation

574. This new power amends and complements the existing power in section 61G(11) of the TCPA 1990, which currently allows for regulations to be made making provision about the modification of designation of areas as neighbourhood areas, including provision about the consequences of modification on proposals for neighbourhood development orders, or on neighbourhood development orders that have already been made. Thus, delegation is consistent with this existing power and simply updates it in order to take into account neighbourhood priorities statements, which are a new legal concept being introduced as part of these reforms.

Justification for procedure selected

575. This power represents an amendment to the existing power in section 61G(11) of the TCPA 1990, exercise of which is subject to the negative procedure. This therefore means that the power is by definition subject to the same level of scrutiny that the existing power is subject to. Further, we consider that the level of scrutiny that the negative procedure provides is appropriate, as this power gives the Secretary of State limited scope to make provision about the consequences of the modification of designations on proposed, or made, neighbourhood priorities statements (and modifications of neighbourhood priorities statements). It can only be exercised in circumstances where there has been a change to the designation of a neighbourhood area.

Clause 93 of, and Schedule 8, inserting new section 39A into, and amending section 122 of, the PCPA 2004

New section 39A(3) PCPA 2004 for the Secretary of State to make regulations to prescribe things that a plan-making authority may, or may not, require a prescribed public body to do under subsection (2)

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

576. New section 39A(1) and (2) PCPA 2004 provides that if a plan-making authority notifies a prescribed public body that it requires the body to engage with the authority in relation to the preparation or revision of a relevant plan, that prescribed public body must do everything that the authority reasonable require of it.

577. A ‘plan-making authority’ is a person who is to prepare or revise a relevant plan, namely: a local plan; a minerals and waste plan; a supplementary plan; a spatial development plan; an infrastructure delivery strategy; and a marine plan.

578. A ‘prescribed public body’ is a body which, or other person who, is prescribed or of a prescribed description in regulations made by the Secretary of State. A prescribed public body must have functions of a public nature.

579. A ‘relevant plan’ is defined in subsection (5) by reference to a list of statutory plans.

580. Section 39A(3) provides a power for the Secretary of State to make provisions in regulations as to:

a. the things that a plan-making authority may, or may not, require a prescribed public body to do under this new requirement;
b. the procedure to be followed in doing anything under section 39A;
c. the determination of the time by or at which anything under section 39A must be done;
d. the form and content of a notification under subsection (1) or any other document or information provided under section 39A.

581. Paragraph 13 of Schedule 8 amends section 122 of the PCPA 2004 to provide that the affirmative parliamentary procedure is to be followed when exercising powers in new section 39A(3).

Justification for delegation

582. New section 39A(3) implements our policy ambition to allow the Secretary of State to impose requirements, and set expectations, in relation to the role of prescribed public bodies.

583. Whilst prescribed public bodies may respond to plan-making authorities and provide information to assist with plan-making, this may not represent meaningful engagement. This is because the information provided is not of sufficient quality, specificity, or detail to assist the authority in plan-making. This is an established issue within the plan-making process and does not support positive planning outcomes.

584. Building on this broader point, during policy development we identified concerns about how some prescribed bodies responded to particular documents commonly produced during the plan-making process. These concerns included delays in responding, that the information provided was not sufficiently detailed enough, and that the prescribed body deferred providing detailed input to a later stage in plan-making.

585. We believe that through our proposed changes to the planning system the process will be improved. Creating a statutory framework for the role, and setting out expectations on prescribed public bodies under the new requirement to assist, would be beneficial. We believe that new section 39A(2) sets out the intent clearly; that prescribed public bodies must do everything the local authority reasonable requires to assist with preparing or revising a relevant.This is critical to joined-up planning.

586. However, we anticipate that procedural refinements will be identified once our proposed changes to the planning system bed down in practice and we understand how it is being used in practice. Having the opportunity to create a statutory framework and set clear expectations in secondary legislation will be valuable for prescribed public bodies, allowing them to benefit from additional clarity on how they should respond under the requirement to assist. Having additional clarity on procedures for them to follow after receiving a

request under the requirement to assist and on the timescales to respond within will be similarly beneficial.

587. In addition, a wider ambition from our proposed changes to the planning system is to support a quicker timetable for producing Local Plans. Therefore, having the ability to set more specific expectations on how prescribed public bodies engage with this process through the requirement to assist will be beneficial.

588. Having the power to set out the format for how LPAs requests information from a prescribed public body could also be important. This supports wider planning reform ambitions around increasing consistency. For example, Clause 79 of the Bill broadly gives power for an LPA to require "persons of a particular description" to provide information in a particular format relating to data standards. It feels prudent to ensure that, with the duty to assist in mind, it is possible to prescribe the format that an LPA can make such a request and align this to the approach taken to develop data standards.

589. Furthermore, in the longer-term, certain prescribed public bodies (existing or future) may have new duties under their remit which impact on plan-making. Providing clarification on what is (or is not) expected of prescribed public bodies when responding to an LPA under the requirement to assist will be beneficial. This will support them operating in accordance with changes made through other laws, policies, or regulations and allow us to make clear what these changes mean for assisting with plan-making. This cannot be known at this stage and may, potentially, require more detailed intervention by the Secretary of State through delegated legislation.

Justification for procedure selected

590. When making regulations under new section 39A(3), the affirmative procedure is proposed for this delegated power in recognition that this is a a matter which may interest MPs and Lords. The specific regulations may have consequence for the activities of the bodies concerned; therefore parliamentary debate by members of both houses is warranted.

New section 39A(6) PCPA 2004 for the Secretary of State to make regulations to provide which persons or bodies are 'prescribed public bodies' for the purposes of the requirement to engage with plan-making authorities

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: *Negative procedure*

Context and Purpose

591. The requirement to engage with plan-making imposes a requirement on prescribed public bodies to do everything that a plan-making authority requires of it in relation to the preparation or revision of a relevant plan.

592. Section 39A(6) provides that a prescribed public body is person who is specified or described in regulations made by the Secretary of State. This further provides that such bodies must have functions of a public nature.

Justification for delegation

593. We need to define a list of prescribed public bodies to whom this requirement applies to within secondary legislation. This list may change over time as new organisations are created who should be prescribed public bodies in the interests of positive planning. Additionally, there may be future, unknown planning issues that arise which mean an existing organisation needs to become prescribed. This matter may need adjusting more often than Parliament can be expected to legislate for by primary legislation.

594. Additionally, the use of delegated powers in this way has a strong precedent and should be seen as uncontroversial. For example, an existing list of prescribed bodies relating to the current Duty to Cooperate (Section 33A of the Planning and Compulsory Purchase Act 2004) is recorded within Regulation 4(1) of the Town and Country Planning (Local Planning) (England) Regulations 2012.

595. It should also be noted that the accompanying Regulations 4(2) and 4(3) were added later via the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012. This resulted in Local Nature Partnerships and Local Enterprise Partners being added to the list of prescribed bodies.

Justification for procedure selected

596. It is also noted that the existing provision prescribing bodies for the purposes of the duty to co-operate in the Town and Country Planning (Local Plan) Regulations 2012 have been laid using negative procedures and perform a similar function to what we require. These regulations have previously been used to add newly formed organisation, such as Local Enterprise Partnerships, as prescribed bodies and made them party to the broad-ranging Duty to Co-operate.

Clause 94, and Schedule 8, substituting new section 14 into the PCPA 2004

Section 14(3) PCPA power for the Secretary of State to, by regulations require or (in a particular case) direct a county council to keep under review in relation to the relevant area such of the matters mentioned in section 13(1) to (4) as the Secretary of State prescribes or directs (as the case may be).

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument or by Direction
Parliamentary Procedure: Various (negative procedure for regulations; no procedure for directions)

Context and Purpose

597. Existing section 14 of the PCPA 2004 makes provision relating to the survey function of county councils, requiring them to keep under review the matters which may be expected to affect development of so much of their area for which there is a district council or the planning of its development in so far as the development relates to a county matter. New section 14 sets out provisions regarding the survey of area by minerals and waste planning authorities and county councils, reflecting the fact that minerals and waste planning authorities are a new legal concept being introduced as part of these reforms.

598. New subsection (1) provides that a minerals and waste planning authority must keep under review the matters which may be expected to affect minerals and waste development in the relevant area or the planning of such development.

599. New subsection (2) re-enacts existing subsection (2), setting out that subsections (2) to (6) of section 13 of the PCPA apply for the purposes of subsection (1) as they apply for the purposes of that section, but updates the language used so that references to the LPA must be construed as references to the minerals and waste planning authority, references to the area of the LPA must be construed as references to the relevant area, and references to the LPA for a neighbouring area must be construed as references to, (i) in the case of a neighbouring area in England, the minerals and waste planning authority for that area, or (ii) in the case of a neighbouring area in Wales, the LPA for that area for the purposes of Part 6.

600. New subsection (3) then simply re-enacts the existing power in existing section 14(3), providing the Secretary of State with a number of powers. The Secretary of State may either make regulations requiring a county council to keep under review in relation to the relevant area certain matters, or the Secretary of State may, in a particular case, direct a county council as such. In respect of the matters that are to be kept under review, the Secretary of State may by regulations prescribe which of the matters mentioned in section 13(1) to (4) of the PCPA 2004 a county council may be required (under regulations), or directed, to keep under review, or the Secretary of State may alternatively issue a direction setting out these matters.

601. As aforementioned, this is a re-enactment of powers contained within existing section 14(3) of the PCPA 2004. The existing powers have been used in the Town and Country Planning (Local Development) (England) Regulations 2004, S.I. 2004/2204, at regulation 5(1), to prescribe the matters that each county council are required to keep under review.

Justification for delegation

602. Schedule 8 substitutes a new section 14 for existing section 14 of the PCPA 2004, but the substance of the provisions does not materially differ to

existing section 14. The changes that are being made reflect updates in language, to refer to the new legal concept of minerals and waste planning authorities, which are being introduced as part of these reforms. As such, delegation is consistent with the existing powers, which have been exercised in the past, and the Government wishes to keep these powers going forward.

Justification for procedure selected

603. Regulations made under this power represent points of detail within the overall planning process, and as such, it is not considered necessary for Parliament to debate each exercise of this power. Directions made under this power which will require certain matters to be kept under review are able to be made in a particular case, which is unlikely to be of wider Parliamentary interest. It may be important that, in certain cases, such action can be undertaken swiftly. Requiring Parliamentary scrutiny each time a direction is made could prevent swift action being taken. Further, as this is a re-enactment of the powers in existing section 14(3) of the PCPA 2004, it is proposed that the approach taken there is replicated here.

Section 14(5) PCPA 2004 power for the Secretary of State to set out in regulations, or in a direction, the persons to whom a county council must make available the results of their review under subsection (3).

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument or by direction
Parliamentary Procedure: Various (negative procedure for regulations; no procedure for directions)

Context and Purpose

604. As set out above, new section 14 makes provision relating to the survey of area by minerals and waste planning authorities and county councils, and subsection (3) in particular provides that a county council may be required (under regulations), or directed, to keep under review certain matters.

605. New subsection (5) provides that the county council must make available the results of their review under subsection (3) to such persons as the Secretary of State prescribes or directs (as the case may be). This therefore provides the Secretary of State with powers to either make regulations prescribing such persons, or to issue a direction setting out these persons.

606. This is a re-enactment of the power in existing section 14(5) of the PCPA 2004. The existing regulation making power has been exercised in the Town and Country Planning (Local Development) (England) Regulations 2004, S.I. 2004/2204, at regulation 5(2).

Justification for delegation

607. As set out above, Schedule 8 substitutes a new section 14 for existing section 14 of the PCPA 2004, without materially changing the substance of the provisions. Rather, the changes being made reflect updates in language, to refer to the new legal concept of minerals and waste planning authorities being introduced as part of these reforms. Delegation is therefore consistent with the powers in existing section 14(5) of the PCPA 2004, which have been exercised in the past, and the Government wishes to keep these powers going forward.

Justification for procedure selected

608. These powers replicate those in existing section 14(5) of the PCPA 2004. On that basis, the Government considers that these levels of scrutiny are appropriate and that the same approach should be replicated here, allowing for this power to be exercised by regulations subject to the negative procedure, or by direction.

Heritage

Clause 96 Power for the Secretary of State to make regulations providing that a temporary stop notice cannot prohibit prescribed works, or the execution of works in prescribed circumstances.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

609. Clause 96 of the Bill inserts new sections 44AA-44AC into the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 44AA enables Local Planning Authorities, the Secretary of State and the Historic Buildings and Monuments Commission, to issue temporary stop notices in England in relation to unauthorised works to listed buildings.

610. Where a Local Planning Authority considers that there has been a breach of listed building consent and, in order to safeguard the special historic or architectural character of the listed building it is necessary that the activity should stop immediately, the Local Planning Authority can issue a temporary stop notice. The temporary stop notice will specify the prohibited works that must cease immediately, and the reasons. The temporary stop notice will cease to have effect after 56 days, (or sooner if specified), if further enforcement action is not pursued.

611. This power will strengthen the current enforcement powers available to Local Planning Authorities to tackle unauthorised works to listed buildings.

612. New subsection 44AA(11) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides that a temporary stop notice does not prohibit the execution of works of such description, or the execution of works in such circumstances, as the Secretary of State may by regulations prescribe.

Justification for delegation

613. New section 44AA provides a new enforcement power for local planning authorities in England in the context of the listed building consent regime. It is intended to allow local planning authorities to take more effective enforcement action to protect listed buildings. The Government considers that local authorities are best placed to decide when and how they use this new power, as they do currently with their other enforcement powers. We do not think it is appropriate therefore, to place any restrictions on its use on the face of the Bill. A similar power was taken by the Welsh Government in the Historic Environment (Wales) Act 2016 which received Royal Assent on 21 March 2016. However, we understand this power has not been used to date.

614. The Government considers it prudent to provide for the possibility of introducing restrictions, should the need arise, once evidence has been gathered on how the power is being used in practice in England, rather than returning to Parliament at that point. The power to provide for restrictions is therefore a safeguarding power.

Justification for procedure selected

615. The scope of the power is limited to placing restrictions on local planning authorities' ability to use temporary stop notices. The Government expects that the power will be used rarely. National planning policy provides that any enforcement action taken by local planning authorities should be proportionate. The power would only be used if there is clear evidence that the use of the power in particular circumstances is causing unintended consequences and after discussion with key stakeholders. Given that context and that the expected use of the power would be to restricted to some limited extent local planning authorities' discretion to issue temporary stop notices, the Government considers that this is not the sort of matter to warrant Parliamentary debate on its exercise.

Clause 96 power for the Secretary of State to make regulations prescribing the time and manner in which a claim for compensation in respect of loss or damage caused by a temporary stop notice must be made.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

616. Clause 96 of the Bill inserts new sections 44AA-44AC into the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 44AA enables Local Planning Authorities, the Secretary of State and the Historic Buildings and Monuments Commission, to issue temporary stop notices in England in relation to unauthorised works to listed buildings. New section 44AC introduces compensation provisions for temporary stop notices issued under new section 44AA (as described above). Subsection 44AC(1) allows the Secretary of State to prescribe the form and manner

in which a person can make a claim to the Local Planning Authority for compensation in respect of any loss or damage suffered as a result of a temporary stop notice.

Justification for delegation

617. The Government would wish to take a consistent approach to the timing and manner of submission of compensation claims in relation to loss and damage arising from a temporary stop notice, as for other similar compensation provisions in the listed building consent regime context. There is a strong precedent for setting matters of administrative detail out in secondary legislation rather than primary. For example, see the compensation provisions at section 28 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and sections 107 and 186 of the Town and Country Planning Act 1990. Taking the same approach here will allow, should there be a need to amend the compensation procedures, for this to be done as necessary, in a consistent manner and in the same set of regulations. This means the legislation is easier to use, and thus reduces the time and cost to users of the enforcement regime.

Justification for procedure selected

618. Given the limited scope of the delegated power the Government considers that it is not necessary or practicable to bring such decisions before Parliament for a debate each time a change to the procedure for issuing a compensation claim is required. The Government considers that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny. There are precedents for this approach elsewhere in the listed building consent regime, for example in the Planning (Listed Buildings and Conservation Areas) Act 1990 (Regulation 9) and the Planning (Local Listed Building Consent Orders) (Procedure) Regulations 2014 (Regulation 7).

Clause 97 (subsections(3)(c)-(e)) amending s.55(5B) P(LBCA)A 1990) power for the Secretary of State to prescribe the rate of interest to apply to any outstanding costs incurred by a Local Planning Authority, the Secretary of State or the Historic Buildings and Monuments Commission when carrying out urgent works to preserve listed buildings or unlisted buildings in conservation areas.

Powers conferred on: *Secretary of State*
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

619. Clause 94 of the Bill amends section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which enables a Local Planning Authority, the Secretary of State or the Historic Buildings and Monuments Commission to execute any works which appear to them to be urgently necessary for the preservation of a listed building or an unlisted building in a conservation area. Works can be carried out to buildings that are occupied and in use, including as those that are in residential occupation.

620. Section 55(1) of the Planning (Listed Building and Conservation Areas) Act 1990 provides that the costs incurred by a Local Planning Authority, the Secretary of State or the Historic Buildings and Monuments Commission in carrying out urgent works in the abovementioned circumstances can be recovered. To aid costs recovery, Clause 94(3)(a) provides for the costs incurred to be registered as a local land charge.

621. By virtue of subsection 55(5B), as amended, and new subsection 55(5BA), the Secretary of State may by regulations specify the rate of interest to be paid on any outstanding costs. This will ensure there is an effective sanction again those who fail to repay the costs of any works urgently necessary for the preservation of a listed building or an unlisted building in a conservation area.

Justification for delegation

622. Where local authorities have used their own funds to carry out urgent works to a listed building (or an unlisted building in a conservation area) to ensure its preservation, it is right that they are able to recover those funds as soon as possible. It is important therefore, that the interest rate set acts as a deterrent to late payment. It is likely therefore that the rate will need to change from time to time to reflect changes in the Bank of England base rate. Providing for a delegated power to set the interest rate will allow for efficient review and revision of the rate in the light of experience and any wider economic changes.

Justification for procedure selected

623. Given the limited scope of the delegated power the Government considers that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny. There are precedents for this approach, for example, in the compulsory purchase system. Section 196 of the Housing and Planning Act 2016 and section 25(4) of the Neighbourhood Planning Act 2017 contain delegated powers, subject to the negative resolution procedure, to set interest rates in respect of outstanding compensation payable by acquiring authorities to those whose land has been acquired by compulsion.

Chapter 4 – Street Votes
Clause 99 makes provision inserting new sections 61QA to 61QM into the Town and Country Planning Act 1990.

Section 61QB(1)(a) and (b) for the Secretary of State to set out in regulations requirements in relation to a "qualifying group" of people who may bring forward a proposal for a street vote development order.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

624. Section 61QA (Street vote development orders) makes provision about street vote development orders ("SVDOs"), permitting a qualifying group to initiate a process for the purpose of requiring the Secretary of State to make an SVDO (as defined in subsection (2)). This process may also be initiated by a person on behalf of a qualifying group.

625. Section 61QB then sets out the definition of a qualifying group, namely that this is a group of individuals –

a. each of whom on the prescribed date meet the conditions in subsection (2), and
b. comprised of at least –
    i. the prescribed number, or
    ii. the prescribed proportion of persons of a prescribed description.

626. This provision therefore contains delegated powers that will allow for provision to be made in regulations as to the criteria that a group must satisfy to be able to take forward an SVDO proposal.

627. Firstly, there is a power to set out, in regulations, the date on which the conditions set out in section 61QB(2) must be met in order for individuals to fall within the definition of a qualifying group. There are then further powers to set out, in regulations (1) the minimum number of persons required for a group to be classified as a qualifying group, and (2) the minimum proportion of persons of a description to be specified in the regulations required for a group of individuals to be classified as a qualifying group.

Justification for delegation

628. These delegated powers control matters of procedural detail in contrast to the pillars of the policy which are established in primary legislation. It might be considered excessive to include such matters of policy detail on the face of the bill. In addition, the number or proportion of persons required for a group to be classified as a 'qualifying group' may depend on how 'street areas' are defined, in particular, the extent of a street area, which will be further specified in secondary legislation. It is therefore appropriate to make provision in respect of the number or proportion of persons at the same time to ensure the effective operation of the system.

Justification for procedure selected

629. It is considered appropriate for these delegated powers to be subject to the negative resolution procedure because they relate to matters of procedural detail.

Section 61QC(1)(a) for the Secretary of State to set out, in regulations, further details as to the definition of "street area".

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

630. As to the definition of a "street area", section 61QC(1) makes clear that a "street area" means an area in England (a) which is of a prescribed description, and (b) no part of which is within an excluded area.

631. Subsection (1)(a) therefore provides for the Secretary of State, under the power set out in section 333(1)(b) of the Town and Country Planning Act 1990, to set out in regulations further details as to the definition of "street area". This is important as the definition of street area will be a key consideration in respect of determining the specific areas in relation to which SVDOs may grant planning permission.

Justification for delegation

632. This power allows the Secretary of State to specify a more detailed definition of a 'street area' in secondary legislation. The use of this power does not change the pillars of the policy which are established on the face of the bill. The government anticipates the definition set out in the secondary legislation will be highly technical nature as it will need to reflect the different configurations of streets and roads that are found in English towns and cities. It would therefore not be a suitable matter to set out on the face of a bill.

Justification for procedure selected

633. The negative resolution procedure is appropriate in this case because it is envisaged that the definition is likely be technical in nature. The government intends to invite the views of sector stakeholders to inform the drafting of the definition of 'street area' in secondary legislation as part of a wider consultation on the detail of the policy.

Section 61QC(3) for the Secretary of State, in regulations, to make changes in respect of the list of areas included within the meaning of "excluded area".

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

634. As abovementioned, section 61QC(1) sets out the definition of a "street area". The effect of subsection (1)(b) is that no part of an area covered by an SVDO may be within an excluded area.

635. Subsection (2) then sets out, on the face of the legislation, a list of excluded areas, including a National Park or the Broads, areas of outstanding national beauty under section 82 of the Countryside and Rights of Way Act 2000, and areas identified as green belt land, local green space or metropolitan open land in a development plan.

636. This provision allows regulations to amend this section so as to:
   a. add to and amend the excluded areas in the list; and
   b. remove an excluded area from the list.

Justification for delegation

637. It is acknowledged that this is a Henry VIII power. The legislation that could be amended using this power is expressly limited to the Town and Country Planning Act 1990, and section 61QC(2) specifically so as to narrow it in so far as possible. Street vote development orders are a new route to planning permission and the department considers it is important for Ministers to have the flexibility to adjust the scope of the measure if evidence emerges prior or following commencement that this is necessary to ensure the effective operation of the policy. The government anticipates using this power to extend the list to protect other sensitive locations and, in exceptional cases, to remove or amend existing ones, where protections can be secured through alternative means e.g. through setting conditions under section 61QG(2)(c).

Justification for procedure selected

638. The power will be subject to the affirmative resolution procedure which the Department acknowledges is appropriate given it is a Henry VIII power.

Section 61QD(1) requiring the Secretary of State to make regulations which make provision about the preparation and making of an SVDO.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

639. This provision requires the Secretary of State to make regulations, to be known as "SVDO regulations", which make provision about the preparation and making of an SVDO. Subsection (1) therefore confers a power on the Secretary of State to make regulations in respect of procedural arrangements and the functions of statutory and non-statutory entities who are involved in the process.

640. Subsection (2) supplements this provision, making clear the matters which SVDO regulations made under subsection (1) must make provision in respect of. This includes provision:

a. for the appointment by the Secretary of State of a person (whether the same or different persons) to –
    i. handle street vote proposals or specified aspects of those proposals
    ii. carry out the independent examination of street vote proposals; and
    iii. to make SVDOs on the Secretary of State's behalf;
b. as to the circumstances in which an SVDO may be made.

641. Subsection (3) then goes on to set out a non-exhaustive list of examples of the sorts of matters which SVDO regulations made under subsection (1) may include provision as to in respect of the arrangements for the submission, examination and making of SVDOs. For instance, SVDO regulations may include provision as to the form and content of a street vote proposal; the circumstances in which an appointed person may or must decline to consider or reject a proposal; the procedure for independent examination of street vote proposals; and any consultation requirements. These are therefore important procedural aspects of the street votes process which will be set out in secondary legislation.

642. Further examples of the provision which may be made by SVDO regulations under subsection (3) include provision in respect of:

a. the functions of a qualifying group and how those are to be discharged (see subsection (3)(a));
b. the functions of local planning authorities or other authorities including how the functions of local planning authorities are to be discharged where an SVDO proposal falls within the boundaries of two authorities (see subsections (3)(o) and (p);
c. the modifications which may be made to draft SVDOs following independent examination (see subsection (3)(m));
d. prescribing information or documents, and/or descriptions of information or documents which are to be provided by persons in connection with an SVDO (see subsection (3)(v)); and
e. as to when a court may entertain proceedings for questioning prescribed decisions to act or any other prescribed matter (see subsection (3)(x)).

Justification for delegation

643. These delegated powers control matters of administrative and procedural detail to augment the fundamentals of the policy which are set out on the face of the Bill. This is consistent with the planning regime more widely where many procedural requirements are set by delegated legislation. For example, under the 1990 Act, this includes but is not limited to the procedural requirements for making planning applications, the requirements for making written representations, and the procedure for making and holding planning appeals. Under the Planning Act 2008, which regulates nationally significant

infrastructure project applications, the procedures for making applications, consulting interested parties, examining applications and modifying development consent orders are also set out in Regulations. These delegations allow for the requirements to be updated so that procedures operate optimally.

Justification for procedure selected

644. Regulations made under these delegated powers will be subject to the negative procedure. The Government considers that the level of scrutiny associated with the negative procedure is appropriate as the powers are not such that Parliament should need to debate each exercise of them. As set out above, the provisions mainly relate to administrative and procedural detail. There is precedent in using the negative procedure in relation to delegated powers for procedural matters in connection with routes to planning permission under the Town and Country Planning Act 1990 such as the those set out in the Town and Country Planning (Development Management Procedure) (England) Order S.I 2015/595.

Section 61QE(1) and (2) for the Secretary of State to, in regulations, make provision about referendums held in connection with SVDOs and, in doing so, to apply or incorporate, with or without modifications, any provision made by or under any enactment relating to elections or referendums.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

645. Section 61QE makes provision regarding referendums which must be held in connection with SVDOs as required by section 61QG(2)(b). In particular, subsection (1) provides a power for the Secretary of State, in regulations, to make provision about referendums. Paragraphs (a) to (o) then set out a non-exhaustive list of the sort of provision that regulations may include under subsection (1), including provision as to who is eligible to vote.

646. For example:
a. subsection (1)(a) permits SVDO regulations to include provision as to the circumstances in which an appointed person or the Secretary of State may direct relevant councils to carry out a referendum in relation to an SVDO. This sub-delegation would be administrative in nature, since the directions would be addressed to specific councils;
b. subsection (1)(d) makes clear that SVDO regulations may prescribe the date by which the referendum must be held or before which it cannot be held;

c. subsection (1)(h) sets out that SVDO regulations may include provision as to the provision of prescribed information to voters in connection with the referendum; and
d. subsections (j) to (o) cover the conduct of the referendum and the threshold of votes which must be met before an SVDO may be made.

647. Subsection (2) goes on to set out that where regulations are made in exercise of the power in subsection (1), they may apply or incorporate any provision relating to elections or referendums made by or under any enactment, and in doing so, the regulations may make modifications to those provisions.

648. However, subsection (3) then imposes a limitation on the power to apply or incorporate provisions of other enactments where the relevant provision creates an offence. In such circumstances, the regulations are not permitted to impose a penalty greater than is provided for in respect of that provision in the other enactment.

649. These are important provisions to set out in secondary legislation the precise details of referendums held in connection with SVDOs. The intention is that, once a street vote proposal and the draft SVDO have passed through independent examination successfully, the relevant council(s) will be required to hold a referendum within a specified period. If an SVDO proposal does not receive the required threshold of votes in a referendum an SVDO may not be made. However, subsection (4) makes clear that before any provision can be made by regulations under this section, the Secretary of State must consult the Electoral Commission.

Justification for delegation

650. These delegated powers are concerned with matters of procedural detail to augment the fundamentals of the policy which are set out on the face of the Bill. This is consistent with the planning regime more widely where many procedural requirements are set by delegated legislation. For example, under the 1990 Act, this includes but is not limited to the procedural requirements for making planning applications, the requirements for making written representations, and the procedure for making and holding planning appeals. Under the Planning Act 2008, which regulates nationally significant infrastructure project applications, the procedures for making applications, consulting interested parties, examining applications and modifying development consent orders are also set out in Regulations. These delegations allow for the requirements to be updated so that procedures operate optimally. In particular, changes to publicity requirements to take account of technological changes.

651. There is precedent for setting out detailed referendum procedures in secondary legislation in the context of planning permission granted by neighbourhood development orders see for example Neighbourhood Planning (Referendums) Regulations 2012 (S.I 2012/2031).

Justification for procedure selected

652. The negative resolution procedure is considered to be appropriate in this case as the provisions relate to administrative procedures and the effective operation of the referendum process. The requirement for the Electoral Commission to be consulted will ensure that the views of the Commission can be taken into consideration before the exercise of the power.

Section 61QF for the Secretary of State, in regulations, to provide for exemptions and to confer functions.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

653. This section makes general provision regarding SVDO regulations. As such, paragraph (a) permits the Secretary of State, in SVDO regulations, to provide for exemptions. In doing so, the regulations may also set out conditions which any such exemptions are subject to.

654. Paragraph (b) then further permits the Secretary of State to confer, in SVDO regulations, functions on any person, including functions involving the exercise of a discretion.

Justification for delegation

655. It may be necessary to introduce exemptions and allow certain bodies that carry out functions in the process to exercise discretion, for example, to allow the independent examiner to accept representations outside of a period of time specified in the secondary legislation. These delegated powers provide for matters of detail to be set out in secondary legislation to augment the pillars of the policy which are set out on the face of the Bill.

Justification for procedure selected

656. The negative resolution procedure is appropriate in this case because the provisions mainly relate to administrative procedures and the effective operation of the street vote development order process.

Section 61QG(2)(a) and (c) for the Secretary of State to set out, in regulations, the types of development that an SVDO may provide for the granting of planning permission in respect of, and any conditions that must be met.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

657. Section 61QG deals with the provision that may be made by an SVDO. As such, subsection (1) makes clear that an SVDO may make provision in relation to all land in the street area specified in the order, any part of that land, or a site in that area specified in the order.

658. Subsection (2) goes on to provide that an SVDO may only provide for the granting of planning permission for development in the following circumstances:

a. where it is prescribed development or development of a prescribed description or class,
b. where it is not excluded development (as to the meaning of "excluded development", see section 61QH), and
c. where it satisfies any further prescribed conditions.

659. Subsection (2)(a) therefore provides for the Secretary of State, under the power set out in section 333(1)(b) of the Town and Country Planning Act 1990, to prescribe in regulations the type of development for which planning permission may be granted by an SVDO. Subsection (2)(c) then also allows for regulations to set out further conditions that must be met in order for permission to be granted by an SVDO.

Justification for delegation

660. These delegated powers allow the Secretary of State to prescribe in detail the requirements and criteria that development must meet before a proposal can be put to referendum. The government anticipates that these requirements will be highly technical in nature as they will need to take into account a wide range of urban contexts and circumstances. It would therefore not be appropriate to set out such a level of detail on the face of the Bill.

Justification for procedure selected

661. The negative resolution procedure is appropriate in this case as it relates to detailed technical matters. The government intends to seek the views of sector stakeholders to inform the drafting of the secondary legislation as part of a wider consultation on the detail of the policy.

Section 61QH(2) for the Secretary of State, in regulations, to make changes in respect of the categories of development included within the definition of "excluded development".

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

662. Section 61QH(1) sets out, for the purposes of section 61QG(2)(b), what development constitutes "excluded development" which is not in scope of the development which may be permitted by SVDO. For example, development that consists (whether wholly or partly) of a nationally significant infrastructure project is excluded, as is development consisting of the winning and working of minerals. As such, in accordance with section 61QG(2)(b), an SVDO may not provide for the granting of planning permission for any development of a category listed in section 61QH(1).

663. Subsection (2) contains a delegated power, for regulations to amend this section so as to:
   a. add to and amend the categories of excluded development; and
   b. remove a category of excluded development from the list.

Justification for delegation

664. It is acknowledged that this is a Henry VIII provision. The legislation that could be amended using this power is expressly limited to the Town and Country Planning Act 1990, and section 61QH(1) specifically so as to narrow it as far as possible. Street vote development orders are a new route to planning permission and the department considers it is important for Ministers to have the flexibility to adjust the scope of the measure if evidence emerges prior or following commencement that this is necessary to ensure the effective operation of the policy. The government anticipates using this power to extend the list to remove other development from scope or, in exceptional cases, to narrow or amend the list where equivalent protections can be secured through alternative means e.g. through setting conditions under section 61QG(2)(c).

Justification for procedure selected

665. The power will be subject to the affirmative resolution procedure which the Department acknowledges is appropriate given it is a Henry VIII power.

Section 61QI(1) for the Secretary of State to prescribe, in regulations, conditions or limitations on planning permission granted by an SVDO.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

666. Section 61QI makes provision concerning planning permission granted by SVDOs. Subsection (1) provides that the granting of planning permission by an SVDO is subject to:

a. any prescribed conditions or limitations or conditions or limitations of a prescribed description, and
b. such other conditions or limitations as may be specified in the order (but see subsections (4) and (6)).

667. Subsection (1)(a) therefore provides for the Secretary of State, under the power set out in section 333(1)(b) of the Town and Country Planning Act 1990, to set out in regulations any specific conditions or limitations which planning permission granted by an SVDO is subject to. If exercised, this power will therefore allow the Secretary of State to impose statutory conditions which apply in respect of planning permission granted by SVDO. For example, this could be a condition that development for which planning permission is granted by an SVDO must, in all circumstances, commence within a specified period of time.

668. Subsection (7) makes clear that a condition or limitation prescribed under subsection (1)(a) may confer a function on any person, including a function involving the exercise of a discretion.

Justification for delegation

669. These delegated powers allow the Secretary of State to make provision so that planning permission granted by street vote development order is subject to particular conditions. These powers could be used to standardise the imposition of conditions where appropriate for example to require that development is commenced within a minimum specified period to ensure development comes forward in a timely manner. They are necessary powers which cover matters of operational detail to augment the pillars of the policy which are established in primary legislation. As matters of detail, they are better suited to secondary legislation so as to avoid unnecessarily using Parliamentary time.

Justification for procedure selected

670. The negative resolution procedure is appropriate because the powers cover matters of operational detail and are not such that Parliament should need to debate each exercise.

Section 61QI(5) for the Secretary of State to make regulations amending the list of requirements under subsection (4) so as to add, remove or amend a requirement.

Powers conferred on: *Secretary of State*

Powers exercised by: *Regulations*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

671. Section 61QI makes provision concerning planning permission granted by SVDOs. Subsection (1)(b) makes clear that the granting of planning permission by an SVDO, as well as being subject to any conditions or limitations set out in regulations, is also subject to such other conditions or limitations as may be specified in the order itself.

672. Subsection (2) provides that one such condition may be to the effect that:
   a. development (or any description thereof) may not be commenced; or
   b. anything created in the course of the development may not be occupied or used

unless a relevant obligation (i.e. a planning obligation under s.106 TCPA or highway works agreement under section 278 agreement – see subsection (10)) has been entered into.

673. However, subsection (4) specifies that a condition can only require a person to enter into a s.106 obligation if the obligation would meet the tests listed in (4)(a)-(c) that the obligation is:
   a. necessary to make the development acceptable in planning terms;
   b. directly related to the development; and
   c. fairly and reasonably related in scale and kind to the development.

674. The tests in subsection (4)(a)-(c) correspond to the equivalent tests in reg 122 of the Community Infrastructure Levy Regulations 2010. There, they serve a similar purpose in respect of 'standard' planning applications (i.e. those determined under ss. 70, 73, 76A, 77 or 79 TCPA 1990), in that reg 122 provides that a s.106 obligation may only be taken into account as a reason to grant planning permission if it meets the three tests.

675. Prior to the Community Infrastructure Levy Regulations 2010, the three tests were set out in national planning policy (for example, in ODPM Circular 5/05 Annex B), but only from 2010 were they set out in legislation of any kind.

676. The Henry VIII power in subsection (5) permits the Secretary of State by regulations to add, remove or amend the list of requirements under subsection (4) which must be met before a condition can be imposed requiring a person to enter into an obligation under s106 TCPA.

Justification for delegation

677. In future, it is possible that Government may wish to amend or restate the policy tests applicable to s.106 agreements (where relied on as a reason to grant planning permission) in reg 122 of the Community Infrastructure Levy Regulations 2010. It is clear that Government would be able to do so via secondary legislation, e.g. by way of amendment to the 2010 Regulations.

678. If Government were to do that, it is very likely that it would also be appropriate to make a corresponding amendment or restatement of the tests in subsection (4)(a)-(c). This is because the policy tests applicable to a s.106 obligation should be the same, whether the development in question is consented via the 'standard' planning application route or via a street vote development order.

679. It is appropriate that subsection (4)(a)-(c) should be capable of amendment by secondary legislation for the same reasons that it is appropriate for reg 122 to be capable of amendment by secondary legislation. Moreover, since reg 122 may be amended by secondary legislation, it would be anomalous if primary legislation were required to effect an amendment to subsection (4)(a)-(c).

Justification for procedure selected

680. The power will be subject to the affirmative resolution procedure which the Department acknowledges is appropriate given it is a Henry VIII power.

Section 61QI(6) allowing the Secretary of State to restrict conditions and limitations to which a street vote development order may be subject under s.61QI(1)(b)

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

681. As noted above, new section 61QI(1)(b) provides that the planning permission granted by a street vote development order is subject to any conditions and limitations specified in the order.

682. For example, and subject to regulations, an examiner may conclude that a street vote development order should only be made, or allowed to proceed to referendum, if the permission granted by the order is subject to a condition specified in the order regulating the development in some way.

683. Subsection (6) allows the Secretary of State, by regulations, to restrict the conditions and limitations which may be so specified. More particularly, the regulations may:

a. provide that conditions or limitations of a prescribed description may not be imposed;
b. provide that conditions or limitations of a prescribed description may only be imposed in certain circumstances; or

c. provide that, in certain circumstances, no conditions or limitations may be imposed.

Justification for delegation

684. The government may wish, for example, to provide in secondary legislation that conditions cannot be imposed that require a section 106 obligation for the purposes of securing contributions to affordable housing, as this will be secured through another mechanism i.e. the Community Infrastructure Levy. This delegation covers matters of detail which augment the fundamentals of the policy which are set out on the face of the Bill. As matters of detail, they are better suited to secondary legislation so as to avoid unnecessarily using Parliamentary time. In addition, this power is similar to that under section 100ZA(1) of the Town and Country Planning Act 1990 which applies in respect of conditions imposed on a relevant grant of planning permission.

Justification for procedure selected

685. The negative procedure is appropriate in this case as the powers relate to detailed matters and are not such that Parliament should need to debate each exercise.

Section 61QJ(1) for the Secretary of State, by order, to revoke or modify an SVDO.

Powers conferred on: *Secretary of State*
Powers exercised by: *Order*
Parliamentary Procedure: *None*

Context and Purpose

686. Section 61QJ makes provision for the revocation or modification of SVDOs.

687. Subsection (1) confers a power on the Secretary of State, by order, to revoke or modify an SVDO. Where the power is exercised by the Secretary of State to revoke an SVDO, subsection (3) imposes a requirement on the Secretary of State to state the reasons for the revocation.

Justification for delegation

688. This is necessary to enable the Secretary of State to revoke or modify a street vote development in the unlikely event that it is identified that planning permission granted through this route could lead to unacceptable impacts on people or the local area. The government anticipates that this power will rarely be used and only in the most exceptional circumstances. This mirrors a power

that is available to the Secretary of State for planning permission granted through other consent routes.

Justification for procedure selected

689. It is not considered necessary for the exercise of such a power to require a Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Section 61QJ(2) for a local planning authority, with the consent of the Secretary of State, to by order revoke an SVDO relating to a street area any part of which falls within the area of that authority.

Powers conferred on: Local planning authority (with consent of the Secretary of State)
Powers exercised by: *Order*
Parliamentary Procedure: *None*

Context and Purpose

690. This provision confers a power on a local planning authority, with the consent of the Secretary of State, to by order revoke an SVDO relating to a street area any part of which falls within the area of that authority.

691. The fact that the Secretary of State's consent must be obtained here before a local planning authority may revoke an SVDO provides an important safeguard and will ensure that SVDOs cannot be unilaterally revoked by a local planning authority.

692. Further, under subsection (3), if a local planning authority revokes an SVDO, they are required to state the reasons for doing so.

Justification for delegation

693. This is necessary to enable the local planning authority to revoke a street vote development in the unlikely event that it is identified subsequently that planning permission granted through this route could lead to unacceptable impacts on people or the local area. The government anticipates that this power will rarely be used and only in the most exceptional circumstances. The requirement for Secretary of State consent and for reasons to be provided will guard against the inappropriate use of this power.

Justification for procedure selected

694. It is not considered necessary for the exercise of this power to require a Parliamentary procedure. The exercise of this power would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Section 61QJ(4) for an appointed person to at any time by order modify an SVDO for the purpose of correcting errors.

Powers conferred on: Appointed person
Powers exercised by: *Order*
Parliamentary Procedure: *None*

Context and Purpose

695. As set out earlier section 61QD(2)(a) provides that SVDO regulations must make provision for the Secretary of State to appoint a person (whether the same or different persons) to handle street vote proposals or specified aspects of those proposals, examine proposals and make SVDOs on the Secretary of State's behalf.

696. This provision confers a narrow power on an appointed person, to at any time by order modify an SVDO for the purpose of correcting errors.

697. Where the powers in (1) and (4) to modify are exercised, subsection (5) makes clear that a modification of an SVDO is to be done by replacing the order with a new one containing the modification.

Justification for delegation

698. This is necessary to allow the appointed person to correct errors to street vote development orders, for example spelling mistakes, without the Secretary of State having to resort to following the full modification procedure under section 61J(1). It is also consistent with powers available to local planning authorities for correcting errors in neighbourhood development orders in section 61M(4) of the Act.

Justification for procedure selected

699. It is not considered necessary for the exercise of this power to require a Parliamentary procedure. The exercise of the power by the appointed person would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Section 61QJ(6) for the Secretary of State, in regulations, to make provision in connection with the revocation or modification of an SVDO.

Powers conferred on: Secretary of State
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

700. This provision confers a power on the Secretary of State to make provision, in regulations, in connection with the revocation or modification of an SVDO. As such, this will therefore allow for further procedural details regarding the revocation or modification of SVDOs to be set out in regulations.

701. Subsection (7) provides a non-exhaustive list of the kind of provision that may be made under the power in subsection (6), including provision as to the giving of notice and publicity in connection with a revocation or modification, and any consultation requirements in relation to a revocation.

Justification for delegation

702. These powers cover matters of procedural detail, which augment the fundamentals of the policy which are established in primary legislation. As matters of detail, they are better suited to secondary legislation so as to avoid unnecessarily using Parliamentary time. This power is consistent with revocation and modification powers for planning permission granted under existing consent routes under the Town and Country Planning Act 1990, which provide for delegation in relation to procedural matters to secondary legislation.

Justification for procedure selected

703. This power relates to matters of procedural detail and the negative procedure is consistent with the planning regime more widely where many procedural requirements are set by delegated legislation. For example, under the 1990 Act, this includes but is not limited to the procedural requirements for making planning applications, the requirements for making written representations, and the procedure for making and holding planning appeals. Under the Planning Act 2008, which regulates nationally significant infrastructure project applications, the procedures for making applications, consulting interested parties, examining applications and modifying development consent orders are also set out in Regulations.

Section 61QK for the Secretary of State to carry out activities in respect of SVDOs.

Powers conferred on: Secretary of State
Powers exercised by: *Various*
Parliamentary Procedure: *None*

Context and Purpose

704. Section 61QK makes provision regarding financial assistance in relation to street votes. Subsection (1) confers a power on the Secretary of State to do anything that they consider appropriate:

a. for the purpose of publicising or promoting the making of SVDOs and the benefits expected to arise from their making, or
b. for the purpose of giving advice or assistance to anyone in relation to the making of street vote proposals or the doing of anything else for the purposes of, or in connection with, such proposals or SVDOs.

705. Subsection (2) non-exhaustively sets out that the things that the Secretary of State may do under this section include, in particular:
a. the provision of financial assistance (or the making of arrangements for its provision) to any body or other person, and
b. the making of agreements or other arrangements with any body or other person (under which payments may be made to the person).

706. As such, further things which the Secretary of State may do under this section includes (but is not limited to) the following:
a. issuing non-legislative guidance regarding street vote proposals and/or SVDOs for the purposes of providing advice or assistance;
b. Providing technical support through third parties e.g. consultants.

Justification for delegation

707. This delegated power is necessary to enable the government to support stakeholders in navigating the system and support the preparation of street vote development proposals. These powers cover matters of administrative detail, which augment the fundamentals of the policy which are established in primary legislation. As matters of detail, they are better suited to secondary legislation so as to avoid unnecessarily using Parliamentary time. This delegation also mirrors the delegated power under section 120 of the Localism Act 2011 for neighbourhood development plans and neighbourhood development orders.

Justification for procedure selected

708. It is not considered necessary for the exercise of such a power to require a Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Section 61QL for the Secretary of State, in regulations, to make provision modifying or excluding the application of Schedule 7A to the TCPA 1990 in relation to planning permission granted by an SVDO.

Powers conferred on: Secretary of State
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

709. Section 61QL makes provision for regulations to modify or exclude the application of Schedule 7A Town and Country Planning Act 1990 in relation to street votes to be made.

710. Schedule 7A to the Town and Country Planning Act 1990, when commenced, will make provision for grants of planning permission in England to be subject to a condition to secure that the biodiversity gain objective (as to the definition of this term, see paragraph 2 of Schedule 7A) is met.

711. As such, when commenced, the provisions in Schedule 7A will operate over grants of planning permission by SVDOs. This provision therefore confers a power on the Secretary of State to, by regulations, make provision which modifies or excludes the application of Schedule 7A in relation to planning permission granted by an SVDO.

Justification for delegation

712. Schedule 7A (not yet in force) has the effect of imposing on the grant of planning permission a condition requiring the development that is permitted to deliver an increase in biodiversity of at least 10%. In the case of SVDOs development is likely to be commenced at different times at different sites by different people and development may not come forward at all in some parts of the area covered by the SVDO. It is necessary for the Secretary of State to have the flexibility to make changes in respect of the framework in Schedule 7A so that the biodiversity net gain objective referred to in paragraph 2 of Schedule 7A can be met in the context of SVDOs.

Justification for procedure selected

713. The negative resolution procedure is appropriate in this case because the provisions mainly relate to tailoring administrative procedures to ensure they operate effectively for street vote development orders and so that biodiversity net gain can be achieved in relation to this consent route.

Clause 99(4) provides for the Secretary of State to prescribe information about street vote development orders or proposals for such orders which local planning authorities must include on their planning register.

Powers conferred on: Secretary of State
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

714. Section 69 of the 1990 Act requires a local planning authority to keep a register containing prescribed information relating to applications for planning permission. The specific information which must be included in the planning

register is prescribed in Article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("the DMPO"). Regulations made under this power will allow prescribed information about street vote development orders to be captured in the planning register. This will in turn allow the Government to closely monitor the impact of such orders, and also ensure that a consistent approach is taken with information held on the planning register about them.

Justification for delegation

715. Delegating details of matters to be included in Planning Registers in respect of the grant of planning permission is consistent with the current provisions in the 1990 Act which provide for such details to be set out in secondary legislation.

Justification for procedure selected

716. Existing powers to prescribe information which must be captured in the planning register are subject to the negative parliamentary procedure and have been exercised in the DMPO. The Government intends to amend the DMPO to reflect these new requirements and it is therefore considered appropriate for this power to be subject to the same level of parliamentary scrutiny. This will also allow for all information requirements to be set out in the same instrument and provide consistency and efficiency for users of the regime.

Clause 99(6)(g) provides for a new subsection (3DB) to be inserted into section 108 of the Town and Country Planning Act 1990, which provides the Secretary of State with a power to, in regulations, set out the manner in which notice of the revocation or modification of an SVDO must be published, and the period in which such notice must be published in the context of certain arrangements for compensation.

Powers conferred on: Secretary of State
Powers exercised by: *Regulations*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

717. Sub-clause (6) amends section 108 Town and Country Planning Act 1990 so that it applies to SVDOs. It adds SVDOs to the list of orders in s108 of the Town and Country Planning Act 1990 in respect of which, under s107 of that Act, compensation will be payable by a local planning authority where planning permission granted by an order (including an SVDO) is withdrawn (by the revocation or amendment of the order and on an application made for planning permission for development formerly permitted by that order), the application is refused or is granted subject to conditions other than those

imposed by that order. In that case, if, on a claim made to the authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it:

a. has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
b. has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the LPA must pay that person compensation in respect of that expenditure, loss or damage.

718. However, compensation is not payable if, in the case of planning permission granted by an SVDO, the condition in section 108 (3DB) (as inserted by sub-clause (6)(f) is met). This condition mirrors conditions in respect of other routes to permission limiting the circumstances when s108 applies i.e.:

a. the planning permission is withdrawn by the revocation or modification of the SVDO,
b. notice of the revocation or modification was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation or modification took effect, and
c. either –
    i. the development authorised by the SVDO had not begun before the notice was published, or
    ii. section 61QI(8) applies in relation to the development.

719. As such, paragraph (b) of new subsection (3DB) provides for the Secretary of State, under the power set out in section 333(1)(b) of the Town and Country Planning Act 1990, to set out in regulations the manner in which notice of the revocation or modification of an SVDO must be published, and the period in which this notice must be published.

Justification for delegation

720. These powers cover matters of procedural detail, which augment the fundamentals of the policy which are established in primary legislation. As matters of detail, they are better suited to secondary legislation so as to avoid unnecessarily using Parliamentary time. The powers mirror the powers in the Town and Country Planning Act in respect of compensation arrangements and withdrawal of permission granted through similar existing consent routes.

Justification for procedure selected

721. The negative resolution procedure is appropriate in this case because the provisions relate to administrative procedures. This is also consistent with the procedure for a similar powers in respect of compensation when permission under existing consent routes under the Town and Country Planning Act 1990 is withdrawn.

Clause 100(3) inserting new section 211(11)(b) into the Planning Act 2008 allowing CIL regulations to make provision about the procedural requirements for putting in place, or revising, a charging schedule in order to make provision only about the amount of CIL chargeable on street vote development

Powers conferred on: Secretary of State, with the consent of the Treasury

Powers exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative procedure (Commons only)

Context and Purpose

722. Ordinarily, the procedure for putting in place or revising a CIL charging schedule is governed by ss. 212-213 and 214(1) and (2) Planning Act 2008. Among other things, this requires that a charging schedule (or revision to a charging schedule) must undergo an examination by an appropriately qualified and experienced person (see s.212(2)), with members of the public able to make representations and be heard by the examiner (see s.212(9)).

723. New section 211(11)(a) disapplies ss. 212-213 and 214(1) and (2) in cases where a charging authority is (i) introducing a charging schedule, but one which only makes provision for CIL to be charged in respect of street votes development; or (ii) revising its charging schedule, where the revisions only concern the amount of CIL to be charged in respect of street vote development.

724. New section 211(11)(b) – the delegated power under consideration here – allows CIL regulations to make provision about the procedural requirements which must be met before a charging schedule or revision to a charging schedule may take effect, where the charging schedule or revision thereto only makes provision for the purpose of determining the amount of CIL chargeable in respect of street vote development.

725. The upshot of new s.211(11) is therefore that the usual procedural rules for introducing (or revising) a charging schedule do not apply when the charging schedule (or revision thereto) is concerned only with street vote development – but in their place, CIL regulations may make rules about the procedure which applies.

726. The Department intends to make provision in CIL regulations for an 'expedited' procedure to apply in these cases. This is because existing CIL rates, where they have been set, will not have been set in the expectation that they would be applied to street vote development. It may be inappropriate to apply existing CIL rates to street vote development. For example, the Department's policy intention is that street vote developers will not be required to enter into s.106 obligations to contribute to affordable housing. However, the policy intention is also that street vote development should make a contribution towards affordable housing (as well as other infrastructure). Therefore, it may be appropriate for an authority to seek more value, through higher CIL rates for street votes development, to ensure that the CIL take can cover contributions to both affordable housing and other infrastructure.

727. While authorities could introduce a new CIL charging schedule or revise an existing CIL charging schedule in light of the introduction of street vote development orders, the Department wishes to ensure that the procedure for doing so is proportionate. The Department's view is that it would be disproportionate to require a full public examination process, which is involved and time-consuming, where an authority wishes to introduce or revise only those CIL rates applicable to street vote development.

728. This is particularly so given that the introduction of IL (which will largely replace CIL) is around the corner – these provisions can be seen as a 'stopgap' to facilitate the timely introduction or revision of CIL charging rates for street vote development, pending the introduction of IL in the medium-term.

Justification for delegation

729. The ability to follow an expedited procedure to put in place or revise CIL charging rates applicable only to street vote development is a small element of the overall CIL regime and operates by way of limited exception to the provisions of ss.212 to 213 and 214(1) and (2).

730. It is necessary to set out in secondary legislation all detail relating to the limited, exceptional procedure to put in place or revise CIL charging rates applicable only to street vote development. This follows from the fact that the details of the legal framework for street votes development orders will itself be set out in regulations. In the context of this kind of provision, this kind and level

of detail is more appropriately set out in delegated legislation. As this will be a new arrangement, it is also considered beneficial to retain flexibility on how this element of the policy is implemented, and to allow for adjustment by regulations if required.

Justification for procedure selected

731. This power is a power to make provision in 'CIL regulations'. Section 222(2) Planning Act 2008 sets out the position on Parliamentary procedure for CIL regulations – being class (i) draft affirmative resolution (Commons only) (and subject to Treasury consent). A draft-affirmative process is considered appropriate and necessary for sufficient Parliamentary control and scrutiny of the provision to be made in CIL regulations, including under this power. The Department also considers that a Commons-only procedure is appropriate given the subject-matter of the CIL regulations, which concerns the imposition of a charge/levy, attracting financial privilege.

Clause 100(8) inserting new section 214A(2) into the Planning Act 2008 allowing the Secretary of State to direct a charging authority to review its charging schedule if the CIL chargeable in the area significantly impairs, or risks significantly impairing, street vote development

Powers conferred on: Secretary of State

Powers exercised by: Direction

Parliamentary procedure: None

Context and Purpose

732. This provision is a power for the Secretary of State to direct that a charging authority must review its charging schedule, with a view to its potential revision, if that charging schedule was introduced or revised pursuant to provision made under new s.211(11)(b). As noted in the commentary above, the Department intends to make provision under new s.211(11)(b) to provide

for an ‘expedited’ procedure for introducing or revising a charging schedule setting rates for street vote development (only).

733. This power may only be exercised if it appears to the Secretary of State that the CIL chargeable in the charging authority’s area significantly impairs, or risks significantly impairing, the economic viability of street vote development.

734. If the Secretary of State makes such a direction, new s.214A(3) sets out that the charging authority must consider whether to revise its charging schedule, and notify the Secretary of State of its decision with reasons.

Justification for delegation

735. The risk of providing for an expedited procedure is that charging authorities may set inappropriately high CIL charging rates for street vote development. This would impair the viability of street vote development and would disincentivise such development from coming forward. If a charging authority has done so, then it would be appropriate for the charging authority to review its charging schedule, with a view to potential revision.

736. However, absent an ability to compel a charging authority to undertake such a review, a charging authority may simply not do so. This could lead to inappropriate rates of CIL continuing to be charged on street vote development in that charging authority’s area, impairing the viability of street vote development and disincentivising it from coming forward.

737. To avoid that outcome, it is necessary to provide the Secretary of State with a power to direct that a charging authority must review its charging schedule, with a view to its potential revision.

Justification for procedure selected

738. Where the Secretary of State exercises this power, it will be to direct a charging authority to consider whether to revise its charging schedule in light of

the risk of impaired economic viability of street vote development. It will not necessarily mandate that the authority in fact revise its charging schedule, though that outcome may result. It is not considered necessary that the exercise of such a power require Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Clause 100(8) inserting new section 214A(5) into the Planning Act 2008 allowing the Secretary of State to appoint a person to review a charging schedule on behalf of a charging authority

Powers conferred on: Secretary of State

Powers exercised by: Appointment

Parliamentary procedure: None

Context and Purpose

739. This is a power for the Secretary of State to appoint a person to review a charging schedule on behalf of a charging authority, in the event that the charging authority does not comply – within a reasonable time and to a standard that the Secretary of State considers adequate – with a direction under new s.214A(2) to review its charging schedule.

740. New s.214A(6) sets out the consequences that may follow once a person is duly appointed, should they decide that the charging schedule should be revised.

Justification for delegation

741. Although the Secretary of State may issue a direction requiring a charging authority to review its charging schedule under new s.214A(2), there is a risk that the charging authority simply will not do so, or will not do so

adequately. This could lead to inappropriately high levels of CIL continuing to be charged in that charging authority's area, impairing the viability of street vote development and disincentivising it from coming forward.

742. To avoid that outcome, it is appropriate to delegate a power to the Secretary of State to appoint a person to review a charging schedule on behalf of a charging authority in this circumstance.

Justification for procedure selected

743. Where the Secretary of State exercises this power, it will be to appoint a person to consider the question of whether a single charging authority should revise its charging schedule in light of the risk of impaired economic viability of street vote development. It is not considered that the exercise of such a power requires Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Clause 100(8) inserting new section 214A(7) into the Planning Act 2008 allowing the Secretary of State to appoint a person to revise or replace a charging schedule following a review by or on behalf of a charging authority

Powers conferred on: Secretary of State

Powers exercised by: Appointment

Parliamentary procedure: None

Context and purpose

744. If a charging authority reviews its charging schedule under s.214A(3) (following a direction under s.214A(2)), then a conclusion open to the charging authority is that the charging schedule should be revised. If so, under new

s.214A(4), the charging authority must revise the charging schedule within a reasonable time.

745. Likewise, if a person is appointed to review a charging schedule under new s.214A(5), a conclusion open to that person is that the charging schedule should be revised. If so, under new s.214A(6), the charging authority must revise the charging schedule accordingly, within a reasonable time.

746. This is a power for the Secretary of State to appoint a person to revise a charging schedule on behalf of a charging authority, in the event that the charging authority does not comply with a duty under new s.214A(4) or (6).

Justification for delegation

747. Although a charging authority must, under new s.214A(4) or (6), revise its charging schedule in accordance with its own conclusions or the conclusions of a person appointed by the Secretary of State (respectively), there is a risk that the charging authority simply will not do so. This could lead to inappropriate rates of CIL continuing to be charged on street vote development in that charging authority's area, impairing the viability of street vote development and disincentivising it from coming forward.

748. To avoid that outcome, it is appropriate to delegate a power to the Secretary of State to appoint a person to replace or revise a charging schedule on behalf of a charging authority in such circumstances.

Justification for procedure selected

749. Where the Secretary of State exercises this power, it will be to appoint a person to revise a single charging authority's charging schedule. It is not considered that the exercise of such a power requires Parliamentary procedure. A charging authority revising its own charging schedule of its own motion would not require Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

Clause 100(8) inserting new section 214A(8) into the Planning Act 2008 allowing CIL regulations to make procedural and related provision about directions under new section 214A(2) and the appointment of persons under new section 214A(5) and (7)

Powers conferred on: Secretary of State, with the consent of the Treasury

Powers exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative procedure (Commons only)

Context and purpose

750. This provision is a list of procedural and related provisions which may be made by CIL regulations in connection with directions given under new section 214A(2) and the appointment of persons under new section 214A(5) and (7).

Justification for delegation

751. Delegated powers are taken in subsection (8) to set out certain procedural and related matters in IL regulations. These powers are necessary to address issues of procedural detail and operational administration in secondary legislation. It is appropriate to set out such detail in secondary legislation and to enable such matters to be fully explored before legislation, and to facilitate timely revision of such matters as may be required over time.

Justification for procedure selected

752. This power is a power to make provision in 'CIL regulations'. Section 222(2) Planning Act 2008 sets out the position on Parliamentary procedure for CIL regulations – being class (i) draft affirmative resolution (Commons only) (and subject to Treasury consent). A draft-affirmative process is considered

appropriate and necessary for sufficient Parliamentary control and scrutiny of the provision to be made in CIL regulations, including under this power. The Department also considers that a Commons-only procedure is appropriate given the subject-matter of the CIL regulations, which concerns the imposition of a charge/levy, attracting financial privilege.

Clause 100(10) inserting new section 216(8)(b) into the Planning Act 2008 allowing CIL regulations to specify descriptions of housing as 'affordable housing' for the purposes of the application of CIL

Powers conferred on: Secretary of State, with the consent of the Treasury

Powers exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative procedure (Commons only)

Context and purpose

753. The usual policy position is that any developer contributions to affordable housing are to be secured via planning obligations under s.106 Town and Country Planning Act 1990, and that CIL receipts are generally not to be spent on funding affordable housing. However, for street votes development, the policy intention is that s.106 will play a much more limited role (if any), and any developer contribution to affordable housing is to be by way of CIL.

754. In order to facilitate this, subsection (9) of this clause inserts a new section 216(2)(fa) providing that CIL chargeable in respect of street vote development may be applied spent on affordable housing. It does this by adding 'affordable housing' to the non-exhaustive list in s.216(2) of matters which constitute 'infrastructure' where the CIL is chargeable in respect of street vote development (and s.216(1) provides that CIL regulations must require CIL to be applied to funding 'infrastructure').

755. Subsection (10) inserts a new subsection (8), which defines 'affordable housing' for this purpose as social housing within the meaning of Part 2 of the

Housing and Regeneration Act 2008, and any other description of housing that CIL regulations may specify.

756. When Part 11 Planning Act 2008 was first enacted, affordable housing was included within the non-exhaustive list in s.216(2) at paragraph (g) (with no qualifier limiting it to CIL chargeable in respect of any particular type of development). It was defined in essentially the same way as this provision defines it, including the power for CIL regulations to specify further types of housing as 'affordable housing'. This was removed by regulation 63 of the CIL Regulations 2010 (using the power in s.216(3)).

Justification for delegation

757. The Department considers that this delegated power is justified, as it was when an equivalent delegated power was included in s.216(2)(g) in the original Planning Act 2008. CIL regulations need to be able to provide for updating or revising definitions of what affordable housing means in the context of CIL spending.

758. New forms of affordable housing may be promoted by Government without primary legislation being passed. For example, in 2021, Government introduced the concept of 'First Homes' – a new type of affordable housing, which does not fall within the definition of 'social housing' in Part 2 of the Housing and Regeneration Act 2008 – via written ministerial statement.

759. If in future Government promotes a new type of affordable housing without introducing primary legislation, and wishes to allow charging authorities to spend CIL receipts from street vote development on such affordable housing, it will be necessary to make provision in CIL regulations defining the new type of affordable housing as 'affordable housing' for the purposes of s.216 Planning Act 2008.

Justification for procedure selected

760. This power is a power to make provision in 'CIL regulations'. Section 222(2) Planning Act 2008 sets out the position on Parliamentary procedure for

CIL regulations – being class (i) draft affirmative resolution (Commons only) (and subject to Treasury consent). A draft-affirmative process is considered appropriate and necessary for sufficient Parliamentary control and scrutiny of the provision to be made in CIL regulations, including under this power. The Department also considers that a Commons-only procedure is appropriate given the subject-matter of the CIL regulations, which concerns the imposition of a charge/levy, attracting financial privilege.

Crown land development: Clause 101

Clause 101(2): new section 293B(3) and section 293D(3) of the TCPA

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

761. Clause 101 inserts new sections 293B to 293J into the Town and Country Planning Act ('the Act') to provide for two new routes to apply for planning permission for the development of Crown land in England (a) where the development is considered to be of national importance, and where it is necessary that the development be carried out as a matter of urgency, and (b) where development is considered to be of national importance but not urgent. The provisions allow the appropriate authority (as defined in section 293 of the Act) to apply to the Secretary of State for planning permission in these two circumstances instead of the Local Planning Authority.

762. New sections 293B(3) and 293D(3) set out the types of applications which can be made to the Secretary of State under these two provisions. Applications under section 73 (applications to develop land without compliance with conditions previously attached) are excluded for both routes on the face of the Bill. The Secretary of State has a power to make regulations to further exclude other types of application from the scope of these provisions if these are considered inappropriate for these application routes.

Justification for delegation

763. These powers mirror that provided for in section 62A(2) of the Act, which is an existing route by which applications can be made directly to the Secretary of State in certain specified circumstances. It allows the Secretary of State to further constrain the use of these new routes for prescribed types of application where he considers that it would be appropriate for such applications to instead be made in all cases to the Local Planning Authority. Given the nature of the new routes, which are to determine genuinely nationally important developments, it may be appropriate to further limit the types of applications which are submitted so that applications are directed to the appropriate

decision-maker in the first instance. This is necessary should it become apparent that certain applications would not appropriately be dealt with under either new route.

Justification for procedure selected

764. The negative procedure is considered appropriate for these regulations, in line with other similar powers in this part of the Act, specifically section 62A(2) and (3).

Clause 101(2): new section 293B(4) and (9) to (12) of the TCPA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Development order made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

765. New section 293B sets out the process by which applications can be made under this provision and considered by the Secretary of State as the decision maker. Subsection (4) provides that the form of the application and what it must contain may be set out in a development order. Subsection (9) provides that a development order may make provision about the form and manner of an application, notices to be given about the application, the form and content of such a notice and publicity for applications.

766. Subsections (10) and (11) provides that any development order made under subsection (9) can provide that certain information not be disclosed to the public where the information relates to national security or measures taken or to be taken to ensure the security of any premises or property, where it would not be in the national interest for such information it to be disclosed to the public. Subsection (12) provides that a development order made under this section may make different provision for different cases or classes of development.

Justification for delegation

767. It is a long-established practice that secondary legislation is used to prescribe the detailed requirements for planning applications within the development management process. For applications made to a local planning authority under Part 3 of the Act, the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) ("the DMPO") is the principal development order which defines the types of development, timescales for their determination, and the form and content of information to which applications should adhere.

768. This provision builds on this practice by providing similar powers to those provided in Part 3 of the Act to make provision for this new route for urgent crown development. It would not be appropriate to provide this level of prescription in primary legislation.

Justification for procedure selected

769. Any secondary legislation prepared under these powers will be subject to the negative parliamentary procedure, and consultation will be carried out where appropriate. We consider that this procedure provides the appropriate level of parliamentary scrutiny for provisions of this nature.

Clause 101(2): new sections 293B(13) and (14) and 293F(2) and (3) of the Act

Powers conferred on: *Secretary of State.*
Powers exercised by: *Direction*
Parliamentary Procedure: *N/A*

Context and Purpose

770. New section 293B(13) of the Act allows the Secretary of State to give directions requiring a local planning authority, which could have otherwise had an application for planning permission submitted to them, to do things in relation to an application made under new section 293B.

771. New section 293F(2) of the Act allows the Secretary of State to give directions requiring a local planning authority or hazardous substances authority to do things in relation to an application made under new sections 293D or 293E that would otherwise have been made to the authority in question.

772. New section 293B(14) and 293F(3) provide that directions made under these sections may be given either in relation to a particular application or in relation to applications more generally, and to a particular authority or authorities more generally.

Justification for delegation

773. These powers mirror that provided for in section 62A(6) of the Act, which enables the Secretary of State to give directions requiring a local planning authority or hazardous substances authority to do things in relation to an application made to the Secretary of State that would otherwise have been made to the authority. This may apply to particular applications or applications generally as well as particular authorities or authorities more generally. This is necessary as there are certain functions which would normally be carried out by said authorities (if the application were submitted to them) and are more appropriately carried out by them where an application is submitted to the Secretary of State. For example, where a site notice would be required to be affixed within the vicinity of an application site to make communities aware of a development, it would be more appropriate for a local planning authority to carry this function out, rather than the Secretary of State.

Justification for procedure selected

774. These are powers to make directions and are not subject to any Parliamentary procedure, as they would mainly be used to direct the LPA to carry out certain functions that they would have had to have carried out were the application for planning permission submitted to them rather than the Secretary of State. Directions give greater flexibility to be able to identify the activities needed in particular circumstances or in general.

Clause 101(2): new section 293C(3) of the TCPA

Powers conferred on: Secretary of State.
Powers exercised by: Development order made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

775. Where an application is made under section 293B, new section 293C(2) requires that before determining an application the Secretary of State must consult the local planning authority to which the application could have been made, and any such persons as the Secretary of State considers appropriate. Subsection (3) provides that the Secretary of State may make provision by development order as to consultation with such other persons. The development order may also include provision as to the manner in which persons are consulted, and different provision may be made for different cases or classes of development.

Justification for delegation

776. It is a long-established practice that secondary legislation is used to prescribe the detailed requirements for planning applications within the development management process, including which persons are consulted on applications. For applications made to a local planning authority under Part 3 of the Act, Schedule 4 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) ("the DMPO") defines which persons are consulted on applications meeting a particular description.

777. This provision builds on this practice by providing similar powers to those provided in Part 3 of the Act to make provision for this new route for urgent crown development. It would not be appropriate to provide this level of prescription in primary legislation.

Justification for procedure selected

778. Any secondary legislation prepared under these powers will be subject to the negative parliamentary procedure, and consultation will be carried out

where appropriate. We consider that this procedure provides the appropriate level of parliamentary scrutiny for provisions of this nature.

Clause 101(2): new section 293E(3) of the TCPA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

779. New section 293E of the Act makes provision for an application which is 'connected to' an application for Crown land development made under new section 293D to be made instead to the Secretary of State instead of being made to the Local Planning Authority or the Hazardous Substances Authority. Section 293E(3) sets out the requirements to be met for an application to be a connected application. Section 293E(3)(a) provides that the application must be either an application for listed building consent or hazardous substances consent, or an application of a prescribed description. This gives the Secretary of State the power to specify any other type of application that could be made as a connected application under this section.

Justification for delegation

780. This power mirrors that provided for in section 62A(3)(a)(ii) of the Act, which is another route by which applications can be made directly to the Secretary of State in specified circumstances. It allows the Secretary of State to allow for further types of application to be made as connected applications under this route where it would be appropriate for the Secretary of State to consider the application alongside any application for Crown land development under section 293D. Given the nature of the route, which is to determine genuinely nationally important developments, it may be appropriate to further limit the types of connected applications which are submitted so that these are directed to the appropriate decision-maker in the first instance. This is necessary should it become apparent that certain applications would not appropriately be dealt with under section 293E.

Justification for procedure selected

781. The negative procedure is considered appropriate for these regulations, in line with other similar powers in this part of the Act, specifically section 62A(2) and (3)).

Clause 101(2): new section 293H of the TCPA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Development order made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

782. New section 293H(1) and (3) provides that specified provisions of Part 3 of the Act which relate to applications for planning permission and permission in principle made to the local planning authority apply to applications made under new section 293D modified as necessary to take into account that the Secretary of State will instead be the decision maker.

783. New section 293H(2) allows the Secretary of State to apply by a development order, with or without modifications, any requirements imposed by development order which apply to applications for planning permission made under Part 3 of the Act, made under existing sections 62, 65 or 71 or paragraph 8(6) of Schedule 1, or by regulations under paragraph 14(3) or 16 of Schedule 7A of the Act. Section 293H(4) similarly allows the Secretary of State to apply by a development order, with or without modifications, any development order which applies to applications for permission in principle made under existing sections 62(1), (2) or (8), 65 or 71 or paragraph 8(6) of Schedule 1 of the Act. These powers will allow the Secretary of State to apply, with appropriate modifications, the existing procedures and requirements set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) ("the DMPO") (which apply to applications made under Part 3 of the Act) to applications made under new section 293D.

784. New section 293H(5) provides that the Secretary of State can apply by a development order, with or without modification, to a connected application made under section 293E any enactment that relates to an application of that kind when made to the local planning authority or hazardous substances authority.

785. New section 293H(6) and (7) provides that any development order which makes provision to apply to an application under new sections 293D or 293E can provide that certain information not be disclosed to the public where the information relates to national security or measures taken or to be taken to ensure the security of any premises or property, where it would not be in the national interest for such information it to be disclosed to the public.

786. Together, these provisions and powers allow for applications made under new section 293D and 293E to be subject to the same procedures and to be determined in accordance with the same criteria that applies to such applications made to the local planning authority or hazardous substances authority, with or without modifications.

Justification for delegation

787. These powers are modelled on powers contained in section 76C of the Act which apply to applications made under section 62A of the Act.

788. It is a long-established practice that secondary legislation is used to prescribe the detailed requirements for planning applications within the

development management process, and the DMPO is the principal development order which defines the types of development, timescales for their determination, and the form and content of information to which applications for planning permission and permission in principle should adhere.

789. This provision builds on this practice. It would not be appropriate to provide this level of prescription in primary legislation.

Justification for procedure selected

790. Any secondary legislation prepared under these powers will be subject to negative parliamentary procedure, and consultation will be carried out where appropriate. We consider that this procedure provides the appropriate level of parliamentary scrutiny for provisions of this nature.

Clause 101(2): new section 293J of the TCPA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Direction*
Parliamentary Procedure: *N/A*

Context and Purpose

791. Where an application for Crown land development is made under new section 293D or where a connected application is made under new section 293E, new section 293I provides that the application is to be determined by a person appointed by the Secretary of State instead of the Secretary of State.

792. New section 293I is subject to new section 293J, which allows the Secretary of State to issue a direction that the Secretary of State will determine a particular application, rather than a person appointed by the Secretary of State. New section 293J also allows the Secretary to make direction revoking such a direction.

Justification for delegation

793. These powers are modelled on section 76D of the Act which apply to applications made under section 62A of the Act, and section 77 of the Act (applications made or referred to the Secretary of State for a decision in certain circumstances). Directions provide the appropriate mechanism by which to direct who determines an application in this process, as this will be made on a case by case basis. For these reasons it would not be appropriate to be dealt with this through a statutory instrument.

Justification for procedure selected

794. This is a power to make a direction in relation to a particular application made under sections 293D and 293E and is not subject to any Parliamentary procedure. The power relates solely to who should take the decision in a

specified application and does not affect the procedure or criteria that apply to the determination of such an application.

Clause 101(3); Schedule 9: paragraph 8 - amendment to section 303 of the TCPA

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

795. Section 303 of the Act gives the Secretary of State the power to set fees payable on an application for planning permission. This includes fees payable under the current process for applying for urgent Crown development in section 293A. The amendments made in paragraph 8 of Schedule 9 extend those powers to allow the Secretary of State to use the same mechanism to set fees for these new application routes.

Justification for delegation

796. It is a long-established practice that secondary legislation is used to prescribe the detailed requirements for planning applications within the development management process, and the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (SI 2012/2920) are the principal regulations which sets the fees for particular the types of development within the development management process.

797. This provision builds on this practice by providing similar powers to those provided in Part 3 of the Act to make provision for these new application routes. It would not be appropriate to provide this level of prescription in primary legislation.

Justification for procedure selected

798. Any secondary legislation prepared under these powers will be subject to the affirmative parliamentary procedure, and consultation will be carried out where appropriate. We consider that this procedure provides the appropriate level of parliamentary scrutiny for provisions of this nature.

Clause 102 (Minor variations in planning permission) inserting new s73B(4) for Secretary of State to make a development order providing for information and other procedural requirements for the making of an application under the new post-permission variation route

Powers conferred on: Secretary of State
Powers exercised by: Development order made by statutory instrument
Parliamentary Procedure: *Negative procedure*

Context and Purpose

799. The delegated power will operate in the context of a new power creating a new route to post-permission flexibility, enabling permission to be granted for the development of land provided that the planning authority is satisfied that the effect of the permission sought is not substantially different from that of the existing permission.

800. The new power enables changes which go further than the changes in respect of conditions which are permitted under s73 of the Town and Country Planning Act 1990 (and changes under other post-permission routes, i.e. s96A and s73A of the same Act). For example, the new power enables changes to the description of the development. In common with s73, a successful application under the new route leads to a new permission, leaving the old permission intact.

801. The aim is to create a more effective process for achieving post-permission flexibility to address concern across the development sector about the implications of recent case law which is perceived to have made the existing framework less flexible and more complex.

802. The delegated power (s73B(4)) requires provision to be made by development order setting out how an applicant is to do the things in subsections (1)-(3), namely requesting the application is determined under this section, identifying the existing planning permission and prior variations by reference to which the application is to be considered and, making a proposal (if any) as to conditions subject to which permission is granted.

Justification for delegation

803. The powers in subclause 73B(4) provides for the detail with respect to the applications procedure that applications made under the new route will be required to follow. This represents a proportionate and practical separation between what is set out in the primary legislation (the purpose and effect of the new route) and what comes forward through secondary legislation (specifics of process and content that must be followed by applicants).

804. The powers in subclause 73B(4) will supplement the powers which already exists in the Town and Country Planning Act 1990 ("TCPA") to make provision by development order in respect of applications for planning permission. These powers include section 62 (applications for planning permission), s71 (consultations in connection with determinations under s70), s74 (directions as to methods of dealing with applications). Using these powers, detailed procedures for the making and determination of applications for planning permission are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("2015 Order"). The 2015 Order is amended from time to time using the negative Parliamentary procedure (section 333 TCPA).

805. Provision made using the new power in s73B(4) would come forward in the form of amendments to the 2015 Order, and would provide for a single, comprehensive set of regulations that govern the processes under which applications for planning permission in England (via the new route or otherwise) must be processed.

Justification for procedure selected

806. It is proposed that the delegated powers introduced by new section 73B(4) will be subject to the negative resolution procedure and preceded by consultation as required. This is consistent with the fact that the 2015 Order which will be amended using the new power, is also subject to the negative procedure.

Clause 103(2) Power for Secretary of State to prescribe the information to be included in the commencement notice

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

807. Clause 103 inserts section 93G in TCPA. The new provisions under section 93G will require a person proposing to carry out development to give a commencement notice to the local planning authority specifying the date on which the person expects development to be begun (section 93G(2)), and to give a further commencement notice if the intended start date changes (section 93G(3)).

808. Section 93G(4) will give the Secretary of State a power to prescribe the information to be included in the commencement notice, such as the delivery rate of the scheme, and the form and manner that the commencement notice must be in.

809. If the local planning authority believes that development has commenced but a commencement notice has not been provided, then they can serve a notice under section 93G(5) on the person who had proposed to carry out the development and the owner or occupier of the land requiring them to comply with section 93G(2). The person will have 21 days to provide the required information otherwise they are guilty of an offence and liable to a fine (section 93G(7) and (9)).

810. Section 69(1) TCPA provides that the local planning authority must keep a register containing such information as is prescribed as to various types of planning applications and other matters, including local development orders which are listed in that section. This subsection will be amended so that commencement notices are added to the list. . In addition, section 69(2) provides that the register must contain information as to the manner in which applications have been dealt with and such information as is prescribed about the other matters listed in subsection (1) in relation to the authority's area. Subsection (2) will be amended so as to give the Secretary of State power to prescribe the information to be contained in the register on commencement notices. By amending section 69 to include commencement notices, the scope of the delegated powers under section 69 is extended.

Justification for delegation

811. Allowing the Secretary of State to: prescribe the information required in a commencement notice (in addition to the intended commencement date); provide for the form and manner of the commencement notice; and set out the information to be contained in the planning register, in secondary legislation is appropriate as these powers are procedural in nature and therefore better suited to secondary legislation. In terms of the details to be given, which is not anticipated to be onerous, the list is currently expected to be: (a) the planning permission which authorises the development which is to be commenced; (b) whether the permission is an alternative or variation to a previously granted permission; (c) the intended commencement date of the development; (d) in relation to schemes for or involving housing, the proposed delivery rate of the scheme; (e) in relation to non-housing schemes or non-housing parts of a scheme, the amount of floorspace per financial year that will be delivered; (f) the date on which development is expected to be substantially completed; (g) the name and contact details of the person sending the notice; (h) the name and contact details of the person carrying out the development; (i) the name and contact details of the owner(s) of the land; (j) a signed declaration confirming the contents of the notice and liability for the works. Examples in existing legislation where certain information is set out in secondary legislation include:

- section 71ZB(1)(b), (3) and (6) TCPA which allows for the information required in an initiation of development notice, as well as the form and types of planning permission to which the section applies, to be specified by a development order (although this section applies only to Wales);
- section 78(3) and (4A) TCPA which provides the Secretary of State with a power to prescribe the time and the manner in which a notice of an appeal

against a planning decision or failure to take a decision may be served, as well as the information that must accompany the notice of appeal;

- section 69(2)(b) TCPA which provides the Secretary of State with a power to prescribe the information to be contained in a register in respect of, for example, local development orders.

Justification for procedure selected

812. The use of the negative resolution procedure is appropriate as the regulations provide certain details to be given, the form and manner, and information to be contained in a register kept by the local planning authority and so are procedural in nature. The negative resolution procedure therefore provides the appropriate level of parliamentary scrutiny for provisions of this nature, which currently also applies to the similar power to make regulations about notification of appeals against planning decisions and failures to take such decisions. Section 69 is currently subject to the negative resolution procedure and our amendment to the existing power does not change the assessment that the negative resolution procedure is appropriate.

Clause 104 Power for Secretary of State to prescribe information in completion notices and make regulations in relation to provision for the procedure as to appeals

Powers conferred on: Secretary of State

Powers exercised by: *Regulations made by statutory instrument*

Parliamentary Procedure: Negative procedure

Context and Purpose

813. The power of a local planning authority to serve a completion notice where development has begun but has not completed within the commencement period (normally 3 years from the grant of permission) is set out in sections 94 to 96 of the Town and Country Planning Act 1990 (TCPA).

814. The new provisions under sections 93H to 93J will give local planning authorities the power to serve completion notices sooner than is currently allowed under existing legislation, will remove the requirement for confirmation by the Secretary of State, and instead introduce a right of appeal.

815. A local planning authority will be able to serve a completion notice before the end of the commencement period if it is of the opinion that the development will not be completed within a reasonable period, and the completion notice will state that the planning permission will be invalid at the expiration of a further period (section 93H(2)) and any other prescribed information (section 93H(4)). The owner, a person with an interest in the land and a person who holds a licence to occupy it will have the right of appeal against the notice served by the local planning authority (section 93I(1)) and this information will need to be included in the notice (section 93H(4)). An appeal will need to be brought on specified grounds (section 93I(2)).

816. Section 93I(3) will give the Secretary of State a new power to make regulations which make provision for the procedure as to appeals. The regulations will allow the Secretary of State to prescribe: the period within which an appeal must be brought; how an appeal is made; the information to be supplied by the appellant; how a local planning authority must respond to an appeal and the information to be supplied by the authority; and that the appeal is brought to the attention of those in the locality of the development (section 93I(4)). This is akin to section 175(1) TCPA and secondary legislation, including the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, which deal with enforcement appeals.

817. On an appeal, the Secretary of State may decide to quash the completion notice, vary it by substituting a later deadline, or uphold the notice with the original notice deadline (section 93I(5)). The notice will be of no effect pending the final determination or withdrawal of the appeal (section 93J(2)).

818. The planning permission will be invalid either at the original deadline specified in the notice or as substituted on appeal (section 93J(1)). Any development carried out pursuant to the planning permission before the end of the original or the substituted period will not be affected by the notice (section 93J(3)).

819. The Secretary of State has a power to serve a completion notice after consulting the local panning authority if it appears to him/her that it is expedient

that a completion notice should be served in respect of any land in England (section 93H(8)). This mirrors the existing power in section 96 TCPA.

Justification for delegation

820. Allowing the Secretary of State to set out the detail of the appeals process in regulations is appropriate as the powers in relation to appeals are procedural in nature. This follows the existing approach in section 175(1) TCPA which provides the Secretary of State with a power to provide the procedures for planning enforcement appeals.

Justification for procedure selected

821. The use of the negative resolution procedure is appropriate as the regulations merely provide the procedural detail to underpin the appeals process. The negative resolution procedure therefore provides the appropriate level of parliamentary scrutiny for provisions of this nature, which currently also applies to the similar power to make regulations about the appeals process for enforcement appeals.

Clause 105 Power for Secretary of State to make regulations in relation to provision for the exercise of the power to decline to determine planning applications and to prescribe the information that a local planning authority may require

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

822. Clause 105(2) inserts section 70D into the Town and Country Planning Act 1990 (TCPA). The new provisions under section 70D will give local planning authorities a power to decline to determine applications for planning permission for development in England if the application is made by a person who has previously made an application for planning permission for development of all or any part of the land ("the earlier application"), or by a person who has a connection with the development to which the earlier application related ("the earlier development") (section 70D(1)(b)). The power will apply if the earlier development has not begun, or if it has begun but has not been substantially completed and the local planning authority is of the opinion that the carrying out of the development has been unreasonably slow (section 70D(2) and (3)).

823. Section 70D(1)(a) will give the Secretary of State a power to prescribe the description of development to which the power applies, in respect of the present application and the earlier application.

824. Section 70D(1)(b)(ii) will give the Secretary of State a power to prescribe the description of the connection that a person applying for planning permission on the same land has to the earlier development.

825. In forming an opinion as to whether the carrying out of the earlier development has been unreasonably slow, local planning authorities must have regard to all the circumstances, including whether the development was carried out in accordance with any timescales specified in a development commencement notice (if such a notice was provided), or whether a completion notice was served in respect of the earlier development (section 70D(4)).

826. Section 70D(4)(c) will give the Secretary of State a power to prescribe any other circumstances to which local planning authorities must have regard when forming an opinion under section 70D(4).

827. Section 70D(5) will give the Secretary of State a power to prescribe the type of information that a local planning authority may require by notice from an applicant for the purposes of its functions under section 70D.

828. If a person served with a notice under section 70D(5) does not comply with in within 21 days, the local planning authority can decline to determine the application (section 70D(6)). If the person knowingly or recklessly provides false or misleading information, they are guilty of an offence and liable to a fine (section 70D(7) and (8)).

Justification for delegation

829. Clause 105 introduces a new power for local planning authorities to decline to determine planning applications where the applicant is connected to an earlier planning permission on that land which has been built-out unreasonably slowly. There is a proportionate and practical separation between what is set out in the primary legislation and what is to be defined in regulations.

830. Section 70D(1)(a) enables the Secretary of State to prescribe through regulations the type of development to which the new power would apply. In practice, development can differ in a variety of ways, including the proposed land use (residential, commercial, retail etc.) or size (number of units or amount of floorspace). Recording all the various iterations in primary legislation would be unreasonable and impractical. Furthermore, to set out in the primary legislation the type of development to which the power should apply would be unduly restrictive and would not be conducive to a policy that can adapt to different development types which experience new or increasingly frequent issues with slow build-out and repeat applications. Ensuring there is sufficient flexibility through regulations to bring more types of development into scope of the power (or take development out of scope), perhaps in response to intelligence provided by local planning authorities, is a sensible approach.

831. Section 70D(1)(b)(ii) allows for the Secretary of State to set out in regulations the types of connection that a person applying for planning permission might have with an earlier planning permission on that land. This could include that they represent the same development company, or that the person represents a subsidiary of the developer responsible for the earlier planning permission. While there are certain, more obvious ways to establish that a person applying for planning permission is connected with an earlier planning permission (e.g. they are the same company) there may be more obscure connections which are nonetheless legitimate for the purposes of declining to determine a planning application under the new power. It is therefore imperative that we can introduce regulations to capture such instances as they arise. This will, for example, ensure that the power is not subject to unfair gaming by applicants.

832. Through section 70D(4), local planning authorities must have regard to certain circumstances when considering whether to exercise the new power. The primary legislation requires that these circumstances include consideration of information provided in development commencement notices (where available) or whether a completion notice has been served on an earlier planning permission on the land to which a new application relates. However, we do not want this list to be exhaustive and there may be other matters which it is appropriate to require a local planning authority to consider before exercising the power. Such matters might only become clear after the new power has commenced, reflecting on the experience of local planning authorities and applicants in practice, as well as the introduction of future legislative and policy reforms. One additional circumstance that we intend to require through regulations, for example, is information provided for in development progress reports, which are being brought forward as a separate amendment to the Levelling Up and Regeneration Bill.

833. Similarly, with respect to section 70D(5), we would not want to prescribe in primary legislation the type of information that could be requested by local planning authorities when assessing whether a person was connected to an earlier planning permission. This information is likely to vary on a case-by-case basis, and we will want to engage closely with the local planning authorities and others to identify an appropriate list of information to bring forward through regulations. Setting out the list in secondary legislation will let us respond to the power's use in practice and improve its implementation.

Justification for procedure selected

834. Section 70D will be inserted in Part 3 (Control over Development) of the TCPA and will contain powers for the Secretary of State to prescribe certain matters in secondary legislation, as discussed above. Section 336(1) TCPA makes clear that: "*"prescribed" (except in relation to matters expressly required or authorised by this Act to be prescribed in some other way) means prescribed by regulations under this Act.*"

835. Section 333(3) TCPA provides that: "*Any statutory instrument containing regulations made under this Act (except regulations under section 88 or paragraph 15(5) or 16 of Schedule 4B and regulations which by virtue of this Act are of no effect unless approved by a resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.*" Other than these excepted provisions and those named in subsections (3ZA), (3ZAA) and (3A) of section 333, most regulation-making provisions in the TCPA are subject to the negative resolution procedure.

836. It is worth noting that also subject to the negative resolution procedure are most development order-making provisions in the TCPA. Section 333(5)(b) provides that: "*Any statutory instrument… which contains a development order made by the Secretary of State…, shall be subject to annulment in pursuance of a resolution of either House of Parliament.*"

837. In terms of the Secretary of State's power to prescribe the description of development to which section 70D applies, there are established provisions in the TCPA that provide similar powers, for example:

a. Section 59A which relates to the grant of permission in principle – reference is made to "*development of a prescribed description*" (s.59A(1)(a) and (b) TCPA[6]).
b. Section 61K which relates to neighbourhood development orders and specifically the meaning of "excluded development" – reference is made

[6] S. 59A inserted (12.7.2016) by Housing and Planning Act 2016 (c. 22), **ss. 150(2)**, 216(2)(c)

to "*prescribed development or development of a prescribed description*" (s.61K(e) TCPA[7]).

c. Section 74A which relates to deemed discharge of planning conditions – reference is made to "*development of a prescribed description*" (s.74A(6)(c) TCPA[8]).

838. In relation to the power to prescribe the circumstances to which the local planning authority is to have regard under section 70D(4), see for example:

a. Section 61G which relates to neighbourhood development orders and specifically the meaning of "neighbourhood area" – reference is made to "*entitling or requiring a local planning authority in prescribed circumstances to decline to consider an application for a designation*" (s.61G(11)(g) TCPA[9]).

b. Section 61L which relates to permission granted by neighbourhood development orders – reference is made to "*entitling a parish council in prescribed circumstances to require any application for approval under subsection (2) of a prescribed description to be determined by them instead of by a local planning authority*" (s.61L(3) TCPA) and "*requiring parish councils in prescribed circumstances to cease determining applications for approvals*" (s.61L(4)(b) TCPA[10]).

c. Section 74 which relates to directions as to the method of dealing with applications – reference is made to "*enabling the Mayor of London in prescribed circumstances, and subject to such conditions as may be prescribed, to direct the local planning authority*" (s.74(1B)(a) TCPA) and "*prohibiting a local planning authority to which any such direction is given from implementing the direction in prescribed circumstances or during prescribed periods*" (s.74(1B)(b) TCPA[11]).

d. Section 74A (as mentioned in paragraph 837 above) – reference is made to "*other prescribed circumstances*" (s.74A(6)(d) TCPA[12]).

839. With regard to the power to prescribe the description of information the local planning authority may require under section 70D(5), see for example:

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[7] Ss. 61E-61Q and cross-heading inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by Localism Act 2011 (c. 20), s. 240(2)(5)(j), **Sch. 9 para. 2**; S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

[8] S. 74A inserted (12.2.2015) by Infrastructure Act 2015 (c. 7), **ss. 29**, 57(5)(c)

[9] As per footnote 7

[10] As per footnote 7

[11] S. 74(1B)(1C) inserted (12.1.2000) by Greater London Authority Act 1999 (c. 29), **s. 244(9)** (with Sch. 12 para. 9(1)); S.I. 1999/3434, **art. 2**

[12] As per footnote 8

a. Section 59A (as mentioned in paragraph 837 above) – reference is made to the local planning authority being required to "*prepare, maintain and publish a register containing prescribed information as to permissions in principle*" (s.59A(10)(b) TCPA[13]).
b. Section 74 (as mentioned in paragraph 838 above) – reference is made to "*requiring the local planning authority to give to the Secretary of State, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed*" (s.74(1)(f) TCPA).
c. Section 78 which relates to the right to appeal against planning decisions and failure to take such decisions – reference is made to "*A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order*" (s.78(4A) TCPA[14]).

840. As there is relevant precedent for the choice of parliamentary procedure, it is considered that the negative resolution procedure provides the appropriate level of scrutiny for the matters in section 70D to be prescribed by regulations.

Clause 106 for Secretary of State to prescribe the information in a development progress report and to make regulations in relation to how they will operate

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

841. Clause 106 inserts section 90B into the TCPA. The new provisions under section 90B will mean that planning permission for relevant residential

[13] As per footnote 6
[14] S. 78(4A)-(4D) inserted (6.4.2009 for E., 30.4.2012 for W.) by Planning Act 2008 (c. 29), s. 241(3)(4), **Sch. 11 para. 2** (with s. 226); S.I. 2009/400, art. 5(d); S.I. 2012/802, art. 2(b)

development in England will be granted subject to a condition that a development progress report must be provided to the local planning authority in whose area the development is to be carried out for each reporting period (section 90B(2)). Section 90B(3)(a) will give the Secretary of State a power to prescribe the time at which the first reporting period begins or the event that determines when the first reporting period begins.

842. A development progress report will set out the progress that has been made, and that remains to be made, towards completing the dwellings that were granted by the permission in question, as at the end of the reporting period to which the report relates; and the progress which is predicted to be made towards completing those dwellings over each subsequent reporting period up to and including the last reporting period (section 90B(7)). Section 90B(7)(c) will give the Secretary of State a power to prescribe such other information that must be set out in a report.

843. Section 90B(9) will give the Secretary of State a power to make provision by regulations about various matters, including the form and content of development progress reports, when and how development progress reports are to be provided to local planning authorities, and who may or must provide development progress reports to local planning authorities.

844. The term “relevant residential development” is defined in section 90B(10) as involving the creation of one or more dwellings, and this section will give the Secretary of State a power to prescribe the description of development for the purposes of this definition.

Justification for delegation

845. We do not specify in primary legislation the time or event that indicates the start of the first reporting period for four reasons.

846. Firstly, the definition of commencement of development is legally complicated and needs further careful consideration to ensure it is in line with

the significant and moving caselaw on this subject. Using regulations allows flexibility to reflect this.

847. Secondly, not specifying this in primary legislation will allow us to reflect any views expressed by the housebuilding sector about when we consult on this point, or as it moves through Parliament.

848. Thirdly, allowing the Secretary of State to specify in secondary legislation the time or event that indicates the start of the first reporting period is appropriate as it does not touch on the substance of the overall policy – which is to help inform local planning authorities and the public about when permissions are not being built out as promised and thus giving local planning authorities the evidence to act where there is no justification for this delay.

849. Finally, the development commencement notice measure (**clause 103** of the Levelling Up and Regeneration Bill), if agreed, will provide clear evidence in most cases, of the commencement of development, thus meaning it is not necessary to duplicate such detail in primary legislation.

850. To enable this measure to support any future enforcement sanctions regarding the slow or non-build out of schemes, we have not stated in primary legislation what “other information” must be set out in a report since setting it out in secondary legislation ensures that any necessary information can be obtained now and, in the future, thus making the measure legally robust and future proof.

851. It is appropriate that the list of matters outlined in clause 106(9) is covered in secondary legislation to ensure this measure supports any enforcement sanctions regarding slow or non-build out of schemes, and the information that may be required to ensure the planning enforcement of slow or no build out of schemes is robust. It also allows us to reflect any views expressed when we consult with relevant stakeholders on this measure.

852. We do not specify the description of relevant residential development in primary legislation since the objective of the policy is to generate comprehensive build out data. We are therefore proposing, at present, that development progress reports would apply to all residential developments. However, it will be for regulations to determine this precisely, following engagement and consultation with the housebuilding sector on whether some sorts of development should be exempt from development progress reports.

Justification for procedure selected

853. Section 90B will be inserted in Part 3 (Control over Development) of the TCPA and will contain powers for the Secretary of State to prescribe certain matters in secondary legislation, as discussed above. Section 336(1) TCPA makes clear that: "*"prescribed" (except in relation to matters expressly required or authorised by this Act to be prescribed in some other way) means prescribed by regulations under this Act.*"

854. Section 333(3) TCPA provides that: "*Any statutory instrument containing regulations made under this Act (except regulations under section 88 or paragraph 15(5) or 16 of Schedule 4B and regulations which by virtue of this Act are of no effect unless approved by a resolution of each House of Parliament) shall be subject to annulment in pursuance of a resolution of either House of Parliament.*" Other than these excepted provisions and those named in subsections (3ZA), (3ZAA) and (3A) of section 333, most regulation-making provisions in the TCPA are subject to the negative resolution procedure.

855. It is worth noting that also subject to the negative resolution procedure are most development order-making provisions in the TCPA. Section 333(5)(b) provides that: "*Any statutory instrument… which contains a development order made by the Secretary of State…, shall be subject to annulment in pursuance of a resolution of either House of Parliament.*"

856. In terms of the Secretary of State's power to prescribe the time or event that signals the beginning of the first reporting period under section 90B(3)(a), there are established provisions in the TCPA that provide similar powers, for example:

a. Section 206 which relates to the consequences of tree removal – reference is made to the imposition of a duty to plant a replacement tree if a tree that is the subject of a tree preservation order is "*removed, uprooted or destroyed or dies at a prescribed time*" (s.206(1)(b) TCPA[15]).
b. Likewise, section 213 which relates to trees in conservation areas – reference is made to the imposition of a duty to plant a replacement tree if a tree that is in a conservation area is "*removed, uprooted or destroyed or dies at a prescribed time*" (s.213(1)(b) TCPA[16]).

857. With regard to the power to prescribe any additional information that a development progress may set out under section 90B(7)(c), see for example:
a. Section 59A which relates to the grant of permission in principle – reference is made to the local planning authority being required to "*prepare, maintain and publish a register containing prescribed information as to permissions in principle*" (s.59A(10)(b) TCPA[17]).
b. Section 74 which relates to directions as to the method of dealing with applications – reference is made to "*requiring the local planning authority to give to the Secretary of State, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed*" (s.74(1)(f) TCPA).
c. Section 78 which relates to the right to appeal against planning decisions and failure to take such decisions – reference is made to "*A notice of appeal under this section must be accompanied by such information as may be prescribed by a development order*" (s.78(4A) TCPA[18]).

858. In relation to the list of matters for which the Secretary of State may make provision under section 90B(9), including the form and content of development progress reports, see for example:
a. Section 61G which also relates to neighbourhood development orders but specifically the meaning of "neighbourhood area" – reference is made to regulations making provision "*as to the form and content of*

[15] Words in s. 206(1)(b) substituted (6.4.2012 for E.) by Planning Act 2008 (c. 29), s. 241(3)(4), **Sch. 8 para. 11(b)** (with s. 226); S.I. 2012/601, art. 2(a)
[16] Words in s. 213(1)(b) substituted (6.4.2012 for E.) by Planning Act 2008 (c. 29), s. 241(3)(4), **Sch. 8 para. 16** (with s. 226); S.I. 2012/601, art. 2(a)
[17] S. 59A inserted (12.7.2016) by Housing and Planning Act 2016 (c. 22), **ss. 150(2)**, 216(2)(c)
[18] S. 78(4A)-(4D) inserted (6.4.2009 for E., 30.4.2012 for W.) by Planning Act 2008 (c. 29), s. 241(3)(4), **Sch. 11 para. 2** (with s. 226); S.I. 2009/400, art. 5(d); S.I. 2012/802, art. 2(b)

applications for designations" (s.61G(11)(e) TCPA[19]), as well as numerous other matters.

b. Section 106A which relates to the modification and discharge of planning obligations – reference is made to regulations making provision *"with respect to the form and content of applications under subsection (3)"* (s.106A(9)(a) TCPA[20]), as well as several other matters.

859. In respect of the Secretary of State's power to prescribe the description of residential development under section 90B(10), see for example:

a. Section 59A – reference is made to "*development of a prescribed description*" (s.59A(1)(a) and (b) TCPA[21]).

b. Section 61K which relates to neighbourhood development orders and specifically the meaning of "excluded development" – reference is made to "*prescribed development or development of a prescribed description*" (s.61K(e) TCPA[22]).

c. Section 74A which relates to deemed discharge of planning conditions – reference is made to "*development of a prescribed description*" (s.74A(6)(c) TCPA[23]).

860. As there is relevant precedent for the choice of parliamentary procedure, it is considered that the negative resolution procedure provides the appropriate level of scrutiny for the matters in section 90B to be prescribed by regulations.

Enforcement of planning controls

Clause 109 amending section 188 TCPA 1990 for Secretary of State to make a development order prescribing the manner in which a register of enforcement action must be kept and the information to be contained in such a register

[19] Ss. 61E-61Q and cross-heading inserted (15.11.2011 for specified purposes, 6.4.2012 for specified purposes) by Localism Act 2011 (c. 20), s. 240(2)(5)(j), **Sch. 9 para. 2**; S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4)

[20] S. 106- 106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), **s. 12(1)**; S.I. 1991/2272, **art. 3(1)(a)**; S.I. 1991/2728, **art. 2**; S.I. 1992/2831, **art. 2**

[21] As per footnote 17

[22] As per footnote 19

[23] S. 74A inserted (12.2.2015) by Infrastructure Act 2015 (c. 7), **ss. 29**, 57(5)(c)

Powers conferred on: *Secretary of State*
Powers exercised by: *Development order*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

861. Clause 109 inserts section 172ZA into the TCPA 1990 which makes provision for an 'enforcement warning notice' to be issued by a local planning authority. Such a notice can be given where the authority thinks there has been a breach of planning control and there is a reasonable prospect of planning permission being granted if a planning application were made. The purpose of such a notice is to give the person in breach an opportunity to rectify that breach inviting them to apply for planning permission.

862. The notice will state that where such an application is not made within the period specific in the notice, further enforcement action may be taken.

863. Clause 109(4) and (5) also amends section 188 to include an enforcement warning notice in the list of enforcement actions that clauses 109(1) and (2) applies to. This means that local planning authorities must keep a register of enforcement warning notices which relate to land in their area. Section 188(1) TCPA provides that the Secretary of State, by development order, may prescribe the manner in which this register is kept, as well as the information to be contained in the register. S.188(2)(a) provides that a development order may make provision for the entry relating to any planning enforcement order, enforcement notice, stop notice or breach of condition notice to be removed from the register in the circumstances specified in the order. Clause 109(5)(a) adds enforcement warning notices into that list of enforcement action to which the provision applies. S.188(2)(b) provides that a development order may make provision for requiring a county planning authority to supply to a district planning authority (the keeper of the register) such information as may be so specified with regard to enforcement notices, stop notices, breach of condition notices and planning enforcement orders that have been issued, served or made by the county planning authority. Clause 109(5)(b) adds enforcement warning notices into the list of enforcement action to which the provision applies. By amending this section to include enforcement warning notices, the scope of this delegated power is extended.

Justification for delegation

864. The existing delegated power has been used to prescribe (in the Town and Country Planning (Development Management Procedure) (England) Order 2015) the information which a local planning authority must include in its enforcement register in relation to planning enforcement orders, enforcement notices, stop notices and breach of condition notices (e.g. address of the land involved, date of service of the order/notice). The Order also prescribes the timescale for adding information to the register, the circumstances in which an entry must be removed and where the register should be kept. Where a planning enforcement order, enforcement notice, stop notice or breach of condition notice is issued by the county planning authority the Order prescribes what information the county authority must provide to the district planning authority. Similar provision will need to be made in respect of enforcement warning notices so that the public are aware of action taken by local planning authorities. We consider that including provision for enforcement warning notices in existing enforcement registers alongside records of other enforcement action is appropriate.

Justification for procedure selected

865. The negative resolution procedure is considered appropriate for the existing delegated power and that assessment does not change by extending it to include enforcement warning notices.

Clause 113 to provide relief from enforcement of planning conditions.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations (Statutory Instrument)*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

866. Clause 113 amends the Town and Country Planning Act 1990 by inserting a new section 196E at the end of Part VII (Enforcement) into that Act.

867. The purpose of the power in subclause (1) of clause 113 is to allow for the introduction of a specified relief period from enforcement measures in respect of specified planning conditions or limitations that become overly onerous in particular circumstances. The power in subclause (1) allows the Secretary of State, by regulations, to provide that a local planning authority in England may not take, or is subject to specified restrictions in how it may take,

relevant enforcement measures in relation to any actual or apparent failure to comply with a relevant planning condition. Subclause (5) defines a “relevant planning condition” as a condition or limitation subject to which planning permission for a development of land in England is granted and provides for exclusions. Subclause (3) provides the definition of “relevant enforcement measure” and subclause (4) sets out a non-exhaustive, indicative-only list of examples of such measures. Subclause (2) provides that the power in subclause (1) may only be exercised in respect of an actual or apparent failure to comply with a relevant planning condition or limitation which occurs, during a period of time specified in the regulations (“the relief period”), or is apprehended during the relief period to so occur.

868. Regulations to prescribe under the power in subclause (1), will be subject to the negative procedure in both Houses of Parliament.

869. Subclause (6) allows the regulations made under subclause (1) to make provision as to the treatment of an actual or apparent failure to comply with a relevant planning condition, if the failure (a) starts before, but continues after, the commencement of a relief period or (b) starts during, but continues after, a relief period. This clause allows the regulations to make provision as to the treatment of an actual or apparent failure to comply where the failure overlaps the relief period or continues after it.

870. Subclause (7) allows the regulations made under subclause (1) to provide that an actual or apparent failure to comply with a relevant planning condition or limitation is not to be treated as occurring during the relief period, if it occurs wholly within a relief period and is not remedied within a specified time after that relief period. Subclause (7) can therefore be used to deem certain breaches occurring during the relief period as not so occurring, where they are not remedied by a specified period after the relief period. This is needed to ensure that, in certain circumstances, a failure to comply with a relevant planning condition or limitation that occurs during the relief period is not allowed to persist indefinitely, but rather that developers and individuals may be given an opportunity to remedy breaches that occur during that time.

871. Subclause (8) allows regulations made under subclause (1) to make provision that, where anything relating to the taking of a relative enforcement measure is to be or may be done by a time during the specified period, it is to be or may be instead done by a specified time after that relief period. This subclause is needed to deal with enforcement measures which involve deadlines or time limits. It allows for the postponement of deadlines relating to enforcement measures that would otherwise expire during the relief period.

872. Subclause (9)(a) allows regulations made under subclause (1) to specify particular local planning authorities in England to which the regulations will apply.

873. Subclause (9)(b) allows regulations made under subclause (1) to specify relevant planning conditions or limitations.

874. Subclause (9)(c) allows regulations made under subclause (1) to specify the relevant enforcement measures.

875. Subclause (9)(d) allows regulations made under subclause (1) to prevent the taking of relevant enforcement measures indefinitely, or for a specified period of time.

Justification for delegation

876. Clause 113 introduces relief for a specified period, from enforcement measures of local planning authorities in respect of planning conditions or limitations that become particularly onerous in particular circumstances. There is a proportionate and practical separation between what is set out in the primary legislation (the power to allow the Secretary of State to prescribe, by regulations, a local planning authority may not take, or is subject to specified restrictions in how it may take, relevant enforcement measures in relation to non-compliance with a relevant planning condition or limitation which occurs during a specified relief period) and the secondary legislation (which sets out (i) which planning conditions or limitations to which the restriction on enforcement measures will apply; (ii) the local planning authorities that will be subject to the restriction; (iii) the enforcement measures that will be restricted, and (iv) the duration of the relief period). It is necessary to set out those matters through regulations due to the nature of the power and the uncertainty of the circumstances in which it is expected to be exercised. This is also necessary to accommodate the fact that detailed policy has to work differently depending on the planning condition or limitation to which relief from enforcement is provided.

877. The purpose of the power is to ensure that business is not unreasonably burdened by planning conditions or limitations which may prevent appropriate response and recovery in times of disruptions. It is also intended to give local planning authorities confidence that relevant enforcement measures should not be taken against failure to comply with specified conditions or limitations during the relief period. In recent years, circumstances which resulted in businesses being overly burdened by planning conditions or limitations, included national lockdowns during the COVID-19 pandemic and the Heavy Goods Vehicle driver shortage (for which temporary measures were introduced to ease disruption).

As it is not possible to predict novel circumstances in the future may cause disruption and which would merit a temporary relaxation of enforcement action against specified planning conditions and limitations, it is practical to address these circumstances in regulations on a case-by-case basis. With regards to the new subclause (9)(b), the nature of planning conditions, for which local planning authorities are afforded a high degree of discretion through existing legislation, means that it would not be possible or appropriate to prescribe the conditions or limitations within primary legislation. Similarly, as the periods for providing relief from relevant enforcement measures (subclause (9)(d)), the type of enforcement measures that it would be necessary to restrict (subclause (9)(c) and the local planning authorities to which the restriction would apply (subclause (9)(a)) will need to be considered on a case-by-case basis and cannot be predetermined, it is necessary that these matters are prescribed in regulations.

878. Regulations made under subclause (6), (7) and (8) relate to how certain breaches of planning conditions and limitations and associated enforcement deadlines should be treated with respect to the new measures and this will provide an appropriate degree of flexibility to make policy changes as necessary to reflect practical experience.

Justification for procedure selected

879. Regulations made under the new clause 113 will be subject to the made negative resolution procedure. This is consistent with the existing procedure for secondary legislation made regarding the use of planning conditions. This includes sections 74A and 100ZA of the Town and Country Planning Act 1990.

880. Section 74A (Deemed discharge of planning conditions) of the Town and Country Planning Act 1990 allows the Secretary of State to provide, by order, for the deemed discharge of certain conditions attached to planning permissions. By amending part 5 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Secretary of State can regulate the procedure which needs to be followed by applicants to ensure that conditions which require consent, agreement or approval, are deemed to have been discharged by a local planning authority, if a specified time period has elapsed. Any regulations made which amend measures relating to the deemed discharge of conditions are subject to the negative resolution procedure. Similarly, section 100ZA (Restrictions on power to impose planning conditions in England) of the Town and Country Planning Act 1990 requires local planning authorities to obtain the written agreement of an applicant for planning permission to the terms of any pre-commencement conditions that are proposed to be attached to a grant of planning permission. The Secretary of State can set out in regulations certain circumstances in which this requirement

does not apply as well as prescribe that certain conditions of a particular description cannot be imposed on grants of planning permission. These regulations are subject to the negative resolution procedure.

881. As the purpose of the power is to allow businesses and local planning authorities to respond quickly, appropriately and with certainty to novel circumstances, these provisions will use the made negative procedure. This will enable businesses to benefit from relief from enforcement measures against specified planning conditions or limitations for a specified period of relief as soon as the regulations have been laid. Similarly, it will give confidence to local planning authorities that specified types of enforcement measures should not be taken against breaches of specified conditions or limitations for a specified period of relief. Other procedures would not allow for a swift response and may undermine the ability of the measures to achieve their intended purpose.

Other provision

Clause 116 inserting new s327ZA for Secretary of State to make regulations or Development Orders in relation to manner and form requirements for planning applications and related materials, including compliance with technical standards

Powers conferred on: Secretary of State
Powers exercised by: Regulations or Development Orders made by statutory instrument
Parliamentary Procedure: *Negative procedure*

Context and purpose

882. The power applies in respect of planning applications made under the Town and Country Planning Act 1990 ("the 1990 Act") as defined in new section 327ZA(11), applications for approval of biodiversity gain plans within paragraph 14 of Schedule 7A to that Act, applications for listed building consent under the Planning (Listed Buildings and Conservation Areas Act) 1990 and hazardous substance consent under the Planning (Hazardous Substances) Act 1990 and applications made pursuant to conditions attached to such consent.

883. The power applies to any existing relevant power to make provision by secondary legislation about the form and manner in which such applications are to be made and the form and manner in which an associated document is to be provided. This is regardless of the terms in which the existing power is

conferred, see new section 327ZA(9) to (11). The power does not apply to applications made in legal proceedings.

884. The objective is a more consistent, streamlined and digitally enabled approach to the way planning applications are made, which is proportionate to the scale and nature of the development proposed, to promote more effective decision making by planning authorities[i].

885. The power includes the power to make provision:

a. requiring or allowing the application to be made, or the associated document to be provided by particular electronic means, or by electronic means that satisfy particular technical standards or specifications;
b. requiring or allowing the planning authority to which an application is made to waive a requirement of the type referred to in para 4.1, (the planning authority might rely on such provision for example where an applicant does not have access to digital technology);
c. requiring the application or associated document or part of it to be prepared or endorsed by a person with particular qualifications or experience.

886. The power may be exercised by making provision referring to (and giving effect to) material published from time to time on a government website which is accompanied by a statement that it has effect for the purposes of the provision in question (new subsection (7)). It can be exercised, for example, by requiring or allowing a planning application to be made using a form or in accordance with specifications published on a government website (new subsection (8)).

Justification for delegation

887. The new power supplements the existing delegated powers to make provision in respect of applications. For example, section 62 of the 1990 Act, when first enacted, made provision that an application for planning permission must be made in such manner as may be prescribed by regulations made under the Act. That section was substituted[ii] in 2004 by a power to make provision by development order as to applications for planning permission including as to the form and manner in which the application must be made and documents and materials to accompany the application. From 2008 the relevant subordinate legislation[iii] included a requirement that an application for planning permission must be made on a form published by the Secretary of State or a form to substantially the same effect. That change followed consultation and consultees welcomed the idea of an online standard application form. That provision has been repeated in subsequent Orders (currently article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) ("DMPO"). Since then the Government has published forms in respect of various types of applications on a government website[iv].

They can be completed and submitted electronically using a web-based Planning Portal[v].

888. New section 327ZA builds on this practice. Provision in secondary legislation as to requirements in respect of electronic means of transmission, technical standards or specifications and expertise or qualifications and the linking of such requirements to material published by the Government is appropriate because it provides the flexibility needed to respond to developments and changes in technical standards or specifications and qualifications over time. A recent example is an amendment made to DMPO[vi] requiring a fire statement to be submitted with certain applications for planning permission in response to the Dame Judith Hackett's Independent Review of building regulations and fire safety. The fire statement form is similarly published on gov.uk.

889. Further, technical standards will be adopted in a number of different formats and it is unlikely that those will always be compatible with publication in the body of a statutory instrument.

890. Similar provision in relation to the publication of data standards with which local authorities then have to comply was previously made in the context of local development schemes and documents (see section 36(3) of the Planning and Compulsory Purchase Act 2004[vii]).

891. The power confirms there is express authority for the Secretary of State to make provision in secondary legislation by reference to published material and is constrained by:

a. the technical subject matter; and
b. the requirement to publish a statement linking any published material with the provision in respect of which it has effect.

Justification for procedure selected

892. We consider that the negative resolution procedure for any secondary legislation made under these powers provides the appropriate level of parliamentary scrutiny. In that respect, the justification for delegation set out above applies equally to the procedure selected.

Clause 117

New section 106A(9A) Town and Country Planning Act 1990 allowing the Secretary of State to provide for requirements which must be met in order for

a planning obligation to be modified or discharged, and for circumstances in which a planning obligation may not be modified or discharged

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

893. Section 106A TCPA 1990 provides for how a s106 obligation may be modified or discharged. A s106 obligation may be modified or discharged:

a. at any time, by a deed entered into by the relevant local planning authority and the person(s) against whom the obligation is enforceable; and

b. from five years after the obligation is first entered into, by application to the LPA (and there is a right of appeal against the LPA's decision to the Secretary of State).

894. This is a power to provide in regulations for requirements which must be met in order for a planning obligation to be modified or discharged under section 106A TCPA 1990, and for circumstances in which a planning obligation may not be modified or discharged.

895. This was introduced to allow for regulations to prescribe additional restrictions on the modification or discharge of planning obligations, and for these restrictions to be different depending on what kind of development is being considered. This will allow for greater control of the use of planning obligations than the current section 106A TCPA 1990 power provides, which is required for the proper operation of section 106 obligations in the future – in particular, alongside IL. The overall policy aim of IL is for developer contributions to be secured and funded through the IL regime in the majority of cases, and for the use of section 106 obligations to therefore be restricted in specified circumstances.

896. Under section 333(3) TCPA 1990, statutory instruments under the TCPA 1990 are subject to negative Parliamentary procedure unless otherwise provided.

Justification for delegation

897. The ways in which different kinds of development will be dealt with in the IL regime, and and the interaction of IL with planning obligations, will be subject to a 'test and learn' approach over time. As such it is considered necessary to retain flexibility on the additional restrictions that will apply to planning obligations for different kinds of developments. The restrictions that are applied may need to be adjusted over time and also to reflect policy development. This kind of detail and flexibility is best suited to delegated legislation., to ensure that these restrictions can be adjusted if required.

Justification for procedure selected

898. This inserts a new delegated power into section 106A TCPA. The proposed procedure – class (v) negative – corresponds to the procedure which applies to the existing delegated power in section 106A(9). The Department considers that since this procedure would afford either House the opportunity to resolve (following debate) that the instrument should be annulled, this ensures a sufficient level of Parliamentary scrutiny and oversight given the substance of the provision which is sought to be made in this regard.

Clause 118

Clause to provide Secretary of State with a power to make regulations to enable certain statutory consultees to charge fees for services in connection with development consent required for nationally significant infrastructure projects ("NSIPs"), or any other prescribed matter relating to NSIPs

Powers conferred on: Secretary of State.
Powers exercised by: Regulations made by statutory instrument.
Parliamentary Procedure: Negative procedure.

Context and Purpose

899. This clause will amend the Planning Act 2008 ("PA08") to provide the Secretary of State with the power to make regulations which will enable public authorities, limited to certain statutory consultees prescribed by regulations, to charge fees for services provided in connection with NSIPs.

900. The power will enable regulations for and in connection with the charging of fees, including, when a fee may be charged, the amount which may be charged, what may be taken into account in calculating a charge, who is liable to pay a fee, when fees can be recovered and the effect of failing to pay fees.

901. The power excludes certain persons from being charged for fees, including the Secretary of State, Mayor of London, local planning authorities, mayoral combined authorities, qualifying neighbourhood bodies or other persons as may be prescribed by regulations, unless the relevant service to which the fee relates is an application or proposed application for development consent. A qualifying neighbourhood body is defined by the clause as one within the meaning given by section 61E(6) of the Town and Country Planning Act 1990 or section 38A(12) of the Planning and Compulsory Purchase Act 2004.

Justification for delegation

902. Section 4(1) PA08 gives the Secretary of State the power to make regulations for the charging of fees in connection with the performance of major infrastructure functions, and section 4(2) PA08 sets out the nature of such regulations. The Infrastructure Planning Fees Regulations 2010 and the Infrastructure Planning Fees (Amendment) Regulations 2017 were subsequently made pursuant to section 4 PA08. The use of delegated powers

for setting out the process for implementing this power is therefore consistent with the approach taken to the existing power enabling the Secretary of State to charge for fees incurred throughout the development consent order ("DCO") application process.

903. It is also consistent with the NSIP regime more widely where many procedural requirements are set by delegated legislation, for example requirements in relation to the application process and examination of DCOs are set out in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and the Infrastructure Planning (Examination Procedure) Rules 2010 respectively. We therefore consider it appropriate that technical details as to the charging system should be set out in regulations.

Justification for procedure selected

904. Amending regulations made under this delegated power will be subject to the negative procedure. We consider that this procedure provides the appropriate level of parliamentary scrutiny for procedural provisions of this nature.

905. The negative procedure will also enable the delegated powers to be exercised by way of an update to the existing fee regulations which would keep the number of statutory instruments made in respect of the NSIP regime to a minimum. This will mean the legislation is easier to use, and thus reduces the time and cost to statutory consultees.

906. Applying the negative procedure to the regulations will also enable updates to the regulations to be made more efficiently without using parliamentary time for procedural matters.

907. The Government will consult on these proposals to ensure that they are appropriate and allow interested parties to express their views on them prior to their introduction.

Clause 119 - Power for the Secretary of State to shorten the deadline for examinations for development consent order applications

Powers conferred on: *Secretary of State*
Powers exercised by: *discretion of the Secretary of State*

Context and Purpose

908. Section 98 of the Planning Act 2008 ("PA08") relates to the timetable for examining and reporting on Development Consent Order applications for Nationally Significant Infrastructure Projects. It imposes a duty on the Examining Authority to complete its examination of an application by the end of the period of six months from the last day of the preliminary meeting, where an initial assessment of the principal issues takes place. Section 98(4) also provides the Secretary of State with the power to extend the six month deadline.

909. Clause 119 inserts a new subsection (4A) into section 98 of the PA08, giving the Secretary of State a corresponding power to set a shorter deadline for completion of an examination.

Justification for power

910. This power seeks to replicate the discretionary power the Secretary of State already has under section 98 of the PA08 to extend the six month examination deadline. As would be the case when deciding to extend an examination deadline, a decision to have a shorter (than six month) timescale for an examination needs to be made expeditiously so that interested parties to the proceedings can be informed accordingly.

911. The notification and publicity requirements, including the need for a statement to be made to the appropriate House of Parliament, set out in sections 98(7) and (8) of the PA08, will apply when the power to set a shorter examination deadline is exercised. Therefore, Parliament will be notified of any decisions to have shorter examinations in the case of individual DCO applications.

Clause 120 - Power for Secretary of State to make regulations regarding the decision-making process of non-material change applications to development consent orders.

Powers conferred on: *Secretary of State.*
Powers exercised by: *Regulations made by statutory instrument.*
Parliamentary Procedure: *Negative procedure.*

Context and purpose

912. Following the making of a Development Consent Order ("DCO") an applicant may apply to the Secretary of State to make changes to the consented DCO if required. An application may be either for material changes or non-material changes.

913. Where the change is material, the process, including a timescale for a decision, is set out in Part 2 of The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (the "2011 Regulations") made pursuant to Paragraph 3 of Schedule 6 to the Planning Act 2008 (the "PA08").

914. The 2011 Regulations also concern applications for non-material changes, with the process for doing so being set out in Part 1 of those Regulations; however, there is no timescale prescribed within the 2011 Regulations in relation to determining a non-material change application. There is guidance which states that decisions for non-material applications (submitted with sufficient information) should be decided within 6 weeks of the relevant consultation closing date. However, this is considered insufficient because

decisions are not being made within the timeframe set by guidance. Legislation is therefore necessary to emphasise the importance of decisions being made within a set timeframe, ensuring they are made in a timely manner. Furthermore, the future introduction of a timeframe for the determination of non-material change applications will create better consistency across applications for changes to DCOs insofar as they will be closer aligned to the material change process which already has a legal timeframe for determination of such applications.

915. This clause therefore amends Schedule 6 of the PA08, to allow the Secretary of State to make regulations regarding the decision-making process in respect of non-material change applications, including to set time limits for making decisions on such applications.

916. Sub-paragraph (1A) enables the Secretary of State to make provision through regulations about the decision-making process for non-material change applications.

917. Sub-paragraph (1B) replicates paragraphs 2(8A) and 4(5A) of Schedule 6 to the PA08, confirming for the avoidance of doubt that the power to make regulations includes a discretion as to how the power is exercised, and can include, for instance, provision allowing the Secretary of State to extend a deadline for a decision relating to a non-material change application.

Justification for delegation

918. Delegated powers are required to provide for the detailed implementation of the policy, particularly in relation to the timeframe to be imposed for decision-making and any other changes needed to support the delivery of this timeframe.

919. The use of delegated powers for setting out the process for implementing this power is consistent with, and mirrors, the approach taken in respect of material change decisions where the process is set out in Part 2 of the 2011 Regulations.

920. It is also consistent with the NSIP regime more widely where many procedural requirements are set by delegated legislation, for example requirements in relation to the application process and examination of DCOs are set out in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and the Infrastructure Planning (Examination Procedure) Rules 2010 respectively.

Justification for procedure selected

921. Amending regulations made under this delegated power will be subject to the negative procedure. We consider that this procedure provides the appropriate level of parliamentary scrutiny for the following reasons:

922.

a. Both the original 2011 Regulations, and the amendments made to them by the 2015 amendment regulations, were subject to the negative procedure, and it would be inconsistent for these new regulations to take a different approach.
b. This will enable the delegated powers to be exercised by way of an update to the existing 2011 Regulations, which would keep the number of statutory instruments made in respect of the NSIP regime to a minimum. This means the legislation should be easier to use and may reduce the time and cost to users of the regime, including applicants, statutory consultees and the Planning Inspectorate.
c. It will also enable updates to be made more efficiently without using parliamentary time for procedural matters.

923. The Government will consult on the content of such proposed regulations to ensure that they are appropriate and allow interested parties to express their views on them prior to their introduction, in particular on the implementation of a timeframe for decisions on non-material change applications.

Clause 122 to provide express powers for the Secretary of State to make ancillary provision when exercising Regulation/Order making powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning (Hazardous Substances) Act 1990 to make Regulations or Orders and the Town and Country Planning Act 1990.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations and orders made by statutory instrument*
Parliamentary Procedure: *Negative procedure or as prescribed in the Act*

Context and purpose

924. Amendments are made to the Regulation/Order making powers to enable ancillary provision to be made. This is a general power to enable consequential, supplementary, incidental, transitional, transitory or saving provision when exercising powers under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 ("the Acts") to make regulations, and orders by statutory instrument.

Justification for delegation

925. The legislative aim is to make the power to make ancillary provision express in respect of the Acts (in which identical provision is being made). Providing express provision on the face of the legislation will avoid the need to rely on implied powers in the future and reflects a more modern drafting approach.

926. It is a recognised rule of statutory construction that an enabling power may impliedly confer power to make ancillary provision (see *A-G v Great Eastern Rly Co.* (1880 5 App Cas 473) per Lord Selbourne*:* "whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be *ultra vires*.").

927. However, the legislative provision which is made as regards Regulation/Order making powers across the Acts is presently inconsistent in the approach taken to ancillary provision. Some provisions provide for express authority and others do not. For example, sections 202G(4) and 303(6) of the TCPA make adequate express provision, while those regulation and order making powers subject to amendment by this measure do not.

928. It is hoped the reform will reduce confusion and potential for criticism. A comment was received by the Department by a member of the public expressing concern about this issue] in the context of an SI which was drafted in 2020.

Justification for procedure selected

929. This change will not affect the parliamentary process which applies to the Regulation/Order powers in the relevant Acts. It simply allows for ancillary provision to be made when those powers are exercised.

Clause 123 provides for the Secretary of State by regulations to make amendments and modifications of enactments relating to planning or development (including compulsory purchase) to facilitate the consolidation of those enactments

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure

Context and Purpose

930. Some of the current legislation governing planning dates back to 1947 and has become increasingly opaque, due to layers of reform and complexity, rendering the system difficult to navigate. Primary legislation was last consolidated in 1990, and there are now around 40 Acts dealing with planning in England. The current legislative framework pre-dates devolution of planning to the Welsh Government.

931. In respect of compulsory purchase legislation, the Law Commission has described the current operation of the law of compulsory purchase in England and Wales as “difficult to locate, complicated to decipher, and elusive to apply… the principles are to be found in a multiplicity of Acts of Parliament dating back

to 1845 (which are still in force) that have never been subjected to the rigour of consolidation, still less of codification." The Law Commission was invited, on 10 October 2022, to carry out a review of the compulsory purchase and compensation legislation and to prepare consolidation Bills. The pre-consolidation power is intended to dovetail with the Law Commission's review and draft Bills.

932. This pre-consolidation power will enable amendments to be made to enactments which will facilitate, or which are otherwise desirable in connection with, the consolidation – in one or more Consolidation Bills - of those enactments. The scope of the power is restricted to facilitate consolidation for legislation which is within the legislative competence of the Westminster Parliament.

Justification for delegation

933. Enabling amendments to be made to enactments prior to consolidation by affirmative regulations allows the consolidation of those enactments to be dealt with in a Bill which is restricted to consolidation only and therefore can be taken through Parliament using the 'fast track' legislative process.

934. It is inevitable, when looking at consolidation, that there will be a need to consider how the various enactments might be brought together in one or more Acts, and there will likely be some overlap or lack of clarity as to how the provisions fit together. This power enables those issues to be dealt with through affirmative regulations rather than in the relevant Bill(s) which would then have to go through the full parliamentary process.

935. The power is narrowly focussed to only allow such amendments as are necessary or otherwise desirable for the purposes of facilitating consolidation by a Bill; it will tidy up provisions and substantive amendments to provisions will not be made. Amendments made using the power can only come into force when a Consolidation Act relating to those enactments is passed.

Justification for procedure selected

936. The power allows minor, non-substantive amendments to be made to primary legislation, so it is appropriate for regulations to be subject to the affirmative procedure.

PART 4 (Infrastructure Levy)

Infrastructure Levy

Clause 124 / Schedule 11 paragraph 1

New section 204A(1)-(2) Planning Act 2008 allowing the Secretary of State to make regulations providing for the imposition of a charge to be known as Infrastructure Levy

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

937. Schedule 11 provides the legal framework for the new Infrastructure Levy (IL) regime. This is intended to replace the Community Infrastructure Levy (CIL) regime in relation to England (except for Mayoral CIL in relation to Greater London). The existing provisions for CIL are contained in Part 11 of the Planning Act 2008. This existing legal framework would provide most of the powers needed to create the new IL regime, but requires certain modifications. As the long-term aim is for the CIL regime in Part 11 to apply only (a) to Greater London in respect of Mayoral CIL and (b) in relation to Wales, the Bill takes the approach of replicating the powers contained in Part 11 as a new Part 10A of the Planning Act 2008 (contained in Schedule 11), but with the necessary modifications for IL being made in new Part 10A rather than by modifying Part 11. The Bill makes provision to disapply CIL in England to the extent that IL applies, subject to any necessary transitional and saving provision.

938. IL will replace CIL for most or all purposes in England once fully implemented. Part 11 of the Planning Act 2008 allows the Secretary of State to make regulations providing for the imposition of CIL. The new legislation replicates the existing provisions of Part 11 in a new Part 10A, with necessary modifications to accommodate the specific policy proposals for IL. This approach also neatly separates out the IL provisions which will only apply to England from the CIL provisions which will apply only in Greater London (Mayoral CIL) and Wales once IL is fully implemented.

939. New section 204A(1) provides the Secretary of State with a basic power to make IL regulations, with the consent of the Treasury. This power is elucidated by subsequent provisions. This replicates, for England only, the equivalent provision in existing section 205(1) Planning Act 2008.

940. Subsection (2) imposes a policy test on IL regulations to be made under Part 10A and is therefore a limitation on the scope of what may be provided through IL regulations. Subsection (2) replicates the equivalent provision in existing section 205(2) Planning Act 2008, with two revisions:

a. in existing section 205(2), the wording of this provision is that Secretary of State 'shall aim to ensure…'; whereas in new section 204A(2) the wording is that Secretary of State 'must aim to ensure…'. This is not a substantive change and is made to reflect modern drafting practice; and

b. existing section 205(2) constrains the overall purpose of CIL to ensuring that 'the costs incurred in supporting the development of an area can be funded (wholly or partly) by developers of land in a way that does not make development of the area economically unviable'; whereas in new section 204A(2), the overall purpose is amended to take account of the fact that IL regulations may permit wider funding purposes than CIL. The revision made in section 204A(2) reflects the fact that provision under

new sections 204N(5), 204O(3) and 204P(3) allows IL regulations to specify circumstances in which IL receipts may be applied for purposes other than supporting the development of an area. A full explanation and justification of those provisions is set out below.

Justification for delegation

941. It is noted that on introduction of the Bill which became the Planning Act 2008, the Delegated Powers and Regulatory Reform Committee expressed concern in its Twelfth Report of 2007-08 that the CIL provisions were 'skeleton' in nature. The Government then substantially amended the proposed provisions so as to refine the scope of the CIL regime. In its Fifteenth Report of 2007-08, in response to those amendments, the Committee concluded: "though there remains less detail in the Bill than we might have wished, these and the other amendments already tabled provide a greater indication about how CIL will work, and we consider that **Part 11 of the Bill can no longer be described as skeleton legislation**" (emphasis added). The Department considers that the same applies as regards new Part 10A, which is in large substance a replication of Part 11.

942. Accordingly, where Part 11 already provides for delegated powers which are replicated in Part 10A either unamended, or with amendments to accommodate IL which do not fundamentally alter the nature of the delegated power, the Department's view is that there is established precedent for such provision, which is justified in relation to IL as it was in relation to CIL. In particular, the general principle that it is appropriate to delegate power to the Secretary of State to make IL regulations in new section 204A(1), subject to the policy test in new section 204A(2), is considered to be established, justified and necessary on that basis.

943. Notwithstanding that the Department considers the principle of delegating power to make Levy regulations to be necessary and justified (as in the case of CIL), it should be noted in this regard that:

a. the IL regulations are expected to be complex, lengthy and technical in nature, going beyond the level of detail appropriate for primary legislation. The same applied as regards the CIL regulations;

b. although the concept of developer contributions, and capturing planning gain / land value in the development context, is not itself new, providing for a single levy regime which operates on the basis of objective rates and criteria (rather than negotiated case-by-case solutions) is largely novel. It is therefore considered necessary for Government to retain a degree of flexibility to accommodate policy choices and policy development over time. For example, in the light of practical experience of impacts on development and levy receipts, changes to IL regulations may need to be made;

c. it is also necessary and appropriate for Government to retain a degree of flexibility to amend and update the IL regulations to (i) accommodate policy changes, (ii) address any unintended consequences and (iii)

properly place the levy regime within a complex and changing planning law framework;

d. in regard of points (b) and (c) above it is worth noting that the Community Infrastructure Levy Regulations 2010 have been amended on 18 occasions since 2010. For example, SI 2020/1226 was needed in order to amend the CIL exemption for social and affordable housing, to ensure that it could cover 'First Homes' – a new form of affordable housing, provided for in the first instance through planning policy rather than legislation; and

e. the IL regime will need to work differently for different types of development in different areas. For example, it is anticipated that it will be appropriate to provide for different ways for IL to apply to the largest and most complex developments, which tend to have more bespoke infrastructure and mitigation needs and should therefore be subject to a version of the IL regime which accommodates a much greater degree of in-kind provision of infrastructure by the developer, rather than straightforward cash payments. The precise mechanics of this will be technical and detailed, and are likely to be the subject of further consultation to test and finesse the policy. This is best suited to being provided for in delegated legislation.

944. Moreover, the Department takes the view that many of the powers in Part 10A which appear to be new delegated powers are, in fact and substance, not new delegated powers. This is because the Department could have opted to prepare this legislation by way of amendments to Part 11, rather than providing for a new Part 10A. It chose to provide for a new Part 10A because:

a. the Department intends to implement IL – that is to say, commence the relevant provisions – on a phased area-by-area basis. For some time, there will therefore be parallel IL and CIL systems in operation in England. That being so, it is better and more lucid to the reader and to those to whom the legislation applies to have parallel and separate sets of primary legislative provisions and powers. This reflects good law principles: making the legislation clear, coherent, effective and accessible; and

b. new Part 10A introduces the IL regime in relation to England only and accordingly Part 11 will continue to apply in relation to Wales (subject to any changes that the Senedd may make in that regard). Part 11 will also continue to apply for Mayoral CIL in Greater London and for charging authorities in England which already charge CIL (until they move over completely to IL). Again, it is better and certainly clearer for a reader or user of the legislation to have distinct legal provisions which apply to the various territorial areas to avoid confusion.

945. Given the approach described above, this delegated powers memorandum takes the following approach:

a. where a delegated power in new Part 10A is an identical replica of an existing delegated power which is already contained in Part 11 (save for any references to CIL being updated to IL, and the updating of cross-references), that power is recorded in a table at the end of the consideration of Schedule 11 of the Planning Bill. No further elaboration is provided beyond what is stated there.

   N.B. an exception to this approach is made for new section 204N(4), which replicates existing section 216(3). This power is a Henry VIII power and it is considered appropriate to offer more detailed consideration of this delegated power;

b. where a delegated power in new Part 10A replicates with modifications an existing delegated power in Part 11, commentary is provided below on why the amendments have been made and are considered necessary; and

c. where a delegated power in new Part 10A is a substantively new power, a full elaboration and justification for taking the power is provided.

Justification for procedure selected

946. The proposed Parliamentary procedure – class (i) draft affirmative resolution (Commons only) (see new section 204Z(2)-(3)) (and subject to Treasury consent) – is considered appropriate and necessary for sufficient Parliamentary control and scrutiny of the provision to be made in IL regulations. This is the same Parliamentary procedure as applies to CIL regulations under Part 11 (see existing section 222(2)). The provision made in IL regulations will, in terms of subject matter and scope, be substantively the same as for CIL regulations. Therefore, a draft affirmative process is considered appropriate for such regulations to provide the necessary Parliamentary scrutiny and debate on the detail of the legislative and policy proposals. The Department also considers, as in the case of CIL regulations under Part 11, that a Commons-only procedure is appropriate given the subject-matter of the IL regulations, which concerns the imposition of a charge/levy, attracting financial privilege.

New section 204B(1) Planning Act 2008 stating that a charging authority must charge IL in accordance with IL regulations

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

947. This provision makes it mandatory for a charging authority to charge IL. In this respect IL differs from CIL, which is discretionary: a charging authority may choose to charge CIL but does not have to (see existing section 206(1)).

948. The second amendment made to this provision is the addition of the words 'in accordance with IL regulations'. That is the basis on which it may be considered that this provision delegates a power. This clarifies that a charging authority's charging of IL must be in accordance with IL regulations.

949. The words 'of land' are omitted, as they do not add anything and may be confusing.

Justification for delegation

950. This largely replicates the equivalent provision in existing section 206(1) Planning Act 2008, subject to modifications which are necessary to provide for a mandatory IL charge and further clarificatory revisions.

Justification for procedure selected

951. As for new section 204A(1)-(2) above (see above).

New section 204B(4) Planning Act 2008 allowing IL regulations to provide for certain types of local authority to be the IL charging authority in place of the authority which would be the charging authority under subsection (2) or (3)(a)

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

952. This provision allows IL regulations to provide for certain types of local authority to be the IL charging authority in place of the authority which would be the charging authority under subsection (2) or (3)(a).

Justification for delegation

953. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 206(4) Planning Act 2008. Section 206(4)(b) (county borough councils) has not been replicated as county borough councils exist in Wales but not in England (Part 10A being England-only).

Justification for procedure selected

954. As for new section 204A(1)-(2) above (see above).

New section 204B(6) Planning Act 2008 allowing IL regulations to make transitional provision where the charging authority for an area changes

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

955. The charging authority for an area may change, for example as a result of local government restructuring, or the establishment of a development corporation for an area with the functions of a local planning authority under the Planning and Compulsory Purchase Act 2004. This provision allows IL regulations to make provision dealing with transitional issues in connection with IL which may arise as a result.

956. For example, it may be appropriate to make provision governing which authority is the charging authority for developments which, prior to the charging authority changing, have already (a) been the subject of an application for planning permission or (b) been granted planning permission or (c) commenced.

Justification for delegation

957. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 205(6) Planning Act 2008, with the following discrete change.

958. Section 206(6) applies only when a Mayoral development corporation becomes or ceases to be a charging authority for an area. As in the Infrastructure Levy regime a wider range of bodies may become charging authorities, it is appropriate that IL regulations be empowered to make transitional provision in any case of the charging authority for an area changing.

Justification for procedure selected

959. As for new section 204A(1)-(2) above (see above).

New section 204D(4) Planning Act 2008 allowing IL regulations to make provision for an owner, developer or other specified person to be liable for IL where development is commenced and nobody assumes liability, or if other specified circumstances arise

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

960. The concept of 'assumption of liability' is central to IL: the intended operation of IL is that a person will assume liability to pay IL, and that person then becomes liable upon commencement of development (see in particular new section 204D(1) and (3)).

961. However, it cannot be legally permissible for liability to pay IL to be avoided altogether simply by no-one assuming liability. If that were the case, then development could be carried out without anyone being liable to pay IL. This would frustrate the policy purposes of IL and would lead to a shortfall in the availability of infrastructure funding.

962. Likewise, IL liability should nonetheless arise even in the event that the person who has assumed liability withdraws that assumption, or is otherwise unable to pay the liability for some reason.

963. This provision therefore requires IL regulations to make provision about who is liable in default if no-one assumes liability, and in other specified circumstances such as the withdrawal or insolvency of a person who has assumed liability.

Justification for delegation

964. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 208(4) Planning Act 2008, with the following change.

965. It is envisaged that it may be appropriate to provide in IL regulations for 'another specified person' to be liable in the absence of anyone having assumed liability to pay IL – not just an owner or developer. This is because if no person has assumed liability and the collecting authority discovers this after completion of a development, it may be necessary to make particular provision governing who is then liable. For example, it is likely in at least some circumstances to be appropriate not to have liability automatically default to the landowner(s), as following completion of development the landowners may be end-occupiers (that is, homeowners). It is not desirable that they should face an unexpected liability in those circumstances. It is therefore necessary for IL regulations to be able to provide who should be liable in different circumstances.

Justification for procedure selected

966. As for new section 204A(1)-(2) above (see above).

New section 204D(5) Planning Act 2008 allowing IL regulations to make certain kinds of provision in relation to liability

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

967. This provision provides express powers for IL regulations to make certain kinds of provision in relation to liability.

968. In particular, it allows IL regulations to make provision about joint liability (with or without several liability). This may be appropriate where, for example, two or more persons seek to assume liability, and/or if no-one assumes liability on a development where there are multiple landowners or developers. It also allows IL regulations to make provision about the liability of partnerships.

969. It allows IL regulations to provide for the splitting of an IL liability, via a partial assumption of liability and/or an apportionment of liability.

970. It allows IL regulations to make provision for the withdrawal or cancellation of an assumption of liability, or the transfer of liability (assumed or default). Finally, it allows IL regulations to make provision about exemption from or reduction in liability.

Justification for delegation

971. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 208(5) Planning Act 2008, with the following changes.

972. Existing section 208(5)(d)(ii) (IL regulations may include provision for appeals) has not been replicated. This is because powers to make provision for appeals in connection with IL are now all dealt with in a separate discrete section; new section 204V.

973. New sub-paragraph (h) – the power to make provision about exemption from or reduction in liability – is a new addition to the text. But it is not a substantively new power, as the powers under Part 11 clearly permit exemptions and reductions (see sections 220(3) and 222(1)(c) Planning Act 2008). It is considered helpful to the reader and more coherent to place this power within a section concerned with liability, rather than just in a general section towards the end of the relevant Part.

Justification for procedure selected

974. As for new section 204A(1)-(2) above (see above).

New section 204G(1) Planning Act 2008 allowing IL regulations to set out requirements in relation to the issuing of a charging schedule

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

975. A charging authority must issue a 'charging schedule' which establishes rates or other criteria for the charging of IL in respect of development in its area. Such a document must be issued in accordance with provision made in IL regulations. The remainder of this section goes on to explain various kinds of provision which IL regulations may make.

976. It is to be noted here that a charging authority 'must' issue a charging schedule. That is to say that charging IL will be mandatory, as opposed to the equivalent provision for CIL, where charging authorities have discretion whether to issue a charge CIL by introducing a charging schedule.

Justification for delegation

977. This is not in substance a new delegated power. Existing section 211 of the Planning Act 2008, read as a whole, is and has always been clear that IL regulations may make provision about various matters governing the issue of a charging schedule and the setting of rates. The addition of the words 'in accordance with IL regulations' in subsection (1) therefore makes clear that this is a matter on which IL regulations will make further provision. It is important that such clarification is expressed on the face of the legislation, as IL will be a mandatory charge when implemented.

Justification for procedure selected

978. As for new section 204A(1)-(2) above (see above).

New section 204G(2) Planning Act 2008 allowing IL regulations to specify the extent to which, and manner in which, a charging authority must have regard to the desirability of maintaining or increasing the level of developer-funded affordable housing delivery

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

979. The delegated power within this provision is comprised in the ability for IL regulations to specify the extent to which, and manner in which, charging authorities must have regard to the desirability of ensuring over a specified period that the level of affordable housing funded by developers, and the level of funding provided by developers, is equal to or exceeds the level which was provided over an earlier specified period.

Justification for delegation

980. This is a new provision and therefore a new delegated power. However, the approach taken – of setting out in primary legislation the considerations which charging authorities are to take into account, but allowing IL regulations

to refine the extent to and manner in which charging authorities are to have regard to such considerations – is consistent with the established approach in Part 11 (see existing section 211(2) – provision corresponding to which is made in Part 10A in new section 204G(4), considered further below).

981. The Department intends to take a 'test and learn' approach to the implementation of IL. This means that IL will be introduced gradually in an increasing number of areas over a number of years. Over this time, it is very likely that there will be ongoing development of affordable housing policy and programme delivery, and it is also likely that economic circumstances may vary over time. Retaining this degree of flexibility is considered necessary to seek to ensure that IL rates are not set at levels which capture too little value and deliver too little affordable housing, or which seek to capture and deliver too much.

Justification for procedure selected

982. As for new section 204A(1)-(2) above (see above).

New section 204G(3) Planning Act 2008 allowing IL regulations to make provision about how to measure the levels of affordable housing provision and developer funding, for the purposes of new section 204G(2)

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

983. This provision is supplemental to new section 204G(2), considered above. In order to take into account the considerations in section 204G(2), a charging authority will need to know how to measure existing and projected levels of affordable housing delivery in its area and developer funding. This provision allows IL regulations to make provision about how those matters are to be measured.

Justification for delegation

984. As noted above, the Department intends to take a 'test and learn' approach to the implementation of IL. This means that IL will be introduced gradually in an increasing number of areas over a number of years. Over this time, it is very likely that there will be ongoing development of affordable housing policy and programme delivery, and it is also likely that economic circumstances may vary over time. Retaining this degree of flexibility is considered necessary to seek to ensure that IL rates are not set at levels which capture too little value and deliver too little affordable housing, or which seek to capture and deliver too much. It is necessary for IL regulations to specify how to measure levels of affordable housing and levels of funding provided by developers if the policy is to be applied correctly by charging authorities.

Justification for procedure selected

985. As for new section 204A(1)-(2) above (see above).

New section 204G(4) Planning Act 2008 allowing IL regulations to specify the manner and extent to which charging authorities must have regard to the matters listed when setting rates or other criteria

Powers conferred on: Secretary of State, with the consent of the Treasury
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Draft affirmative procedure (Commons only)

Context and Purpose

986. These paragraphs of this memorandum are concerned with the power in the introductory wording in subsection (4). The further powers to specify matters in IL regulations in sub-paragraphs (a)-(c) are given separate consideration under a subsequent heading.

987. In setting rates and other criteria, a charging authority must have regard to the matters specified in sub-paragraphs (a)-(d) when setting IL rates. Under this provision, IL regulations may specify the extent to which, and manner in which, charging authorities must have such regard.

Justification for delegation

988. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the approach taken in the equivalent provision in existing section 211(2) Planning Act 2008.

989. The list of matters in the sub-paragraphs to which charging authorities must have regard has been modified. This reflects the fundamental differences between IL and CIL in terms of the level and type of funding they are aiming to achieve.

990. However, the underlying nature of this delegated power – that is, to specify the manner in which and extent to which charging authorities must have such regard to certain matters – remains the same.

Justification for procedure selected

991. As for new section 204A(1)-(2) above (see above).

New section 204G(4)(a)-(b) Planning Act 2008 allowing IL regulations to specify matters relating to the economic viability of development, and actual or potential economic effects of matters listed in (b) to which charging authorities must have regard when setting rates or other criteria

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

992. This provision allows IL regulations to specify matters relating to the economic viability of development, and potential or actual economic effects (including increases in the value of land) of development plans, planning permissions, infrastructure provision and any other matter affecting the value of land.

993. This will allow the charging authority to be directed to explicitly consider the extent of increases in land value (however arising), and the extent to which they may be captured. This is a change from CIL, in which consideration was led by an assessment of infrastructure need, rather than the amount of value that could be captured. Rate-setting for IL will be a balance between on the one hand maximising land value capture, and on the other avoiding setting rates at a level which has a detrimental effect on the viability of development.

Justification for delegation

994. Sub-paragraph (a) replicates the equivalent provision in existing section 211(2)(b) Planning Act 2008, save that it no longer expressly includes the power to specify actual or potential economic effects of planning permission, which is now part of new sub-paragraph (b).

995. In terms of new sub-paragraph (b), it is considered necessary and appropriate to take a power to define these matters through regulations. It may, for example, become appropriate over time to change the approach required of charging authorities depending on the wider economic circumstances, and/or to reflect matters such as the total housing stock being built.

Justification for procedure selected

996. As for new section 204A(1)-(2) above (see above).

New section 204G(4)(c) Planning Act 2008 allowing IL regulations to specify amounts provided in connection with development in the authority's area, and the time period over which such amounts have been provided, to which charging authorities must have regard when setting rates or other criteria

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

997. This power allows IL regulations to specify matters other than IL which are 'provided in connection with development' over a specified period which a charging authority should take into account when setting rates.

998. One way this provision could be exercised would be for IL regulations to make provision which requires charging authorities when setting rates to seek to achieve an overall level of value capture through IL which corresponds to the level of developer contributions (which may include CIL and contributions secured via section 106 TCPA 1990 obligations) secured over a specified period prior to the introduction of IL.

Justification for delegation

999. It is necessary to be able to make provision of this kind in order to adjust the regulations in response to changing economic circumstances, including the wider planning policy and infrastructure funding environment.

Justification for procedure selected

1000. As for new section 204A(1)-(2) above (see above).

New section 204G(6) Planning Act 2008 allowing IL regulations to make particular kinds of provision about setting rates or criteria

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1001. This provision expressly allows IL regulations to permit or require charging authorities to take particular approaches when setting rates or other criteria.

Justification for delegation

1002. Broadly, the same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 211(4) Planning Act 2008, with the following change.

1003. Sub-paragraph (f) is a new provision, expressly allowing IL regulations to permit or require charging authorities to provide for IL rates to change over time or on the occurrence of specified events, including making provision about how and when they are to change. This addition reflects two core aims of the policy intention for IL, which are:

a. to be able to provide for a charge which is buoyant – that is responsive to values and market conditions. The power could be used to permit or

require charging schedules to make provision for IL rates to automatically adjust in response to, for example, local build costs; and

b. to be able to provide for a charge which seeks to capture more value over time. The power could be used to permit or require charging schedules to make provision for IL rates to be subject to scheduled staged increases over time.

1004. It is consistent with the general approach to making provision for rate-setting that these matters should be the subject of a delegated power – which allows for detailed and flexible provision to be made in IL regulations.

Justification for procedure selected

1005. As for new section 204A(1)-(2) above (see above).

New section 204G(8) Planning Act 2008 allowing IL regulations to make specified kinds of provision in requiring charging schedules to adopt specified kinds of methods of calculation

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1006. This provision is a non-exhaustive list of the ways in which IL regulations may make further provision when permitting or requiring charging schedules to adopt specified methods of calculation.

1007. This provides express power to prescribe several proposed features of the way IL will be calculated (some but not all of which are already a feature of CIL), including: charging by reference to value and floorspace (sub-paragraph (b)); a minimum value threshold below which IL is charged at a nil rate calculated by reference to local build costs (sub-paragraph (g)); the potential for differential rates by types of development (sub-paragraph (a) and (f)); the potential for differential rates by different areas within a charging authority's area such as one rate applicable in town centres or on brownfield land and another rate applicable elsewhere (sub-paragraphs (c) (e) and (f)); and indexation of minimum value thresholds in line with inflation (sub-paragraph (d)).

Justification for delegation

1008. Broadly, the same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 211(6) Planning Act 2008, with the following change.

1009. Sub-paragraph (g) is a new provision, expressly allowing IL regulations to permit or require minimum thresholds below which IL is charged at a nil or reduced rate to be determined in a specified way, etc. As noted above, this paragraph provides express power for the proposed policy approach of having a minimum value threshold below which IL is charged at a nil rate calculated by reference to local build costs. This will facilitate the policy aim of IL of being able to provide for a charge that is set at an appropriate level and is buoyant (that is, responsive to values and market conditions), and which seeks to ensure that development is not rendered unviable.

1010. The express reference to IL regulations making provision which may require charging authorities to publish information relating to the costs of development could be used to require charging authorities to periodically publish information about build costs in their area. This could be used to inform rate-setting; it could also be used to trigger an automatic adjustment in an IL rate or (more likely) a minimum value threshold in combination with the powers in new section 204G(4)(f).

1011. It is consistent with the general approach to making provision for rate-setting that these matters of detail and complexity should be the subject of a delegated power to legislate, which can be amended to reflect policy development over time.

Justification for procedure selected

1012. As for new section 204A(1)-(2) above (see above).

New section 204G(9) Planning Act 2008 allowing IL regulations to require a charging authority to provide estimates in connection with IL liability

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1013. This provision allows IL regulations to require charging authorities to provide estimates in connection with IL. This includes estimates of the amount of IL chargeable on a development.

1014. This also expressly includes estimates in connection with in-kind payments of IL, such as in the form of delivery of affordable housing. It is envisaged that charging authorities will be able to permit or require a developer to meet part of an IL liability through in-kind payments – in particular, in the form of delivery of affordable housing. It is considered that it may be useful for IL regulations to require estimates to be provided, such as an estimate of the amount of affordable housing a developer will be required to deliver, or an estimate of the amount of IL liability that will be discharged through such an in-kind payment.

Justification for delegation

1015. Broadly, the same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 211(8) Planning Act 2008, with the following changes.

1016. The wording 'an estimate of the amount of CIL chargeable' is replaced with 'estimates in connection with the IL chargeable'; and clarificatory wording '(including estimates of the amount of IL that is chargeable and estimates in connection with any payments in a form other than money permitted under section 204R(4))' is included in the new provision.

1017. Both changes are reflective of the policy that:

a. it may be appropriate for more than one estimate to be provided (as development values, on which IL is proposed to be based, may fluctuate); and

b. it may be appropriate for estimates of different elements of IL to be provided (for example estimates of the amount of IL that will be required or permitted to be paid in kind through, for example, the provision of affordable housing, as well as estimates of the overall 'headline' IL liability of a development).

1018. Neither change is considered to fundamentally alter the underlying nature of the delegated power, but rather to enhance and clarify its scope.

Justification for procedure selected

1019. As for new section 204A(1)-(2) above (see above).

New section 204L(2) Planning Act 2008 allowing IL regulations to make provision about when a charging schedule may, must or may not take effect

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1020. This provision allows IL regulations to make provision about when a charging schedule may, must or may not take effect.

1021. Unlike CIL, it will be mandatory for charging authorities to charge IL. It is therefore appropriate and necessary to make provision as to when a charging schedule must take effect.

Justification for delegation

1022. The Department intends to take a 'test and learn' approach to introduction of IL, in order to better understand the impacts on local revenues, the mitigation of the impacts of development, and the viability of development. This means rolling it out over time and across a variety of circumstances, in which authorities may be at different phases of implementing other stages of planning reforms, including new-style local plans.

1023. The flexibility to make provision in IL regulations will allow for more effective alignment with other aspects of the planning system, at the point any particular charging authority is bringing a charging schedule into effect.

Justification for procedure selected

1024. As for new section 204A(1)-(2) above (see above).

New section 204L(4) Planning Act 2008 allowing IL regulations to make provision about documents to be published alongside a charging schedule

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1025. This provision allows IL regulations to make provision about documents which must be published alongside the charging schedule.

1026. New section 204G(9) (which is considered above and corresponds to existing section 211(8)) allows for a charging authority to be required to publish early estimates of an IL liability. Under the proposed system for calculating and charging IL, it will not be possible to arrive at a final assessment of a development's liability until its gross value is known. This provision could be used to require a charging authority to publish standard projected development value figures for their area, that could be used for the purposes of arriving at an early estimate, before a development's final gross value is known.

Justification for delegation

1027. This provision does not directly correspond to any in Part 11 (although it is expressed as a kind of provision which may be made under new section 204L(3) which, as noted above, corresponds to existing section 214(2)).

1028. As new section 204L(3) enables IL regulations to make provision about publication of a charging schedule after approval, it follows that new section 204L(3) (which clarifies the scope of the section 204L(3) power) should also be a delegated power.

Justification for procedure selected

1029. As for new section 204A(1)-(2) above (see above).

New section 204M(1) Planning Act 2008 allowing IL regulations to make provision about when a charging authority must issue a charging schedule

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1030. This is a power for IL regulations to make provision about when a charging authority must issue a charging schedule.

1031. It is constrained by section 204M(2), which provides that a charging authority must be given at least 12 months' notice by the Secretary of State before it can be required to issue a charging schedule under this section.

1032. Unlike CIL, it will be mandatory for charging authorities to charge IL. On first introduction of IL in an area, it would run contrary to the policy aims of IL if a charging authority could delay introduction of IL by delaying issuing a charging schedule. It is necessary to be able to make provision to require the issue of a charging schedule by a specified point or on the occurrence of a specified event.

Justification for delegation

1033. This is a new delegated power.

1034. As noted above, the exercise of this power is subject to a significant procedural constraint in section 204M(2). The purpose of the constraint is to ensure procedural fairness by requiring adequate notice to be given to a charging authority in the event that the authority is required to issue a charging schedule under provision made under 204M(1).

1035. The Department intends to take a 'test and learn' approach to implementation of IL. In this context, this means making decisions about when charging authorities must issue a charging schedule on the basis of early evidence on how the new levy is working, and whether further regulations and detailed changes are required before wider roll-out of the new IL system.

1036. The flexibility to make provision in IL regulations will allow for more effective alignment with other aspects of the planning system (including future reforms thereto), at the point any particular charging authority is to issue a charging schedule. For example, this power may be used to facilitate synchronisation with certain events, such as the issue of a new-style local plan.

Justification for procedure selected

1037. As for new section 204A(1)-(2) above (see above).

New section 204M(3) Planning Act 2008 allowing the Secretary of State to appoint a person to prepare and issue a charging schedule on behalf of a charging authority

Powers conferred on: *Secretary of State*
Powers exercised by: *Appointment*
Parliamentary Procedure: *None*

Context and Purpose

1038. This is a power for the Secretary of State to appoint a person to prepare and issue a charging schedule on behalf of a charging authority, where a charging authority has failed to meet an obligation to introduce a charging schedule by a specified time under section 204M(1).

1039. Unlike CIL, it will be mandatory for charging authorities to charge IL by a certain time. It would frustrate the implementation of IL if a charging authority could delay the introduction of IL by failing to issue a charging schedule. It is therefore necessary that the Secretary of State should have a power to appoint a person in such circumstances in order to ensure that a charging schedule is properly prepared and issued in a timely fashion.

Justification for delegation

1040. The function of preparing and issuing a charging schedule is a function of a charging authority that rightly sits with a charging authority in its capacity as such. It is not considered to be a legislative function but rather an official or administrative function.

1041. Accordingly, the power of the Secretary of State to appoint a person to fulfil this function on behalf of a charging authority is not considered to be a delegation of a legislative function or a disguised legislative power.

Justification for procedure selected

1042. This is not considered to be a delegation of a legislative function.

New section 204M(4) Planning Act 2008 allowing IL regulations to make provision about the Secretary of State's ability to appoint a person to prepare and issue a charging schedule on behalf of a charging authority

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1043. Section 204M(3) – being the Secretary of State's ability to appoint a person to prepare and issue a charging schedule on behalf of a charging authority – is considered and described above.

1044. This provision, section 204M(4), is a list of powers to enable detailed procedural and related provision to be made relating to the exercise by the Secretary of State of such power of appointment.

Justification for delegation

1045. This is a new delegated power.

1046. It is necessary to set out in secondary legislation all procedural and related detail which concerns the exercise of the power to appoint and all connected administrative matters (including, for example, costs). This kind and level of detail is more appropriately set out in delegated legislation. This will enable flexibility and adaptation of the provision as needed over time to respond to a changing policy and wider planning law background. It will also enable the exercise of the power to be properly targeted where it is needed most, if it transpires that the power to appoint should only apply in certain circumstances.

Justification for procedure selected

1047. As for new section 204A(1)-(2) above (see above).

New section 204N(1) Planning Act 2008 requiring IL regulations to provide that IL charging authorities must apply IL, or cause it to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1048. This provision requires IL regulations to, subject to limited exceptions, require charging authorities to apply IL or cause it to be applied to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure.

1049. Subject to new section 204N(5), which is considered below, this provision may be considered to be the overarching restriction on what IL may be spent on.

Justification for delegation

1050. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 216(1) Planning Act 2008.

1051. It adds a cross-reference to ‘this section’ (that is, new section 204N) which reflects the fact that new section 204N(5), considered below, provides for an exception to the general overarching position in this provision.

1052. It refers to supporting 'the development of an area', whereas existing section 216(1) refers to supporting 'development'. This is considered to be a clarificatory drafting improvement.

Justification for procedure selected

1053. As for new section 204A(1)-(2) above (see above).

New section 204N(2) Planning Act 2008 allowing IL regulations to make provision about the extent to which IL may or must be applied to a particular description of infrastructure

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1054. This provision allows IL regulations to make provision about the extent to which the IL paid to a charging authority may or must be applied to funding infrastructure of a particular description.

1055. It could be used to make provision 'ring-fencing' a proportion of a charging authority's IL receipts to be applied towards specific infrastructure – for example, specifying that a minimum amount of IL receipts must be spent on providing affordable housing in an area.

Justification for delegation

1056. This is a new delegated power.

1057. The Department considers that it is necessary to be able to adjust these kinds of provisions in IL regulations over time. It may, for example, become appropriate over time to change the approach required of charging authorities to spending IL depending on the wider infrastructure and affordable housing funding environment. This environment will not remain static following introduction of IL, and changes in it will have an impact on what needs to be funded through IL.

1058. It is also consistent with the established general approach of using delegated powers to make provision about spending, within the parameters of section 204N(1).

Justification for procedure selected

1059. As for new section 204A(1)-(2) above (see above).

New section 204N(4) Planning Act 2008 allowing IL regulations to amend the list of matters included within, and/or to exclude matters from, the meaning of 'infrastructure'

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1060. Section 204N(3) sets out a non-exhaustive list of matters which are within the definition of 'infrastructure' (towards which IL may be applied in accordance with section 204N(1)).

1061. This provision allows IL regulations to amend subsection (3) so as to:

a. add, remove or vary a list entry; and/or

b. list matters which are expressly excluded from the meaning of 'infrastructure'. (If this limb of the power is used, the consequence would be that it would be express on the face of Part 10A that IL could not be applied to the relevant matter, unless falling within one of the exceptions listed in section 204N(1)).

1062. It is acknowledged that this is Henry VIII provision (as is the equivalent provision in existing section 216(3) Planning Act 2008).

1063. CIL Regulations made under Part 11 have made use of this power: the original CIL Regulations 2010 removed 'affordable housing' from the list of matters included within the meaning of 'infrastructure', following a policy decision that CIL would generally not be used to fund affordable housing. (Note that 'affordable housing' appears on the list in new Part 10A, because the policy intent of IL is that it should be used to fund and secure delivery of affordable housing, among other matters.)

Justification for delegation

1064. The same power is considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 216(3) Planning Act 2008.

1065. It will be important to be able to adjust and adapt the meaning of infrastructure for the new Levy, just as it was important to be able to do so in the context of CIL. This could reflect not only policy development but also responses to Court determinations. For example, if a charging authority was spending IL receipts on matters which could not properly be considered to be infrastructure, it may become necessary to make this express on the face of the legislation by varying or adapting the list.

Justification for procedure selected

1066. As for new section 204A(1)-(2) above (see above).

New section 204N(5) Planning Act 2008 allowing IL regulations to make provision about circumstances in which authorities are not required to apply IL, or cause IL to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1067. This provision allows IL regulations to make provision about circumstances in which authorities are not required to apply IL, or cause IL to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure. That is to say, IL regulations may make provision about when authorities can spend IL on things other than 'infrastructure'.

1068. This is an important exception to the general overarching principle in section 204N(1).

Justification for delegation

1069. This is a new delegated power.

1070. This enables IL to be spent so that maximum gain and benefit can be forthcoming for local communities in circumstances which are difficult to predict. It provides for maximum flexibility and use of IL receipts. IL aims to capture at least as much value, if not more, than CIL. Innovations, such as allowing rates to increase over time, may increase the amount of money available to be spent by an authority, compared with the current position. The Department envisages needing to take decisions on what IL may fund outside of infrastructure on the basis of how well the new levy performs in future, particularly in comparison to the current CIL system. Therefore, it is necessary to be able to provide for this in secondary legislation, and also to be able to adjust the ability to spend IL receipts according to policy, economic and wider societal developments.

Justification for procedure selected

1071. As for new section 204A(1)-(2) above (see above).

New section 204N(7) Planning Act 2008 allowing IL regulations to require charging authorities to prepare and publish lists of what is to be or may be wholly or partly funded by IL

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*

Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1072. This provision allows IL regulations to require charging authorities to publish lists of what is to be or may be wholly or partly funded by IL. IL regulations may, but do not have to, provide for such a list be binding as to spending in some or all circumstances. Such a list may be permitted or required to be published as part of an infrastructure delivery strategy (see new section 204Q), or separately.

Justification for delegation

1073. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 216(5) Planning Act 2008, with two changes.

1074. In sub-paragraph (b), the word 'or' is inserted, and the word 'both' replaces 'a combination'. This is not considered to be a significant amendment to the nature of the delegated power. It is a minor drafting change for clarity.

1075. Sub-paragraph (d) is new, allowing IL regulations to permit or require a list to be prepared and published as part of an infrastructure delivery strategy. Lists under this section and infrastructure delivery strategies may be seen to have some similarities and synergies, and so it is considered that it may be appropriate to make provision which can align the two processes and provide for content in one to be used in the other.

Justification for procedure selected

1076. As for new section 204A(1)-(2) above (see above).

New section 204N(9) Planning Act 2008 allowing IL regulations to require charging authorities to prepare and publish lists of what is to be or may be wholly or partly funded by IL

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1077. This provision enables IL regulations to make provision about accountability and scrutiny of IL receipts.

Justification for delegation

1078. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the

equivalent provision in existing section 216(7) Planning Act 2008, with a limited modification.

1079. In s.204N(9)(e) the words in brackets are added for clarity and also the words 'or retain' are additional. It is considered necessary to add the words "or retain" money to this provision to make clear that in some circumstances it may be necessary to make provision which allows a charging or other authority to retain money.

Justification for procedure selected

1080. As for new section 204A(1)-(2) above (see above).

New section 204O(3) Planning Act 2008 allowing IL regulations to provide for circumstances in which money subject to a duty under section 204O(1) may be used for purposes other than those specified in section 204O(2)

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1081. Where IL receipts are subject to a duty under section 204O(1), section 204O(2) sets out the general position on what such IL receipts may then be permitted to be spent on.

1082. This provision allows IL regulations to provide for exceptions from the position in section 204O(2) – that is to say, circumstances in which a specified amount of such IL receipts may be used for specified purposes other than those mentioned in section 204O(2).

Justification for delegation

1083. This is a new delegated power.

1084. It corresponds to the widening of purposes towards which IL may be applied under the IL regulations (that is, in cases not subject to a section 204O(1) duty) – see new section 204N(5). See above for an explanation and justification of the new approach in section 204N(5).

1085. The policy intention of section 204O corresponds to that of its Part 11 equivalent and is two-fold: to make provision whereby IL collected in certain areas (i) must be passed to specified persons, and (ii) may be subject to different rules about spending – potentially (and actually in the case of the 'neighbourhood share' provisions in regulations 59A-59E of the CIL Regulations 2010) with wider freedom to spend the receipts.

1086. If provision of this kind was not included in this new section, it would follow that monies passed under a section 204O duty would in some ways be

subject to narrower, not wider, rules on spending. This is because IL regulations would not be expressly empowered to provide that monies subject to a section 204O duty could be spent on other specified purposes.

1087. This provision has therefore been included to ensure that IL regulations may make appropriate and consistent provision about spending here – so that the range of purposes that IL receipts that are subject to a duty under new section 204O may be spent on is at least as wide as the range of purposes that IL receipts which are not subject to such a duty may be spent on under new section 204N.

Justification for procedure selected

1088. As for new section 204A(1)-(2) above (see above).

New section 204P(3) Planning Act 2008 allowing IL regulations to provide for circumstances in which money to which section 204P(2) applies may be used for purposes other than those specified in section 204P(2)

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1089. Where new section 204P applies, section 204P(2) sets out the general position on what relevant IL receipts may then be permitted to be spent on.

1090. This provision allows IL regulations to provide for exceptions from the position in section 204P(2) – that is to say, circumstances in which a specified amount of such IL receipts may be used for specified purposes other than those mentioned in section 204P(2).

Justification for delegation

1091. This is a new delegated power.

1092. As with new section 204O(3) considered above, it corresponds to the widening of what IL regulations may allow IL receipts generally to be spent on. See above for an explanation and justification of the new approach in sections 204N(5) and 204O(3).

1093. If provision of this kind was not included in this new section, it would follow that where new section 204P applies, relevant IL receipts would in some ways be subject to narrower, not wider, rules on spending. This is because IL regulations would not be expressly empowered to provide that IL receipts under this provision could be spent on other specified purposes.

1094. This provision has therefore been included to ensure that the range of matters on which IL receipts subject to section 204P may (subject to IL

regulations) be spent is at least as wide as the range of matters on which IL receipts not subject to such a duty may be spent under new section 204N. Again, this is to allow appropriate and consistent provision to be made in IL regulations – so that it can align with any like provision made under new sections 204N(5) or 204O(3).

Justification for procedure selected

1095. As for new section 204A(1)-(2) above (see above).

New section 204Q(2)(b) and (3) Planning Act 2008 allowing IL regulations to prescribe information which must be included in a charging authority's infrastructure delivery strategy

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

1096. New section 204Q establishes an obligation for a charging authority to prepare and publish an infrastructure delivery strategy (IDS) for its area. An IDS will give an overarching view of the strategic plans for spending IL in a charging authority's area, including details of IL spend on affordable housing (see new section 204Q(2)(a)).

1097. An IDS may also set out the plans of the charging authority in relation to the provision, improvement, replacement, operation and maintenance of infrastructure in an authority's area, including infrastructure not funded by IL. It may also contain other such information as prescribed by IL regulations. To the extent this provision is a delegated power, it provides that:

a. IL regulations can require an IDS to set out the plans of the charging authority in relation to the provision, improvement, replacement, operation and maintenance of infrastructure, as opposed to this being at the discretion of the charging authority; and

b. generally, IL regulations can prescribe further information which IDS must include.

Justification for delegation

1098. The delegated powers sought allow for necessary flexibility in the content of an IDS. It is the Department's intention that the core of an IDS is a high-level summary of the strategic priorities of the charging authority as regards spending IL. The powers to provide for additional content in regulations allow a test and learn approach to be taken, with additional content to be introduced in stages so as to ensure that the production of an IDS does not become unduly burdensome on charging authorities but also contains meaningful information.

Justification for procedure selected

1099. As new section 204A(1)-(2) above (see above).

New section 204Q(6)-(8) Planning Act 2008 requiring IL regulations to make provision for the independent examination of infrastructure delivery strategies and how that is to be conducted

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1100. These provisions require IL regulations to make provision for the independent examination of IDSs, and for such examination to be combined with the examination of either an IL charging schedule or local plan. They expressly include the ability to make various kinds of procedural and related provision.

Justification for delegation

1101. The Department wishes to retain flexibility to prescribe how IDSs are to be examined to ensure that examination is focused on a charging authority following the correct procedure in setting out their strategic plans for IL (for example, sufficient consultation and regard to national policies) and the other content requirements of an IL as may be specified in regulations, rather than the actual decisions of the charging authority in allocating IL spend. Making provision for independent examination of IDSs in regulations will allow for the examination process to be adjusted if required once IL is introduced in select areas on a test and learn basis.

1102. An IDS examination must be combined with the examination of a charging schedule or a local plan to ensure the administrative requirements of the IDS examination on the charging authority are minimised. As this will be a new arrangement, it is considered necessary to retain flexibility on how this combination is to be implemented, and to allow for this to be adjusted in regulations if required.

1103. In addition, it will be necessary to make detailed provision in IL regulations about procedural matters connected with carrying out an examination, such as who is to carry out the examination, what the examination entails and how it is to be carried out. This kind of detail is best set out in delegated legislation, and this enables quick amendment as needed over time.

Justification for procedure selected

1104. As for new section 204A(1)-(2) above (see above).

New section 204Q(9) allowing the Secretary of State to publish guidance in relation to the preparation, publication, revision or replacement of infrastructure delivery strategies

Powers conferred on: *Secretary of State*
Powers exercised by: *Publication of guidance*
Parliamentary Procedure: *None*

Context and Purpose

1105. This provision expressly allows the Secretary of State to issue guidance to charging authorities in relation to the preparation, publication, revision or replacement of infrastructure delivery strategies.

Justification for delegation

1106. The IDS is an entirely new aspect of the levy regime, and it will be necessary to provide related guidance to charging authorities on how this is to be embedded and operational, taking account of the wider planning system too. It will be necessary to set out all related administrative matters within guidance and also to consult with key stakeholders and authorities about the kinds of steps which can helpfully be synchronised within the new system. It will be necessary for such administrative matters to be quickly updated over time and be flexible.

Justification for procedure selected

1107. No procedure is considered necessary for the publication of this kind of guidance. This is consistent with the established policy in Part 11 regarding general guidance for CIL (see existing section 221 Planning Act 2008 allowing guidance to be provided more generally on the CIL regime).

New section 204Q(10) Planning Act 2008 allowing IL regulations to provide that a public authority other than the charging authority is to exercise a function under section 204Q

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1108. This provision allows IL regulations to provide that a public authority other than the charging authority is to exercise a function under section 204Q.

1109. This provision is necessary as there may be circumstances in which the IL charging authority is not the authority best placed to set out the strategic plan to spend IL, and any other information required by regulations, in an IDS. In those circumstances, it may be appropriate for another public authority to fulfil one or more functions of the charging authority under this section.

Justification for delegation

1110. It is necessary to take such a delegated power because circumstances may arise where it is not possible to fulfil the requirement to prepare and publish an IDS without such intervention from another public authority. Therefore, if this power were not available, the policy aim of new section 204Q would be frustrated. Examples of kinds of circumstances where this may arise are restructuring of local government functions or failure of a local authority to fulfil its legal functions. It is therefore considered appropriate to enable provision to be made in delegated legislation.

1111. This also corresponds with the approach in, for example, the established delegation of power in section 206(4) – replicated in new section 204B(4) – which allows IL regulations to allow another public authority to exercise the functions of a charging authority generally.

Justification for procedure selected

1112. As for new section 204A(1)-(2) above (see above).

New sections 204Q(11)-(12) Planning Act 2008 allowing IL regulations to make procedural and other provision about infrastructure delivery strategies

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1113. These provisions consist of a list of general procedural and related types of provision which IL regulations must and may make in connection with infrastructure delivery strategies.

Justification for delegation

1114. It is necessary to specify the detail of all procedural and connected matters in secondary legislation. The level of detail will be considerable and may change as this policy embeds over time. It is necessary to be able to set out the detail in a form which can be quickly revised and respond to how the policy is operating on the ground. As noted above, IDSs are a new aspect of the levy policy and it will be necessary to pivot how this works from real life experience as it 'rolls out' in local authority areas. It will also be necessary to dovetail this policy with wider planning considerations such as local plan policies.

Justification for procedure selected

1115. As for new section 204A(1)-(2) above (see above).

New section 204R Planning Act 2008 requiring IL regulations to include provision about the collection of IL, and specifying various kinds of provision which IL regulations may make

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1116. This provision requires IL regulations to make provision about the collection (payment / receipt) of IL. As only minor changes are being made to this section as compared with its Part 11 equivalent, this memorandum takes this whole section together.

1117. In particular:

a. IL regulations may make provision for payment on account or by instalments. It is envisaged that in most cases IL will be paid in a series of stages (which may for example include a provisional payment prior to first occupation of a development and a reconciliation payment on completion), rather than as a one-time payment;

b. IL regulations may make provision about repayment. The current policy proposal is that a development's IL liability is to be calculated according to its gross development value as at completion of the development. Since values can go both up and down over time, it follows that this may mean that any earlier provisional payment may turn out to be an overpayment. It may be appropriate to require repayment, with or without interest, in such circumstances;

c. IL regulations may make provision about payment in forms other than money. Payment in-kind is anticipated to be a feature of IL, particularly but potentially not only in relation to the delivery of affordable housing. Accordingly, provision will need to be made for how such payments in-kind may be permitted or required, and how the level of any in-kind contribution is calculated and credited against an overall IL liability;

d. in addition, in recognition of the fact that the largest and most complex development sites are likely to have the most complex, bespoke infrastructure and mitigation needs, it may be appropriate to provide that such developments will be subject to a particular IL regime which allows for much more of the IL liability to be paid through in-kind delivery. It may be appropriate to designate the sites which are subject to such a regime in an authority's charging schedule or infrastructure delivery strategy or a local planning authority's local plan, hence the ability to prescribe what may or must be set out 'in its charging schedule or elsewhere' if such an approach is to be taken in respect of a development;

e. IL regulations may permit or require another authority to collect IL on behalf of a charging authority. Provision of this kind is already made in relation to CIL (see CIL regulation 10 and the concept of the 'collecting authority') and it is likely to be appropriate to make provision of a similar kind in relation to IL;

f. since IL (and for that matter CIL) has features in common with a tax, it may be appropriate to make provision corresponding to an enactment relating to the collection of a tax; and

g. IL regulations may make provision about the source of payments in respect of Crown interests. Provision of this kind is made in relation to CIL (see CIL regulation 124), and it may be appropriate to make provision of a similar kind in relation to IL.

Justification for delegation

1118. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 217 Planning Act 2008, with the following discrete change.

1119. Some clarificatory wording has been added to sub-section (4). The purpose of this is to ensure that there is no doubt as to the ability of IL regulations to make provision of the kind described in paragraphs (c) and (d) above. Payment in kind is only a limited feature of the existing CIL regulations, but is proposed to be a more prominent component of IL (particularly, as explained above, in respect of affordable housing, and on the largest and most complex developments), and so it is considered appropriate to add this clarificatory wording.

Justification for procedure selected

1120. As for new section 204A(1)-(2) above (see above).

New section 204S(2)-(3) Planning Act 2008 requiring IL regulations to include provision about the consequences of failure to assume liability, late payment and failure to pay, and allowing IL regulations to include provision about the consequences of failure to give a notice or other procedural non-compliance

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1121. New section 204S(2) sets out three matters in respect of which IL regulations must provide for enforcement: failure to assume liability, late payment and failure to pay.

1122. The requirement that someone assume liability to pay IL is a central part of the IL proposals – to at least the same if not a greater extent than in the existing CIL regime. This is because, for CIL, the duty to pay arises as a result of the commencement of development. It should be immediately clear at that point if CIL has not been paid, and enforcement such as a 'stop notice' under Part 9 Chapter 2 of the CIL Regulations 2010 is possible and is an effective way of incentivising those who own the land on which development is to be carried out to ensure timely payment (because development cannot continue unless and until CIL is paid). Although assumption of liability is important within the CIL regime, there are effective ways of ensuring that CIL liability attaches to, and incentivised to be paid by, the owners or developers of land in a case where there has been a failure to assume liability.

1123. By contrast, under the intended IL regime, it is proposed that payment will come much later in the process and be based on the final value of development. In most cases, substantial development may already have been carried out or completed before any payment is due. It is possible that the ownership of the relevant land may change during the course of, or following substantial completion of, the development. In that context, it may not be as straightforward to ensure that CIL liability effectively attaches to a specified person or persons if there is a failure of anyone to assume liability at the appropriate time.

1124. It is therefore considered appropriate that IL regulations should have to make provision for enforcement in cases of failure to assume liability.

1125. IL (as CIL) is, fundamentally, a financial levy (albeit one with which will incorporate payment in kind to an extent). Late payment or failure to pay is therefore a fundamental failure to comply with IL. It is therefore considered appropriate that IL regulations should have to make provision for enforcement in cases of late payment or failure to pay, as CIL regulations under Part 11 currently do.

1126. New section 204S(3) allows IL regulations to make provision about the consequences of failure to give a notice and other procedural non-compliance in connection with IL.

<u>Justification for delegation</u>

1127. That IL regulations must make provision about the consequences of late payment and failure to pay replicates the equivalent provision in existing section 218(2) Planning Act 2008. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations.

1128. That IL regulations may make provision about the consequences of failure to give a notice or other procedural non-compliance replicates the equivalent provision in existing section 218(3) Planning Act 2008.

1129. That IL regulations must make provision about the consequences of failure to assume liability is a change from the equivalent provisions in existing section 218(2)-(3), where CIL regulations only 'may' make such provision. This

change is because the requirement that someone assume liability to pay IL is a central part of the IL proposals – to at least the same if not a greater extent than in the existing CIL regime, for the reasons given in the 'context and purpose' section above.

Justification for procedure selected

1130. As for new section 204A(1)-(2) above (see above).

New section 204S(4) Planning Act 2008 allowing IL regulations to make provision of various kinds in relation to enforcement of IL

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1131. This provision is a list of kinds of enforcement measures which may be included within IL regulations in providing for the enforcement of a matter under new section 204S(2)-(3).

1132. It is likely to be appropriate to provide for a 'suite' of measures to enforce the various aspects of IL. By way of example, the CIL Regulations 2010 make provision of many, though not all, of the kinds listed in this provision:

a. late payment interest (reg 87);

b. various surcharges (regs 80-86);

c. 'stop notices' prohibiting development pending payment (regs 89-94). Note that for IL purposes, it may be appropriate to provide for a 'stop notice' prohibiting development pending assumption of liability, as well as or instead of pending payment;

d. power of entry onto land (reg 109);

e. criminal offences (regs 93, 109(8) and 110);

f. power to prosecute an offence (reg 111);

g. enforcement of sums owed, for example by action on a debt (regs 96-107);

h. ability of court to grant injunctive relief against actual or apprehended breach of stop notice (reg 94); and

i. enforcement in the case of death or insolvency of a person liable (regs 105 and 108).

1133. Note that:

a. the power to provide for the imposition of a penalty or surcharge is limited by new section 204S(10);

b. the power to provide for a power of entry onto land is limited by new section 204S(12); and

c. the power to create a criminal offence is limited by new section 204S(13)-(14).

Justification for delegation

1134. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 218(4), with the following change.

1135. Sub-paragraph (f) of existing section 218(4) – power to require the provision of information – has been removed. This is because that is now expressed as a general power in new section 204Z(1)(c), and so it is not necessary to repeat it here.

Justification for procedure selected

1136. As for new section 204A(1)-(2) above (see above).

New section 204S(6) Planning Act 2008 allowing IL regulations to make provision restricting the use or occupation of development pending payment of IL

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1137. The current intention for IL is that, for most developments, it will be appropriate to require payment in two stages:

a. a provisional payment, prior to first occupation or use of a development (but not necessarily prior to commencement of a development); and

b. a final reconciliation payment on completion of the development.

1138. Particularly as regards the first of these, it is considered that not only should there be a 'positive' obligation to pay the provisional payment prior to first occupation or use, but that there should also be an enforceable 'negative' obligation not to first occupy or use the development pending receipt of that payment. This would strengthen the 'toolkit' available to an enforcing authority. It is also likely to further incentivise a developer to ensure that the provisional

payment of IL is made in accordance with the relevant legal provisions, because a developer is likely to find it difficult to dispose of development (for example through sales of completed dwellings to prospective owner-occupiers) which remains subject to an enforceable prohibition or restriction on occupation.

1139. This provision enables IL regulations to include such a prescription.

Justification for delegation

1140. It is a matter for IL regulations to establish the payment and collection regime that will apply in respect of IL – see the established delegated power in new section 204R. Depending on precisely how IL regulations establish the payment and collection regime, it may not always be appropriate for all IL payments to be backed up by an enforceable restriction or prohibition on use or occupation of relevant land. For example, if part of an IL liability is to be collected as a late-stage 'reconciliation' payment following the completion and sale of most or all of a development site, it is not likely to be appropriate to maintain a prohibition on the occupation of any of the development site pending receipt of that reconciliation payment. This is a matter which can only be addressed at the IL regulation-making stage, when full details of the proposed payment and collection system are known.

1141. This approach also reflects the general established principle in existing section 218 Planning Act 2008 that it is for IL regulations to prescribe the details and mechanics of enforcement measures.

Justification for procedure selected

1142. As for new section 204A(1)-(2) above (see above).

New section 204S(8) Planning Act 2008 allowing IL regulations to make provision corresponding to, or apply, any enactment relating to the enforcement of a tax

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1143. This provision allows IL regulations to make provision corresponding to, or apply, any enactment relating to the enforcement of a tax

1144. Since IL has features in common with a tax, it is appropriate to make provision corresponding to provision made in an enactment relating to the enforcement of a tax.

Justification for delegation

1145. The same power is considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 218(6) Planning Act 2008, with the following amendments.

1146. The wording 'replicate' has been changed to 'make provision corresponding to'. This is not considered to fundamentally alter the nature of the delegated power. It is intended to improve the drafting.

1147. Limb (b) of existing section 218(6) – ability to provide for appeals – has not been replicated. This is because powers to make provision for appeals in connection with IL are now all dealt with in a separate section; new section 204V.

Justification for procedure selected

1148. As for new section 204A(1)-(2) above (see above).

New section 204S(10) Planning Act 2008 requiring IL regulations to ensure that no one surcharge or penalty in respect of an amount of IL exceeds the higher of 40% of that amount and £50,000

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1149. This provision limits the level of any individual surcharge or penalty under new section 204S(4)(b) in respect of an amount of IL to the limits stated. This is an important limitation on the power of IL regulations to provide for penalties and surcharges, though please note new section 204N(11) below.

Justification for delegation

1150. This replicates the equivalent provision in existing section 218(8) Planning Act 2008, but with increased limits.

1151. CIL is charged at the commencement of development. This means that a charging authority has a range of effective enforcement options in its 'toolkit' (see in particular the discussion under new section 204(S)(2) above).

1152. IL, by contrast, is proposed to be largely charged towards the end of a development. As described in the commentary under new section 204S(6) above, it is proposed that although part of the Levy liability will be paid prior to completion of the development, a late-stage reconciliation payment will be needed following completion, after a development has been sold and once there is actual sales information on which to base the final calculation of IL liability. As it is likely that the developer will, at this point, have sold on most or all of the development, there are fewer effective enforcement options which can

be designed in regulations and placed in an enforcing authority's 'toolkit' – other than pursuing the IL liability as a debt.

1153. It is therefore considered necessary to increase the maximum level of penalty or surcharge, particularly in relation to late payment – to deter IL defaults such as late payment, and to increase the effective enforcement tools available to an enforcing authority.

1154. In any event this is a limitation on the use of the delegated powers to provide for enforcement by way of surcharge or penalty, rather than a discrete delegated power in its own right.

Justification for procedure selected

1155. As for new section 204A(1)-(2) above (see above).

New section 204S(13)-(14) Planning Act 2008 requiring IL regulations creating a criminal offence not to provide for imprisonment for a term exceeding 2 years

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1156. This provision limits the maximum sentence of any criminal offence under IL regulations made under new section 204S(4)(f) to imprisonment for a term of 2 years on conviction on indictment. Shorter maxima apply in relation to summary convictions.

Justification for delegation

1157. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore follows the equivalent provision in existing section 218(11)-(12) Planning Act 2008, although the wording and format of the provision has changed.

1158. The overall upper limit on sentencing, on indictment, remains at 2 years' imprisonment.

1159. For a summary conviction for an offence triable summarily only, the maximum sentence remains at 6 months' imprisonment initially. However, provision is made for this to increase automatically to 51 weeks' imprisonment upon the coming into force of section 281(5) Criminal Justice Act 2003. This change therefore simply reflects the potential future coming into force of new primary legislation.

1160. For a summary conviction for an offence triable either way, the maximum sentence is 'the general limit in a magistrates' court'. This reflects the position under the Judicial Review and Courts Act 2022. That Act increases the general

limit on magistrates' powers of imprisonment, in relation to either-way offences, from 6 to 12 months, and also provides a power to change between the two limits. That Act further therefore creates a new defined term in the Interpretation Act 1978 to address the fact that the limit may change from time to time: the 'general limit in a magistrates' court' (to which this provision now refers).

1161. In any event, this is a limitation on the use of delegated powers rather than a distinct delegated legislative power in its own right.

Justification for procedure selected

1162. As for new section 204A(1)-(2) above (see above).

New section 204T Planning Act 2008 allowing IL regulations to require a charging authority or other public authority to pay compensation in respect of loss or damage suffered as a result of enforcement action, and allowing IL regulations to make related provision

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1163. There may be circumstances where, as a result of enforcement action taken under IL regulations, it may be appropriate to pay compensation in respect of loss or damage suffered. A possible example of this would be a situation where a 'stop notice' is issued preventing development from being carried out and occasioning losses to a developer, but it is then established that the 'stop notice' should not have been issued.

1164. This section confers a power on the Secretary of State to make provision for such compensation. As only minor changes are being made to this section as compared with its Part 11 equivalent, this memorandum takes this whole section together.

1165. It is considered that it will not be appropriate to compensate a person against whom enforcement action has been taken as a result of their failure to pay IL, and therefore IL regulations are not able to provide for that. Otherwise, it is for IL regulations to specify the circumstances in which compensation may be payable, and to make related procedural and substantive provision.

Justification for delegation

1166. The same powers are considered appropriate in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 219 Planning Act 2008, with the following amendment.

1167. Paragraph (c) of subsection (2) – enforcement action in respect of which provision for compensation may be made includes a prohibition or restriction of the use or occupation of development – is a new addition. This reflects the fact that an express power to provide for enforcement of IL in this way is a new addition to new section 204S. This therefore maintains consistency and coherence across these provisions.

Justification for procedure selected

1168. As for new section 204A(1)-(2) above (see above).

New section 204U Planning Act 2008 allowing IL regulations to make provision about procedure in connection with IL, including provision of various specified kinds

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1169. The IL regime will involve several processes, each of which is likely to require bespoke procedural provision. For example:

a. rate setting;

b. preparation of an infrastructure delivery strategy;

c. calculating the IL liability of a given development;

d. administering any exemptions or reductions;

e. making arrangements for payment via in-kind delivery of affordable housing or other matters;

f. payment of IL;

g. enforcement of IL;

h. administering a system of IL appeals;

i. spending IL including passing receipts to another person to spend;

j. the use of the Secretary of State's powers of intervention under new sections 204M, 204X and 204Y; and

k. the relationship between IL and other planning- and development-related powers.

1170. This section therefore provides IL regulations with a wide range of express powers to make procedural provision of various kinds.

Justification for delegation

1171. At least the same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing s.220 Planning Act 2008 (and so the principle of IL regulations having generally broad powers to make procedural provision is established), with the following changes.

1172. Existing section 220(2)(a) and (c) – regulations may make provision about procedures to be followed by a charging authority proposing to begin or stop charging CIL – have been removed. This is because charging IL will be mandatory. A charging authority is not in a position to 'propose to begin' charging IL – it will simply be obliged to, when the legislation comes into force in its area. Likewise, a charging authority cannot 'stop' charging IL – it can only revise or replace its charging schedule.

1173. New subsection (2)(c) and (d) have been added to expressly allow IL regulations to make procedural provision about valuation (of developments for the purpose of calculation of overall IL liability, and also of in-kind contributions which are to be credited against an overall IL liability) and the resolution of disputes. IL will be based on valuations, in a way that existing CIL currently is not. It is therefore considered necessary to have express powers to make provision about valuation. It is also necessary to be able to provide for forms of dispute resolution short of formal appeal – this may be particularly appropriate in the context of disputed valuations for IL purposes.

1174. It is considered helpful and clarificatory to add the provision in new subsection (2)(e) (power to make provision about the time by or at which anything must be done). This will allow for alignment of process in a more precise way.

Justification for procedure selected

1175. As for new section 204A(1)-(2) above (see above).

New section 204V(1)-(2) and (4) Planning Act 2008 allowing IL regulations to provide for appeals in connection with IL

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1176. It is envisaged that the IL regime will need to incorporate several types / rights of appeal (and indeed new section 204V(3) requires the IL regime to include certain types / rights of appeal – see further below). For example, it is

desirable and appropriate to be able to provide for appeals as to whether the grounds for an exemption or reduction have been established; and/or appeals against some or all types of IL enforcement action.

1177. These provisions consolidate the powers to make provisions in IL regulations regarding appeals. This takes the form of general express powers and includes powers to make procedural provision.

Justification for delegation

1178. Provision for appeals is considered necessary for IL regulations as it was for CIL regulations. This new provision is in effect a consolidation of the existing powers within Part 11 to provide for appeals and a restatement as a general power to provide for appeals in connection with IL. This follows the established approach in Part 11 of providing delegated powers to provide for appeals, rather than setting out substantive rights of appeal on the face of the legislation. Matters such as who may make an appeal, to whom the appeal is made, time limits, procedure and payment of fees are best suited to detailed prescription in secondary legislation, readily capable of amendment.

Justification for procedure selected

1179. As for new section 204A(1)-(2) above (see above).

New section 204V(3) Planning Act 2008 requiring IL regulations to provide for a right of appeal on a question of fact in relation to the application of methods for calculating IL

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1180. The IL regime should and will provide for a right of appeal on a question of fact in relation to the application of methods for calculating IL. This would include:

a. a right of appeal against a valuation of a development for IL purposes (for example a person liable for IL may wish to submit that a development has been overvalued for IL purposes, with a result that the IL liability is higher than it should be); and

b. a right of appeal on the basis that a charging authority has calculated the amount of IL incorrectly (even if the 'valuation' input itself is undisputed).

1181. This provision requires IL regulations to provide for such a right of appeal.

Justification for delegation

1182. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 215(1) Planning Act 2008, with the following changes of substance.

1183. It is no longer considered essential that the right of appeal be to a person (valuation officer or district valuer) appointed by HMRC Commissioners, although it will remain possible for IL regulations to provide for an appeal to such a person. The Department intends to undertake further detailed consultation about who should be appointed to determine these appeals. It is necessary to retain flexibility in this regard as the policy may change over time. In addition, the discrete change made to section 204V(3) includes an express reference to make clear that a right of appeal on a question of fact may include questions in relation to valuation.

Justification for procedure selected

1184. As for new section 204A(1)-(2) above (see above).

New section 204X(1)(b) Planning Act 2008 allowing IL regulations to specify additional circumstances in which the Secretary of State may permit a charging authority to amend, cancel or delay its charging schedule

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1185. New section 204X(2)-(3), considered in detail below, allows the Secretary of State to publish a notice permitting a charging authority to amend, cancel or delay its charging schedule for a temporary specified period. New section 204X(1)(a) provides that the Secretary of State may do so if they consider that the economic viability of development (or development of a particular description) in the charging authority's area is significantly impaired, or there is a substantial risk that it will become significantly impaired, as a result of the IL chargeable in that area.

1186. This provision allows IL regulations to specify other circumstances in which the Secretary of State may publish a notice under this section.

Justification for delegation

1187. While it is possible to expressly state the most likely circumstances which may necessitate use of this power, as is done in new section 204X(1)(a), it is not possible to predict all scenarios where it may be necessary for this power to be used. This enables IL regulations to respond to unforeseen and/or urgent circumstances.

1188. For example, during the Coronavirus pandemic, it was necessary to amend the CIL Regulations 2010 to allow the deferral of payment of CIL in certain circumstances, to prevent small and medium sized developers suffering unduly as a result of stalled developments and severe economic conditions.

Justification for procedure selected

1189. As for new section 204A(1)-(2) above (see above).

New section 204X(2)-(3) Planning Act 2008 allowing the Secretary of State to permit a charging authority to amend, cancel or delay its charging schedule

Powers conferred on: *Secretary of State*
Powers exercised by: *Publication of notice*
Parliamentary Procedure: *None*

Context and Purpose

1190. There may be circumstances in which the economic viability of development in a charging authority's area is significantly impaired (either temporarily or on a more long-term basis) as a result of the IL charged or scheduled to be charged in that area – but viability could or would be maintained, if:

a. IL rates were reduced;

b. the minimum value thresholds below which IL is charged at a nil or reduced rate were increased;

c. a scheduled increase in IL rates were cancelled or delayed; and/or

d. the issue of an approved charging schedule which would increase IL rates were cancelled or delayed.

1191. An aim of the rate-setting process under new section 204G is to ensure that such circumstances do not arise – to ensure that IL charging rates do not render development economically unviable. However, economic conditions may change (with little forewarning) at some point after a charging schedule has been issued.

1192. There may also be other circumstances in which it is desirable to temporarily permit any of the matters set out in (a)-(d) above.

1193. This provision provides the Secretary of State with a power to issue a charging authority with a notice which permits any of (a)-(d) above for a period specified in the notice, without needing to undergo the usual process for replacing or revising an IL charging schedule and all that entails (such as consultation and examination).

1194. Under section 204X(3)(a), a notice published by the Secretary of State under these provisions could confer a discretion on the charging authority with regards to how it can amend its charging schedule. For example, it might permit the charging authority to reduce its IL rates by up to a given amount – it would then be for the charging authority to decide whether to give effect to the maximum reduction, or some smaller reduction.

1195. Under section 204X(3)(b), a notice published by the Secretary of State under these provisions could confer a discretion on the charging authority with regards to whether any amendment to its charging schedule ought not only to apply to development first permitted by planning permission after the publication of the Secretary of State's notice, but may also allow for a recalculation of IL liability for first permitted before the publication of the Secretary of State's notice. This provides for a coherent and less arbitrary result of the policy. The outcome would not depend on when a notice was published but may take account of developments already subject to planning permission which will also be affected by prevailing economic conditions. This allows a more equitable outcome.

Justification for delegation

1196. It is anticipated that under the general provision made by IL regulations under this Part 10A, charging authorities will not be able to make short-term changes to their charging rates and thresholds in order to respond to viability or other concerns – they would have to go through a process of revising or replacing their charging schedule. In the general case, this is considered appropriate: IL charging rates will have a significant effect in their area, and they should generally be subject to a suitably robust examination process.

1197. Nonetheless, as outlined above, viability or other wider concerns may lead to a situation whereby a quick, temporary adjustment to rates or thresholds is appropriate and necessary. It is therefore considered that a suitable appropriate means of achieving this is to delegate a power to the Secretary of State to allow this by formal notice, on a temporary basis and in limited defined circumstances.

Justification for procedure selected

1198. Where the Secretary of State exercises this power, it will be to allow (not mandate) a short-term, temporary change to charging rates in a charging authority's area in defined circumstances. It is not considered that the exercise of such a power to issue a notice requires Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if used improperly or in a manner contrary to public law principles.

New section 204X(5)-(7) Planning Act 2008 allowing IL regulations to make provision governing the exercise of the power to permit a charging authority to amend, cancel or delay its charging schedule

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1199. Subsections (2)-(3) of new section 204X, considered in detail above, allow the Secretary of State to issue a notice permitting a charging authority to amend, cancel or delay its charging schedule for a temporary period in defined circumstances.

1200. New subsections (5)-(7) allow connected provision to be detailed in IL regulations. This will allow IL regulations to delineate the scope of the Secretary of State's power, by:

a. specifying the criteria which must be met or procedures which must be followed for a charging schedule to be amended under subsection (2)

b. restricting the exercise of the power, for example by specifying the extent to which IL rates may be reduced, or thresholds increased

c. making associated ancillary provision.

Justification for delegation

1201. Provision of this kind is necessarily technical, detailed and complex. Further, it may change over time in response to how IL is implemented by local authorities, and how it operates in practice. It is therefore necessary and appropriate for this provision to be detailed in secondary legislation.

1202. The power to make associated ancillary provision is required so that the power is capable of being exercised in a satisfactory way and in order that IL regulations can make effective and coherent provision.

Justification for procedure selected

1203. As for new section 204A(1)-(2) above (see above).

New section 204Y(1) Planning Act 2008 allowing the Secretary of State to direct a charging authority to review its charging schedule in specified circumstances

Powers conferred on: *Secretary of State*
Powers exercised by: *Direction*
Parliamentary Procedure: *None*

Context and Purpose

1204. This provision is a power for the Secretary of State to direct that the charging authority must review its charging schedule, with a view to its potential

revision or replacement in defined circumstances. Those circumstances are, broadly, if the Secretary of State considers that the economic viability of development in a charging authority's area is significantly impaired (either temporarily or on a more long-term basis) as a result of the IL charged in that area.

Justification for delegation

1205. It may become appropriate for a charging authority to review its charging schedule, with a view to potential revision or replacement:

a. if the economic viability of development in a charging authority's area becomes significantly impaired as a result of the IL charged or scheduled to be charged in that area;

b. if a significant time has passed since the charging schedule was issued, or last reviewed, revised or replaced; and/or

c. in other circumstances (to be specified in IL regulations – see commentary on new section 204Y(1)(c) below).

1206. However, absent an ability to compel a charging authority to undertake such a review, a charging authority may simply not do so. This could lead to inappropriate amounts of IL continuing to be charged in that charging authority's area which no longer meet the overall purpose of IL.

1207. To avoid that outcome, it is necessary to provide the Secretary of State with a power to direct that a charging authority must review its charging schedule, with a view to its potential revision or replacement.

Justification for procedure selected

1208. Where the Secretary of State exercises this power, it will be to direct a charging authority to consider whether to revise or replace its charging schedule. It will not necessarily mandate that the authority in fact revise or replace its charging schedule, though that outcome may result. It is not considered necessary that the exercise of such a power require Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

New section 204Y(1)(c) Planning Act 2008 allowing IL regulations to specify additional circumstances in which the Secretary of State may direct a charging authority to review its charging schedule

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1209. This is a power for IL regulations to specify additional circumstances in which the Secretary of State may exercise the power to direct a review of a charging schedule, other than:

a. the economic viability of development in a charging authority's area becoming significantly impaired as a result of the IL charged or scheduled to be charged in that area; or

b. a significant time having passed since the charging schedule was issued, or last reviewed, revised or replaced.

Justification for delegation

1210. The most likely circumstances for the exercise of this power are set out on the face of the legislation (new section 204Y(1)(a)-(b)). However, it is not possible to foresee all eventualities. Development is complex, with multiple parties having diverging interests, which will need to operate across a range of economic and policy environments. This means that currently unforeseen circumstances may arise. Therefore, it is appropriate and necessary to retain some flexibility to enable provision to be made in IL regulations in response to wider social or economic pressures.

Justification for procedure selected

1211. As for new section 204A(1)-(2) above (see above).

New section 204Y(4) Planning Act 2008 allowing the Secretary of State to appoint a person to review a charging schedule on behalf of a charging authority

Powers conferred on: *Secretary of State*
Powers exercised by: *Appointment*
Parliamentary Procedure: *None*

Context and Purpose

1212. This is a power for the Secretary of State to appoint a person to review a charging schedule on behalf of a charging authority, in the event that the charging authority does not comply with a direction to review its charging schedule within a reasonable time to a standard that the Secretary of State considers adequate.

1213. New section 204Y(5) sets out the consequences that may follow once a person is duly appointed, should they decide that the charging schedule must be revised or replaced.

Justification for delegation

1214. Although the Secretary of State may issue a direction requiring a charging authority to review its charging schedule under new section 204Y(1),

there is a risk that the charging authority simply will not do so, or will not do so adequately. This could lead to inappropriate amounts of IL continuing to be charged in that charging authority's area which no longer meet the overall purposes of IL.

1215. To avoid that outcome, it is appropriate to delegate a power to the Secretary of State to appoint a person to review a charging schedule on behalf of a charging authority in this circumstance.

Justification for procedure selected

1216. Where the Secretary of State exercises this power, it will be to appoint a person to consider the question of whether a single charging authority should revise or replace its charging schedule. It is not considered that the exercise of such a power requires Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

New section 204Y(6) Planning Act 2008 allowing the Secretary of State to appoint a person to revise or replace a charging schedule following a review by or on behalf of a charging authority

Powers conferred on: *Secretary of State*
Powers exercised by: *Appointment*
Parliamentary Procedure: *None*

Context and Purpose

1217. If a charging authority reviews its charging schedule under new section 204Y(2), a conclusion open to it is that the charging schedule should be revised or replaced. If so, under new section 204Y(3), the charging authority must revise or replace the charging schedule within a reasonable time.

1218. Likewise, if a person is appointed to review a charging schedule under new section 204Y(4), a conclusion open to that person is that the charging schedule should be revised or replaced. If so, under new section 204Y(5), the charging authority must revise or replace the charging schedule accordingly within a reasonable time.

1219. This is a power for the Secretary of State to appoint a person to revise or replace a charging schedule on behalf of a charging authority, in the event that the charging authority does not comply with a duty under new section 204Y(3) or (5).

Justification for delegation

1220. Although a charging authority must, under new section 204Y(3) or (5), replace or revise its charging schedule in accordance with its own conclusions or the conclusions of a person appointed by the Secretary of State (respectively), there is a risk that the charging authority simply will not do so.

This could lead to inappropriate amounts of IL continuing to be charged in that charging authority's area which no longer meet the overall purposes of IL.

1221. To avoid that outcome, it is appropriate to delegate a power to the Secretary of State to appoint a person to replace or revise a charging schedule on behalf of a charging authority in such circumstances.

Justification for procedure selected

1222. Where the Secretary of State exercises this power, it will be to appoint a person to revise or replace an authority's charging schedule. It is not considered that the exercise of such a power requires Parliamentary procedure. A charging authority revising or replacing its own charging schedule of its own motion would not require Parliamentary procedure. The exercise of this power by the Secretary of State would be open to legal challenge if it was used improperly or in a manner contrary to public law principles.

New section 204Y(7) Planning Act 2008 allowing IL regulations to make procedural and related provision about directions under new section 204Y(1) and the appointment of persons under new section 204Y(4) and (6)

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1223. This provision is a list of procedural and related provisions which may be made by IL regulations in connection with directions given under new section 204Y(1) and the appointment of persons under new section 204Y(4) and (6).

Justification for delegation

1224. Delegated powers are taken in subsection (7) to set out certain procedural and related matters in IL regulations. These powers are necessary to address issues of procedural detail and operational administration in secondary legislation. It is appropriate to set out such detail in secondary legislation and to enable such matters to be fully explored before legislation, and to facilitate timely revision of such matters as may be required over time.

Justification for procedure selected

1225. As for new section 204A(1)-(2) above (see above).

New section 204Z Planning Act 2008 allowing IL regulations to make various kinds of general provision

Powers conferred on: *Secretary of State, with the consent of the Treasury*

Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1226. This is a general power for IL regulations to make ancillary and connected provision of various kinds, including provision which applies IL differently in different cases, circumstances or areas; which can require the provision of information; which can generally allow for 'exceptions', which can confer or allow a charging schedule to confer a discretionary power; which may apply an enactment with or without modifications; and which may include provision of a kind permitted by section 232(3)(b) Planning Act 2008 (incidental, consequential, supplementary, transitional or transitory provision or savings).

1227. It is expressly stated that the power to make incidental, supplemental or consequential provision may include provision disapplying, modifying the effect of or amending an enactment. It is acknowledged that this means that this provision is Henry VIII provision, as is the corresponding existing provision in Part 11 (section 222(1)(f)).

Justification for delegation

1228. The same scope of powers is considered necessary for IL regulations as was the case for CIL regulations. As noted, the IL regime will be a complex, technical and far-reaching legal system which must fit seamlessly within the existing planning law framework. Further, it may change over time, including in response to changes in the planning system, Court determinations and wider economic and policy developments. Considerable flexibility and operational responsiveness is required, as was the case in relation to CIL. This therefore replicates the equivalent provision in existing section 222(1)-(2) Planning Act 2008, with one amendment. The powers to make provision in IL regulations of various kinds must be capable of being exercised in a satisfactory and coherent way and the general powers provided here enable effective and seamless provision to be made. The IL regime provides for a substantive local charging regime and will need to properly embed within existing legal frameworks.

1229. Subsection (1)(c) – power for IL regulations to require provision of information – is a new addition. This has been moved to this 'general' powers section as it is considered to sit more appropriately there. This power was originally located in section 218(4)(f).

Justification for procedure selected

1230. As for new section 204A(1)-(2) above (see above).

New section 204Z1(1)-(3) and (5) Planning Act 2008 allowing IL regulations to include provision about how other powers relating to planning or development are to be used or not used

Powers conferred on: *Secretary of State, with the consent of the Treasury*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Draft affirmative procedure (Commons only)*

Context and Purpose

1231. It is intended that the IL regime, when fully introduced, will largely 'occupy the field' of developer contributions policy. It is intended to replace many (though not necessarily all) of the functions currently fulfilled by obligations under section 106 TCPA 1990.

1232. This means that a likely or possible policy direction is that developer contributions which would previously have been sought via obligations under section 106 TCPA 1990, or possibly by conditions attached to planning permissions under section 70 TCPA 1990 or agreements under section 278 Highways Act 1980 or some other power relating to planning or development, should in future:

a. not be sought using those methods in some or all circumstances (as to do so may result in developers being 'doubly charged'); and/or

b. if secured using those methods, should in some or all circumstances be credited as an in-kind payment of the Infrastructure Levy.

1233. These provisions therefore provide that IL regulations are able to make provision about how those planning and development related powers may or may not be used.

1234. Note that this power is constrained by new section 204Z1(5), which provides that such powers may only be exercised if the Secretary of State considers it necessary or expedient for the purposes set out in (5)(a)-(e).

Justification for delegation

1235. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. This therefore replicates the equivalent provision in existing section 223(1)-(2) and (4), with the following changes.

1236. CIL under Part 11 Planning Act 2008 has been added to the express list of matters under new section 204Z1(1) which IL regulations may make provision in respect of. This is because for a time at least (and in the case of CIL charged by the Mayor of London, potentially indefinitely), the IL and CIL systems will operate in parallel, and it is anticipated that the interrelationship of the two systems may require bespoke and complementary provision.

1237. Planning conditions imposed under section 70 TCPA 1990 have been added to the express list of powers under new section 204Z1(1) which IL regulations may make provision in respect of. This is because planning conditions may occasionally be used to have the effect of seeking to secure developer contributions. In the future IL system, developer contributions should secured or funded through IL regulations.

1238. New section 204Z1(3) provides an express illustration of how the powers under new section 204Z1(1)-(2) may be used. This is a clarificatory provision which makes clear that those powers may be used to define specified reasons for or conditions on granting planning permission in specified circumstances. While the existing CIL regulations (regulation 122) make provision concerned with controlling the use of section 106 Town and Country Planning Act 1990 (namely, the requirements that a planning obligation must meet in order to constitute a reason for granting planning permission), IL regulations will need to make provision of this kind (specifying the reasons for and/or conditions on granting planning permissions in various scenarios) to a greater extent as such matters are likely to be central to the IL regime, the purpose of which is to provide a holistic framework for the securing of developer contributions via land value capture. Therefore, it is necessary to have this clarificatory, non-exhaustive provision stated expressly in the legislation.

1239. New section 204Z1(5) is in the same terms as existing section 223(4), save that the wording of sub-paragraph (a) is changed from 'complementing the main purpose of CIL regulations' to 'delivering the overall purpose of IL mentioned in section 204A(2)'. This is considered to be a clarificatory drafting improvement.

Justification for procedure selected

1240. As for new section 204A(1)-(2) above (see above).

New section 204Z1(4)-(5) Planning Act 2008 allowing the Secretary of State to issue guidance about how powers relating to planning or development are to be exercised

Powers conferred on: *Secretary of State*
Powers exercised by: *Publication of guidance*
Parliamentary Procedure: *None*

Context and Purpose

1241. This is an express power for the Secretary of State to publish guidance about how a power relating to planning or development is to be exercised.

1242. Note that this power is constrained by new section 204Z1(5), which provides that it may only be exercised if the Secretary of State considers it is necessary or expedient for one of the matters set out in (5)(a)-(e).

Justification for delegation

1243. The same powers are considered necessary in this regard for IL regulations as they were for CIL regulations. New section 204Z1(4) therefore replicates the equivalent provision in existing section 223(3) Planning Act 2008.

1244. New section 204Z1(5) is in the same terms as existing section 223(4), save that the wording of sub-paragraph (a) is changed from 'complementing

the main purpose of CIL regulations' 'delivering the overall purpose of IL mentioned in section 204A(2)'. This is considered to be a clarificatory drafting improvement.

Justification for procedure selected

1245. This replicates the position for guidance issued under existing section 223(3)-(4) Planning Act 2008.

Table of provisions containing powers which replicate provisions containing powers in Part 11 Planning Act 2008

1246. The following table identifies those delegated powers provided for in Part 10A which replicate in terms existing powers already provided in Part 11 of the Planning Act 2008 (which, for these purposes, means changing reference to 'CIL' and 'CIL regulations' to 'IL' and 'IL regulations' respectively, and updates to cross-references). The table also provides a brief description of the power.

1247. In each case, the same substance and scope of the power is considered necessary and appropriate for IL regulations as was the case for CIL regulations. In all these cases, the approach is therefore simply to replicate the relevant existing provision (including the Parliamentary procedure).

Provision of new Part 10A	**Description of provision**	**Corresponding provision of existing Part 11**
204A(4)	Allows IL regulations to add additional definitions of 'affordable housing' beyond social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008	216(2)(g) (as enacted)
204C(2)-(3)	Allows IL regulations to make provision where a joint committee that includes a charging authority is established	207(2)-(3)
204D(1)	Allows IL regulations to make provision about assumption of liability	208(1)
204D(2)(b)	Allows IL regulations to make provision about the procedure for assuming liability to pay IL	208(2)(b)
204D(7)	Allows IL regulations to make provision for IL liability where development requiring planning permission is commenced without it	208(7)

204D(8)	Allows IL regulations to make provision for IL liability where development is exempt or subject to a reduced rate, but then changes	208(8)
204E(2)	Allows IL regulations to make provision for what is to be treated as development	209(2)
204E(3)-(4)	Requires IL regulations to make provision determining when development is treated as commencing	209(3)-(4)
204E(5)	Requires IL regulations to define planning permission	209(5)
204E(6)	Requires IL regulations to make provision for determining the time at which planning permission is treated as first permitting development	209(6)
204E(8)	Allows IL regulations to make provision for a person to be or not be treated as an owner or developer of land	209(8)
204F(1)	Requires IL regulations to provide for an exemption from IL liability for development carried out by charities for a charitable purpose	210(1)
204F(2) and (5)	Allows IL regulations to provide for an exemption from or reduction in IL liability for other development carried out by charitable institutions	210(2) and (5)
204F(3)	Allows IL regulations to provide that an exemption or reduction under subsection (1) or (2) does not apply if specified conditions are satisfied	210(3)
204G(5)	Allows IL regulations to make other provision about setting rates or criteria	211(3)
204G(7)	Allows IL regulations to permit or require charging schedules to adopt specified methods of calculation	211(5)
204H(1)	Allows IL regulations to make provision about consultation and other steps in connection with the preparation of a charging schedule	211(7)

204H(3)	Allows IL regulations to make provision about appropriate available evidence for the preparation of a charging schedule	211(7B)
204I(7)	Requires IL regulations to require a charging authority to allow anyone who makes representations about a draft charging schedule to be heard by the examiner, and allowing IL regulations to make provision about timing and procedure	212(9)
204I(8)	Allows IL regulations to make provision for the examiners of charging schedules to reconsider their decisions with a view to correcting errors	212(10)
204K(9)	Allows IL regulations to make provision about the form or contents of a charging authority's report as to how its approved charging schedule remedies any non-compliance identified by the examiner	213(3C)
204K(10)	Allows IL regulations to make provision for the correction of errors in a charging schedule after its approval	213(4)
204L(3)	Allows IL regulations to make provision about publication of a charging schedule after its approval	214(2)
204N(6)	Allows IL regulations to specify particular kinds of matters which may or may not be funded by IL, criteria for determining the areas that may benefit from IL funding, and what is or is not to be treated as funding	216(4)
204N(8)	Allows IL regulations to make certain kinds of provision about the ways in which IL may be applied	216(6)
204O(1), (2) and (4)	Allows IL regulations to impose a duty on a charging authority to pass IL received in respect of development in an area to a person other than the charging authority, to be used to fund infrastructure or anything else which addresses demands that development places on an area	216A(1)-(3)

204O(5)-(8)	Allows IL regulations to make specified kinds of related provision in relation to a duty under section 204O(1).	216A(4)-(7)
204P(2)	Allows IL regulations, where there is an area to which a particular duty under new section 204O(1) relates and also an area to which it does not relate ('the uncovered area'), to make provision about how the charging authority is to apply IL received in respect of the uncovered area	216B(2)
204P(4)-(5)	Allows IL regulations to make specified kinds of related provision in relation to a duty under section 204O(1)	216B(3)-(4)
204S(1)	Requires IL regulations to include provision about enforcement of IL	218(1)
204S(5)	Allows IL regulations to make provision about registration or notification of IL liability	218(5) (first part)
204S(7)	Allows IL regulations to include provision for local land charges and entries in statutory registers	218(5) (latter part)
204S(11)	Allows IL regulations to provide for more than one surcharge or penalty in relation to an IL charge	218(9)
204S(12)	Requires IL regulations not to authorise entry to a private dwelling without a warrant issued by a justice of the peace	218(10)
204W	Allows the Secretary of State to issue guidance about IL	221
204Z1(6)	Allows IL regulations to constrain a power to give guidance or directions	223(5)

Clause 125

New section 14(6A) Housing and Regeneration Act 2008 allowing the Secretary of State to designate the Homes and Communities Agency as a charging authority for an area

Powers conferred on: *Secretary of State*
Powers exercised by: *Order made by statutory instrument*

Parliamentary Procedure: *Draft affirmative procedure*

Context and Purpose

1248. Under section 13(1) of the Housing and Regeneration Act 2008, the Secretary of State may by order designate an area if the Secretary of State considers that the area is suitable for development and it is appropriate for the Homes and Communities Agency (HCA) (which trades under the name Homes England) to be the local planning authority for all or any part of the area, for particular purposes and in relation to particular kinds of development.

1249. Under section 320(3)(a) of the Housing and Regeneration Act 2008, a designation order under section 13 is subject to the draft affirmative procedure.

1250. Section 14 of the Housing and Regeneration Act 2008 sets out what kind of provision a designation order under section 13(1) may contain. Under section 14(2) the designation order may provide for the HCA to be the local planning authority for all or any part of the designated area, for specified permitted purposes and in relation to specified kinds of development.

1251. Clause 125 inserts a new subsection (6A) into section 14 which allows a designation order to provide (and if so, to what extent) for the HCA to be the IL charging authority for all or part of the designated area.

Justification for delegation

1252. The power to designate an area under section 13 Housing and Regeneration Act 2008, and to provide that HCA is the local planning authority for the designated area, has not been exercised to date.

1253. If it is exercised, then it likely follows that HCA should be the IL charging authority for that area. This is because, generally, under the provisions for IL in Schedule 11, the local planning authority for an area is the IL charging authority for that area.

1254. However, HCA may only be the local planning authority for specified purposes or kinds of development. It will be necessary to take a decision at the time of making a section 13(1) designation as to the extent to which HCA should be an IL charging authority.

1255. It is therefore necessary to have the power under section 14 Housing and Regeneration Act 2008 to make provision as to whether, and if so to what extent, HCA is to be the IL charging authority for an area designated under section 13(1).

Justification for procedure selected

1256. As noted above, designation orders under section 13(1) of the Housing and Regeneration Act 2008 are subject to the draft affirmative procedure. This new delegated power adds to the type of provision which may be included in a designation order and so it attracts the same Parliamentary procedure. The

draft affirmative procedure is considered to afford Parliament the appropriate degree of scrutiny and oversight in this regard.

PART 5 (Community Land Auction Pilots)

Clause 127(3) for the Secretary of State to make regulations providing for a community land auction arrangement ("CLA regulations")

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1257. Clause 127 (community land auction arrangements and their purpose) makes provision about community land auction arrangements.

1258. Subsection (3) explains that a community land auction arrangement is an arrangement provided for in community land auction (CLA) regulations (defined in subsection (2) as regulations made under this Part by the Secretary of State). Under such an arrangement a local planning authority is to invite anyone with a freehold or leasehold interest in land in the authority's area to offer to grant a CLA option over the land, with a view to the land being allocated for development in the next local plan for the authority's area. Any CLA option that is granted under such an arrangement will cease to have effect in the event that the land in question is not allocated when the plan is adopted or approved. The local planning authority may then exercise the CLA option, with a view to developing or disposing of the land itself, or the local planning authority may dispose of the option itself to another person who proposes to exercise it and develop the land.

Justification for delegation

1259. The concept of capturing land value uplift that comes with new development is not new. It already exists in the current system of developer contributions and in the proposed Infrastructure Levy. However, a system based around community land auction arrangements is entirely novel. It is therefore considered necessary for the Government to retain a degree of flexibility to accommodate policy choices and policy development over time, and this is reflected in the other delegated powers set out in this memorandum (although clause 127(3) itself is relatively narrow).

1260. It is also right that the details behind a CLA arrangement should be designed through secondary legislation where the level of detail required will not be appropriate for primary legislation. This approach has also been applied to the Infrastructure Levy, and existing Community Infrastructure Levy regulations, and in some cases, powers have been taken that largely replicate those taken to introduce the Infrastructure Levy.

Justification for procedure selected

1261. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to make regulations providing for CLA arrangements.

Clause 127(4)(c) for the Secretary of State to make CLA regulations imposing further requirements on CLA options

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1262. Clause 127(4) provides that a CLA option is an option to acquire an interest in land which is granted under a community land auction arrangement and can be exercised by the local planning authority in whose area the land is situated or be disposed of by that authority to any other person.

1263. Subsection (4)(c) provides that a CLA option must also meet any further requirements imposed by CLA regulations. This provides the Secretary of State with a power to impose further requirements on an option before it can be properly considered a CLA option for the purposes of this Part. This is important as, unless an offer of an option over land meets the requirements of a CLA option, the land will not be capable of being allocated in a local plan unless it falls within any prescribed exceptions (see clause 128(2)).

1264. Subsection (5) provides a non-exhaustive list of provisions that the Secretary of State can make under this power, including provision as to:

a. how long a CLA option must be capable of being exercised for;
b. when, or the circumstances in which, a CLA option may or must be capable of being exercised;
c. when, or the circumstances in which, a CLA option may or must cease to have effect;
d. when, or the circumstances in which, a CLA option may or must be withdrawn;
e. when, the circumstances in which or the terms on which, a CLA option may or must be disposed of;
f. sums that are to be paid under or in connection with a CLA option (including provision permitting or requiring such sums to be adjusted to reflect changes in the value of money);
g. the form and content of a CLA option.

Justification for delegation

1265. Subsection (1) sets out that regulations made under subsection (4)(c) must aim to ensure the overall purpose of community land auction

arrangements is fulfilled. Subsection (4)(c) is required to establish the parameters within which regulations may be made and which elements of a CLA arrangement they can relate to – in this case, the requirements that must be fulfilled in order for an option over land to constitute a 'CLA option'. The elements of a CLA option, non-exhaustively listed in subsection (5), are bespoke to the effective operation of a CLA arrangement. How a CLA option will function, for instance, will be complex and will have significant bearing on the efficacy of a CLA arrangement. As such, it is appropriate for flexibility to be retained to ensure effective operation, with detail to be provided in regulations rather than in primary legislation. Subsection (5) provides a comprehensive indication as to the sorts of provision that might be made in regulations using the power in subsection (4)(c).

1266. Retaining this flexibility is necessary to ensure that the novel concept of a CLA option can be modified if required, and allows further consultation to occur with regards to designing that process through the drafting of and consultation on regulations.

Justification for procedure selected

1267. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to impose further requirements in respect of CLA options in regulations.

Clause 128(1)(a) for the Secretary of State to direct that a local planning authority may put in place a community land auction arrangement in relation to its local plan

Powers conferred on: Secretary of State
Powers exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

1268. Clause 128(1) provides that the power to permit community land auction arrangements is exercisable by direction of the Secretary of State. Clause 128 applies where the Secretary of State directs that a local planning authority may put in place a community land auction arrangement in relation to that authority's preparation of a local plan, the local planning authority resolves to do so (and that resolution has not been rescinded), and the community land auction arrangement has not come to an end.

Justification for delegation

1269. This enables a local planning authority, which has volunteered to pilot community land auction arrangements, to be permitted to put such an arrangement in place by way of a direction given by the Secretary of State. This

direction-making power therefore ensures that a local planning authority can voluntarily conduct a community land auction arrangement, with the approval of the Secretary of State.

1270. Such delegation is necessary, as the intention is for community land auction arrangements to be piloted across a limited number of local planning authority areas, where those authorities have expressed a desire to participate in the pilot. Such a direction does not mandate the relevant local planning authority to put in place a community land auction arrangement, but rather permits them to do so. This will ensure that the Secretary of State can retain control over the number of community land auctions in place during the piloting period.

Justification for procedure selected

1271. We consider that the giving of such directions are unlikely to be considered controversial, as they will simply permit a local planning authority to put in place a community land auction arrangement should they wish to do so. As such, the giving of such a direction is only the first step in a community land auction arrangement being put in place. The local planning authority must still then resolve to do so (subsection (1)(b)). Therefore, when taken as a whole, subsection (1) will make it a voluntary decision for the local planning authority and will not mandate the authority to pilot a community land auction arrangement. It would not be practicable to bring the decision to Parliament each time as to whether a particular local planning authority should be able to run a community land auction arrangement.

Clause 128(2)(b) for the Secretary of State to prescribe circumstances in CLA regulations in which a local plan may allocate land for development which is not subject to a CLA option

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1272. Where a community land auction arrangement is in place, subsection (2)(a) of clause 128 provides that a local planning authority's local plan may only allocate land in the authority's area for development if the land is subject to a CLA option or a CLA option has already been exercised in relation to it. This means that, if a landowner wishes for their land to be allocated in the local plan, they will need to grant a CLA option.

1273. Subsection (2)(b) permits the Secretary of State, in CLA regulations, to prescribe circumstances in which the local plan may allocate land for development without that land being subject to a CLA option.

Justification for delegation

1274. In an area conducting a community land auction arrangement, the basic premise is that land can only be allocated in a local plan if that land is, or has been, subject to a CLA option, as set out in subsection (2)(a). There may be circumstances, however, where the Government wishes to prescribe that land allocation can occur outside of the community land auction arrangement.

1275. These circumstances would be bespoke, and could involve sites that were not able to be put forward by landowners when the community land auction arrangement began. There could be a number of reasons why a site was not put forward at the outset of a community land auction arrangement – for instance, if there were pre-existing options on land that were still in place when the arrangement was launched. As these circumstances could be numerous, we consider that it will be more appropriate to set these out in regulations, upon which the Government can consult, rather than listing these in primary legislation.

Justification for procedure selected

1276. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to prescribe circumstances in which a local plan may allocate land for development which is not subject to a CLA option.

Clause 128(4) for the Secretary of State to make provision in CLA regulations about how, or to what extent, any financial benefit is to be taken into account when deciding whether to allocate land and when deciding whether a local plan is sound

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1277. Clause 128(3) provides that any financial benefit that the local planning authority has derived, or will or could derive, from a CLA option may be taken into account:

a. in deciding whether to allocate land which is subject to a CLA option, or in relation to which the option has been exercised, for development in the local plan; and
b. by a local plans examiner in deciding whether the local plan is sound.

1278. Subsection (4) provides the Secretary of State with a power to make provision in CLA regulations about how, or to what extent, any financial benefit may be taken into account in these circumstances. This may include provision about how the financial benefit should be weighed against any other relevant

considerations when considering whether to allocate land for development in the local plan or testing whether the local plan is sound.

Justification for delegation

1279. Subsection (3) introduces a new consideration – financial benefit – which may be taken into account by local planning authorities in deciding whether to allocate land which is subject to a CLA option in their local plan and by examiners in deciding whether the plan is sound in an examination under Part 2 of the Planning and Compulsory Purchase Act 2004. By allowing this consideration to be taken into account, it will allow local planning authorities to make decisions regarding allocation of land in a manner that could enable community land auction arrangements to maximise land value capture.

1280. However, the Government considers it essential that possible financial benefits that could or will derive from a CLA option are not the only consideration to be taken into account in making decisions about local plans. Other factors, including the existing requirement to prepare local plans with the objective of contributing to the achievement of sustainable development as per section 39 of the Planning and Compulsory Purchase Act 2004 (as amended by paragraph 9(a) of Schedule 8 to the Bill), will remain. To ensure appropriate weighting is given to these different considerations, it is important that the Government can prescribe how this operates in practice, and can adjust the approach in detail, if necessary.

1281. As financial benefits are a novel consideration introduced as part of this pilot, it will be necessary to consider how they interact with other tests for plan soundness. Site allocations are also historically guided by non-statutory means, and national policy can shift over time. That is why the power taken in subsection (4) – for regulations to make provision about how, or to what extent, any financial benefit can be taken into account – is needed, to ensure that the Government can respond appropriately to policy changes where these may impact on community land auction arrangements. If required to act quickly, doing so through secondary legislation will facilitate that more so than if primary legislation were required.

Justification for procedure selected

1282. Given the introduction of financial benefits as a consideration which can be taken into account by local planning authorities when making decisions as to allocation of land in their local plan and by examiners in deciding whether the plan is sound by subsection (3), this power will also be subject to the affirmative procedure, and so any exercise of it will be subject to Parliamentary debate. The Government considers that this will ensure that the appropriate level of Parliamentary scrutiny takes place.

Clause 129(1) requiring the Secretary of State to make CLA regulations to provide that a local planning authority which receives financial benefit from CLA options must apply them, or cause them to be applied, to supporting the

development of an area by funding the provision, improvement, replacement, operation or maintenance of infrastructure, or fund the operation of CLA arrangements in relation to its area

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1283. Clause 129(1) requires CLA regulations to require local planning authorities to apply CLA receipts, or cause them to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure. CLA receipts may also be used to fund the operation of community land auction arrangements in relation to its area, including the exercise of CLA options by the authority.

1284. Subject to clause 129(7), which is considered below, this provision may be considered to be the overarching restriction on what CLA receipts may be spent on. Clause 129(1) is also subject to the provisions of clause 130 and clause 131 which are considered below.

1285. CLA receipts are defined as sums which represent financial benefit derived from CLA options over land. Subsection (12) further provides that a financial benefit is derived from a CLA option if it arises as a consequence of the local planning authority exercising the option and developing or disposing of the land, or disposing of the option itself.

Justification for delegation

1286. As raised above in the justification for the delegated power in clause 127(3), CLA arrangements are a novel process, and this power aligns with the approach taken for other forms of land value capture, such as the new proposed Infrastructure Levy. This power provides an important safeguard to ensure that CLA receipts are spent in a way which benefits local communities, as it allows the Secretary of State overall oversight of the application of CLA receipts.

Justification for procedure selected

1287. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to set out in regulations how CLA receipts must be spent.

Clause 129(3) for the Secretary of State to make provision in CLA regulations about the extent to which CLA receipts may or must be applied to funding infrastructure of a particular description

Powers conferred on: Secretary of State

Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1288. Clause 129(3) allows CLA regulations to make provision about the extent to which CLA receipts received by a local planning authority may, or must, be applied to funding infrastructure of a particular description.

1289. It could be used to make provision 'ring-fencing' a proportion of a local planning authority's CLA receipts to be applied towards specific infrastructure – for example, specifying that a minimum amount of CLA receipts must be spent on providing affordable housing in an area.

Justification for delegation

1290. As set out above, this power could be used to make provision 'ring-fencing' a proportion of CLA receipts to be applied towards specific infrastructure. The Government considers that it may be necessary to be able to adjust these kinds of provisions in CLA regulations over time. Should, for instance, the Government wish to seek a particular objective, flexibility can be afforded through regulations that will allow or require piloting authorities to spend CLA receipts on particular forms of infrastructure. It is therefore not appropriate to prescribe that CLA receipts should be spent on specific types of infrastructure in primary legislation.

Justification for procedure selected

1291. We consider it is appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision about the extent to which CLA receipts may or must be applied to funding infrastructure of a particular description.

Clause 129(5)(b) for the Secretary of State to specify, in regulations, other descriptions of housing which fall within the definition of "affordable housing"

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1292. Clause 129(4) sets out a non-exhaustive list of matters which are within the definition of "infrastructure" (towards which CLA receipts may be applied in accordance with subsection (1)). As per subsection (4)(g), affordable housing is one such matter which falls within the definition of "infrastructure".

1293. Clause 129(5) provides that in subsection (4)(g) "affordable housing" means:

a. social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, and
b. any other description of housing that CLA regulations may specify.

1294. As such, this provision provides the Secretary of State with a power, in regulations, to specify other descriptions of housing that satisfy the definition of "affordable housing" for the purposes of clause 129(4)(g), thus falling within the definition of "infrastructure".

Justification for delegation

1295. This delegated power will allow CLA regulations to specify other descriptions of housing which fall within the definition of "affordable housing" and therefore will be able to be funded by CLA receipts. This power is important to ensure that, should it be appropriate to do so, the definition of affordable housing can be expanded beyond social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008. Further, a similar power is being taken in respect of the Infrastructure Levy at new section 204A(4)(b) (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill). As such, the Government considers that it is necessary to take this power here in order to retain the flexibility to keep the definition of "affordable housing" aligned in the context of both CLAs and the Infrastructure Levy.

Justification for procedure selected

1296. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to specify other descriptions of housing which fall within the definition of affordable housing.

Clause 129(6) for the Secretary of State, in CLA regulations, to amend the non-exhaustive list of matters included within the meaning of 'infrastructure' or to list matters excluded from the meaning

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1297. Clause 129(4) sets out a non-exhaustive list of matters which are within the definition of 'infrastructure' (towards which CLA receipts may be applied in accordance with subsection (1)).

1298. Clause 129(6) allows CLA regulations to amend this section so as to:

a. add, remove or vary a list entry in subsection (4); and/or

b. list matters which are expressly excluded from the meaning of 'infrastructure'. (If this limb of the power is used, the consequence would be that it would be express on the face of this Part that CLA receipts could not be applied to the relevant matter, unless falling within one of the exceptions. or if the relevant provisions in clauses 130 and 131 applied.

1299. It is acknowledged that this is a Henry VIII provision. There is equivalent provision in existing section 216(3) of the Planning Act 2008 and new section 204N of that same Act as inserted by Schedule 11 of this Bill, which is introduced by clause 124. The power in section 216(3) of the Planning Act 2008 was used in the Community Infrastructure Levy Regulations 2000 (S.I. 2000/948) to omit from the definition of infrastructure: "affordable housing".

Justification for delegation

1300. The same power is considered necessary in this regard for CLA regulations as they were for existing CIL regulations and new IL regulations that can be made under new section 204N (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill). This delegated power therefore also replicates the equivalent provision in existing section 216(3) Planning Act 2008.

1301. Adjusting and adapting the meaning of infrastructure will be important for the application of CLA receipts in piloting authorities. This power allows us to make clear what should not be considered as infrastructure, for instance if outside funding is allocated for infrastructure of a particular description, and therefore that infrastructure should not be funded through community land auction arrangements.

Justification for procedure selected

1302. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to amend the non-exhaustive list of matters included within the meaning of 'infrastructure' or to list matters excluded from the meaning.

Clause 129(7) for the Secretary of State to make provision about the circumstances in which local planning authorities are not required to apply a specified amount of CLA receipts towards funding the provision, improvement, replacement, operation of maintenance of infrastructure, or to funding the operation of CLA arrangements

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1303. Clause 129(7) allows CLA regulations to make provision about circumstances in which authorities are not required to apply a specified amount of CLA receipts, or cause a specified amount of CLA receipts to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure or to funding the operation of CLA arrangements. That is to say, CLA regulations may make provision about when authorities can spend CLA receipts on thing other than 'infrastructure' and CLA arrangements.

1304. This is an important exception to the general overarching principle in subsection (1).

Justification for delegation

1305. This delegated power will enable CLA receipts to be spent in a manner that can optimise the gains that can accrue to local communities. If CLA arrangements work as intended, and land value capture is optimised, it may increase the amount of money available for a local planning authority to spend. In doing so, it may be appropriate for a local planning authority to fund matters outside of infrastructure. That is a matter for secondary legislation, which can better adapt to changing societal developments, policy, or changes to the economy.

Justification for procedure selected

1306. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision about the circumstances in which local planning authorities are not required to apply a specified amount of CLA receipts towards funding the provision, improvement, replacement, operation of maintenance of infrastructure, or to funding the operation of CLA arrangements.

Clause 129(8) for the Secretary of State to specify particular kinds of matters which may or may not be funded by CLA receipts, criteria for determining the areas that may benefit from funding by CLA receipts, and what is or is not to be treated as funding

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1307. Clause 129(8) allows CLA regulations to make provision specifying that particular matters may or are to be, or may not be, funded by CLA receipts, such as the provision, improvement or replacement of works, installations and

other facilities, or maintenance and operational activities in connection with infrastructure. Further, CLA regulations are permitted under this provision to specify criteria for determining the areas that may benefit from funding by CLA receipts, and what is to be, or not to be, treated as funding. CLA regulations may also specify things within clause 130(2) and 131(2) which CLA receipts may or are to be, or may not be used to fund. This covers scenarios where there is a duty to pass CLA receipts on to another person.

1308. This is an important provision allowing for CLA regulations to set out further details regarding the application of CLA receipts.

Justification for delegation

1309. This delegated power will allow for the Secretary of State to have flexibility in specifying what may or may not be funded by CLA receipts. If CLA arrangements work as intended, and land value capture is optimised, they may increase the amount of money available for a local planning authority to spend. In doing so, it may be appropriate for a local planning authority to fund matters outside of infrastructure. Such funding is a more appropriate matter for secondary legislation, which can better adapt to changing societal developments, policy, or changes to the economy. This power can also be used to ensure that infrastructure is not double funded if outside funding is already allocated to it.

Justification for procedure selected

1310. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to specify particular kinds of matters which may or may not be funded by CLA receipts, criteria for determining the areas that may benefit from funding CLA receipts, and what is or is not to be treated as funding.

Clause 129(9) allowing CLA regulations to require local planning authorities to prepare and publish lists of what is to be or may be wholly or partly funded by CLA receipts

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1311. Clause 129(9) allows CLA regulations to require local planning authorities to which clause 128 relates to prepare and publish lists of what is to be, or may be, wholly or partly funded by CLA receipts. CLA regulations may, but do not have to, provide for such a list to be binding as to spending in some or all circumstances, and may also include provision about the procedure to be

followed in preparing a list (which may include provision for consultation or the appointment of an independent person). Such a list may be permitted or required to be prepared and published as part of a CLA infrastructure delivery strategy (see clause 132).

Justification for delegation

1312. The same power is considered necessary in this regard for CLA regulations as it was for the new IL regulations at section 204N (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill). This is important because it will allow for CLA regulations to require local planning authorities to prepare and publish a list of what is to be, or may be, wholly or partly funded by CLA receipts, and that such list may be permitted or required to be prepared or published as part of a CLA infrastructure delivery strategy that an LPA might be required to prepare. It is considered appropriate to make provision to align the two processes as they have similarities in their purpose to show communities what CLA receipts are to be spent on.

Justification for procedure selected

1313. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow that CLA regulations may require local planning authorities to prepare and publish lists of what is to be, or may be, wholly or partly funded by CLA receipts.

Clause 129(10) for the Secretary of State to make provision about funding and the ways in which CLA receipts may be applied

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1314. Clause 129(10) sets out further matters CLA regulations may make provision about when making provision about funding.

1315. CLA regulations may permit CLA receipts to be used to reimburse expenditure already incurred; to be reserved for expenditure that may be incurred in the future; or to be applied to administrative expenses in connection with infrastructure or anything within clause 130(2)(a)(ii) or clause 131(2)(b) or otherwise in connection with a CLA arrangement. They may also include provision for the giving of loans, guarantees or indemnities, or make provision about the application of CLA receipts where funding is no longer required in respect of anything to which receipts were to be applied.

Justification for delegation

1316. The same power is considered necessary in this regard for CLA regulations as they were for the new IL regulations under new section 204N (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill). This delegated power is important because it permits CLA regulations to make provision which would allow local planning authorities to borrow against future CLA receipts to deliver infrastructure at the right time to support development and for the giving of loans, guarantees, and indemnities.

Justification for procedure selected

1317. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision about funding and the way in which CLA receipts may be applied.

Clause 129(11) for the Secretary of State to make provision about accountability and scrutiny of CLA receipts

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1318. Clause 129(11) enables CLA regulations to make provision about accountability and scrutiny of CLA receipts. In particular, regulations may require local planning authorities to account for CLA receipts received or due, monitor the use of CLA receipts in its area, report on actual or expected collection and application of CLA receipts. Regulations may also permit a local planning authority to cause money to be applied in respect of things done outside its area, permit a local planning authority or other body to spend or retain the money or pass the money to another body. If money is passed to another body, the provisions of clause 129(11)(a)-(e) apply to that other body.

Justification for delegation

1319. The same powers are considered necessary in this regard for CLA regulations as they were for IL regulations under new section 204N (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill). These powers are considered necessary to allow for transparency with regards to CLA receipts, as the powers could require LPAs to account for CLA receipts received or due, and how they are to be applied in their area.

Justification for procedure selected

1320. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that

adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision about accountability and scrutiny of CLA receipts.

Clause 130(1), (2) and (4) for the Secretary of State to impose a duty on local planning authorities to pass CLA receipts received in respect of a development in an area to a person other than the local planning authority, to be used to fund infrastructure. anything else which addresses demands that development places on an area or the operation of CLA arrangements

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1321. Clause 130(1) sets out that CLA regulations may make provision requiring local planning authorities that receive CLA receipts in respect of development in an area to pass them to a person other than the authority. By virtue of subsection (4), this duty may relate to the whole of a local planning authority's area or the whole of the combined area of two or more local planning authorities, or part only of such an area or combined area.

1322. Subsection (2) then requires CLA regulations imposing a duty under subsection (1) to contain provision to secure that any CLA receipts passed to a person in discharge of the duty are used to support development by funding the provision, improvement, replacement, operation or maintenance of infrastructure, or anything else that is concerned with addressing demands that development places on the area to which the duty relates or any part of that area. CLA receipts may also be used to fund the operation of CLA arrangements in relation to land in the local planning authority's area.

Justification for delegation

1323. These powers allow for CLA regulations to create a duty for local planning authorities to pass on CLA receipts to other bodies, and broadly replicates powers granted under new section 204O (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill) for IL and section 216A of the Planning Act 2008 for CIL. This is important as it provides for the "neighbourhood share", whereby local planning authorities must pass a proportion of their CLA receipts to a person other than the authority to support the development of the area, anything else concerned with addressing demands that development places on an area, or to fund CLA arrangements. This provision is currently used to require funds to be passed to a parish council, but the reason that parish councils are not expressly referred to in the primary legislation is to allow for the power to be used to pass funds on to other potential persons in the future. Retaining this flexibility through regulations is necessary to ensure that the novel process of CLA arrangements can be modified, if required, to address policy development over time.

Justification for procedure selected

1324. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure. The Government considers that this will ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to impose a duty on local planning authorities to pass CLA receipts received in respect of a development in an area to a person other than the authority, to be used to fund infrastructure, anything else which addresses demands that development places on an area, or to fund CLA arrangements.

Clause 130(3) for the Secretary of State to provide for circumstances in which a specified amount of CLA receipts subject to a duty under clause 130(1) may be used for purposes other than those specified in clause 130(2)

Powers conferred on: Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

1325. Where CLA receipts are subject to a duty under clause 130(1), clause 130(2) sets out the general position on what such CLA receipts may then be permitted to be spent on.

1326. This provision allows CLA regulations to provide for exceptions from the position in clause 130(2) - that is to say, circumstances in which a specified amount of such CLA receipts may be used for specified purposes other than those mentioned in clause 130(2).

Justification for delegation

1327. This power is considered necessary as where CLA regulations create a duty for CLA receipts to be passed to other bodies under clause 130(1), clause 130(3) allows for CLA regulations to make provision about the circumstances in which a specified amount of those receipts may be used for specified purposes outside of the criteria set for spending in clause 130(2).

1328. Without this power, CLA receipts passed under clause 130(1) could only ever be subject to the criteria in subsection (2). This delegated power will allow for the Secretary of State to have the flexibility to specify what may or may not be funded by CLA receipts by bodies such as parish councils.

1329. The policy intention in clause 130 is to make provision whereby CLA receipts collected in certain areas (i) must be passed to specified persons, and (ii) may be subject to different rules about spending – potentially with wider

freedom to spend the receipts. As such, subsection (3) of clause 130 allows CLA regulations to make provision about circumstances in which a specified amount of CLA receipts may be used for purposes not mentioned in subsection (2).

1330. If provision of this kind was not included it would follow that monies passed under an clause 130 duty would in some ways be subject to narrower, not wider, rules on spending. This is because CLA regulations would not be expressly empowered to provide that monies subject to a clause 130 duty could be spent on other specific purposes.

1331. This provision has therefore been included to ensure that CLA regulations may make appropriate and consistent provision about spending here – so that the range of purposes that CLA receipts that are subject to a duty under clause 130 may be spent on is as wide as the range of purposes that CLA receipts which are not subject to such a duty may be spent on under clause 129.

Justification for procedure selected

1332. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to provide for circumstances in which a specified amount of CLA receipts subject to a duty under clause 130(1) may be used for purposes other than those specified in clause 130(2).

Clause 130(5) - (8) for the Secretary of State to make specified kinds of related provision in relation to a duty under clause 130(1)

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1333. Pursuant to clause 130(5), CLA regulations may make provision about the persons to whom CLA receipts may or must, or may not, be passed in discharge of a duty under clause 130(1). Subsection (6) then sets out what a duty under subsection (1) may relate to, and in paragraph (b) provides a power for CLA regulations to make provision relating to specific parts of CLA receipts which this duty may relate to.

1334. Under subsection (7), CLA regulations may make provision in connection with the timing of payments in discharge of a duty under subsection (1).

1335. Subsection (8) then sets out that CLA regulations may, in relation to CLA receipts passed to a person in discharge of a duty under subsection (1), make

provision about matters such as accountability, scrutiny and recovery of CLA receipts, and the use of anything recovered.

Justification for delegation

1336. The same powers are considered necessary in this regard for CLA regulations as they were for IL regulations in new section 204O (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill) and for CIL regulations in 216A of the Planning Act 2008. These powers allow for CLA receipts to make specific kinds of related provisions in relation to the "neighbourhood share", including to support transparency where provision may be made through CLA regulations to account, monitor, and report on CLA receipts passed to bodies.

Justification for procedure selected

1337. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make specified kinds of related provision in relation to the duty under clause 130(1).

Clause 131(2) for the Secretary of State, where there is an area to which a particular duty under clause 130(1) relates and also an area to which it does not relate ('the uncovered area'), to make provision about how the local planning authority is to apply, or cause to be applied, CLA receipts received in respect of the uncovered area

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1338. Where there is an area to which a particular duty under clause 130(1) relates, and also an area to which that duty does not relate, subsection (2) of clause 131 sets out that CLA regulations may provide that the local planning authority that receives CLA receipts in respect of development in the uncovered area may apply those receipts, or cause them to be applied, to support development by funding the provision, improvement, replacement, operation or maintenance of infrastructure, to support development of the uncovered area (or any part of it), by funding anything that that's concerned with addressing demands that development places on an area, or to funding the operation of community land auction arrangements in relation to the local planning authority's area.

Justification for delegation

1339. This provision must be considered alongside clause 130(1) and (2). clause 130(1) allows the Secretary of State to require that a proportion of CLA

receipts must be passed on to a person other than the local planning authority and allows them to be spent on wider range of matters, as set out in clause 130(2). Clause 131(2) allows local planning authorities to allow a proportion of their CLA receipts to be spent on the same wider range of matters in areas where there is no relevant person, such as a parish council, to pass the funds onto. The Government has committed to exploring how unparished areas can receive a portion of developer contributions, through the neighbourhood share of CIL and later through the Infrastructure Levy. While the means to do so remain under development, it is appropriate that we retain the flexibility to ensure CLA piloting authorities without parish councils can avail of that reform as and when appropriate.

Justification for procedure selected

1340. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this power.

Clause 131(3) for the Secretary of State to provide for circumstances in which a local planning authority may apply a specified amount of CLA receipts, or cause a specified amount of CLA receipts to be applied, towards specified purposes other than those mentioned in subsection (2)

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1341. Where clause 131 applies, subsection (2) sets out the general position on what relevant CLA receipts may then be permitted in CLA regulations to be spent on.

1342. This provision allows CLA regulations to provide for exceptions from the position in subsection (2) - that is to say, circumstances in which a specified amount of such CLA receipts may be used for specified purposes other than those mentioned in subsection (2).

Justification for delegation

1343. As with clause 130(3) considered above, this power corresponds to the widening of what CLA regulations may allow CLA receipts generally to be spent on. See above for an explanation and justification of this approach in clauses 129(7) and 130(3).

1344. If provision of this kind was not included in this section, it would follow that where clause 131 applies, relevant CLA receipts would in some ways be subject to narrower, not wider, rules on spending. This is because CLA regulations would not be expressly empowered to provide that CLA receipts under this provision could be spent on other specified purposes.

1345. This provision has therefore been included to ensure that the range of matters on which CLA receipts subject to clause 131 may (subject to CLA regulations) be spent is at least as wide as the range of matters on which CLA receipts not subject to such a duty may be spent under clause 129. This will allow appropriate and consistent provision to be made in CLA regulations – so that it can align with any like provision made under clauses 129(7) or 130(3).

Justification for procedure selected

1346. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to provide for circumstances in which an LPA may apply a specified amount of CLA receipts, or cause a specified amount of CLA receipts to be applied, towards specified purposes other than those mentioned in subsection (2).

Clause 131(4) and (5) for the Secretary of State to make specified kinds of related provision in relation to provision made under clause 131(2)

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1347. As set out above, subsection (2) of clause 131 sets out the general position on what relevant CLA receipts may be permitted in CLA regulations to be spent on, where clause 131 applies. Subsection (1) makes clear that subsection (2) applies where there is an area to which a duty under clause 130(1) relates and also an area to which that duty does not relate ("the uncovered area").

1348. Subsection (4) sets out that provision under subsection (2)(a) or (b) may relate to the whole, or part only, of the uncovered area.

1349. Subsection (5) then permits provision under subsection (2) to relate to all CLA receipts (if any) received in respect of the area to which the provision relates, or to such part of those CLA receipts as is specified in, or determined under or in accordance with, CLA regulations. It therefore provides a power for CLA regulations to make provision relating to specific parts of CLA receipts which provision under subsection (2) may relate to.

Justification for delegation

1350. This power aligns with the approach taken for other forms of land value capture, such as the new proposed Infrastructure Levy (see new section 204P(4) and (5), to be inserted into the Planning Act 2008 by Schedule 11 to

the Bill). The Government has committed to exploring how unparished areas can receive a portion of developer contributions, through the neighbourhood share of CIL and later through the Infrastructure Levy. In doing so, flexibility is needed to be able to set out whether the relevant provision applies to the whole, or part only, of the uncovered area, and to all or part of the receipts received. Therefore, while the means to do so remain under development, it is appropriate that we retain the flexibility to ensure that CLA piloting authorities without parish councils an avail of that reform as and when appropriate.

Justification for procedure selected

1351. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to make specified kinds of related provisions in relation to provision made under clause 131(2).

Clause 132(1) allowing CLA regulations to require a local planning authority in relation to which clause 128 applies to prepare and publish a CLA infrastructure delivery strategy

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1352. Clause 132(1) establishes that CLA regulations may place an obligation on local planning authorities to which clause 128 applies to prepare and publish a CLA infrastructure delivery strategy (CLA IDS). A CLA IDS will give an overarching view of the strategic plans for spending CLA receipts in a local planning authority's area, and such other information as may be prescribed (see clause 132(2)(a) and (b)).

Justification for delegation

1353. The delegated power sought at clause 132(1) allows CLA regulations to set out a requirement for piloting local planning authorities to prepare and publish a CLA IDS.

1354. A similar provision is included at new section 204Q (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill) pertaining to the Infrastructure Levy, though that provision is drafted such that there is an obligation, on the face of the primary legislation, for every Infrastructure Levy charging authority to produce an IDS. Clause 132(1) sets out that CLA regulations may require a CLA IDS to be produced. This is to ensure that the capacity of a piloting authority to run a CLA arrangement is preserved and a holistic view of how the system operates can be taken prior to requiring the production of a CLA IDS.

The content of a CLA IDS will be subject to a level of detail best set out in regulations.

Justification for procedure selected

1355. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow CLA regulations to place an obligation on local planning authorities piloting CLA arrangements to prepare and publish a CLA infrastructure delivery strategy.

Clause 132(2)(b) and (3) for the Secretary of State to prescribe information which must be included in a CLA infrastructure delivery strategy

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1356. As set out above, CLA regulations may require a local planning authority to which clause 128 applies to prepare and publish a CLA IDS.

1357. As well as setting out an overarching view of the strategic plans for spending CLA receipts in an authority's area, a CLA IDS may (and, if required by CLA regulations, must) set out the plans (however expressed) of the local planning authority in relation to the provision, improvement, replacement, operation and maintenance of infrastructure in the authority's area, including infrastructure not funded by CLA receipts. It must also contain such other information as prescribed by CLA regulations. To the extent these provisions are delegated powers, they provide that:

a. CLA regulations can require a CLA IDS to set out the plans of the local planning authority in relation to the provision improvement, replacement, operation and maintenance of infrastructure, as opposed to this being at the discretion of the local planning authority (see clause 132(3)); and
b. generally, CLA regulations can prescribe information which the CLA IDS must include (see clause 132(2)(b)).

Justification for delegation

1358. Clause 132 provides a high-level summary of the content of a CLA IDS. Prescribing what kinds of information must be included in a CLA IDS, as per subsection (2)(b), will require a level of detail inappropriate for primary legislation. It is therefore a matter best left for regulations. The same principle applies to subsection (3) of clause 132.

1359. Moreover, similar provision is made by new section 204Q(2) (to be inserted into the Planning Act 2008 by Schedule 11 to the Bill) in respect of

Infrastructure Levy IDSs. The development of a CLA IDS and an IDS for the purposes of the Infrastructure Levy should necessarily proceed in lockstep given their objectives are the same. It would not be coherent to state on the face of CLA legislation the detail of a CLA IDS, and instead retaining the flexibility to keep both procedures aligned makes this a matter for regulations.

Justification for procedure selected

1360. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to prescribe information which may or must be included in a CLA infrastructure delivery strategy.

Clause 132(5) - (7) for the Secretary of State to make provision for the independent examination of CLA infrastructure delivery strategies and how that is to be conducted

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1361. These provisions permit CLA regulations to make provision for the independent examination of CLA IDSs, and revisions to, or replacements of, such strategies, and for such examination to be combined with the examination of a local plan or the examination of an infrastructure delivery strategy. Subsection (7) expressly provides the ability to make various kinds of procedural and related provision.

Justification for delegation

1362. The Government wishes to retain flexibility to prescribe how CLA IDSs are to be examined to ensure that examination is focused on a CLA piloting authority following the correct procedure in setting out their strategic plans for spending CLA receipts. This could, for instance, pertain to whether sufficient consultation has occurred, or whether CLA guidance and regulations have been adhered to. CLAs are a novel process and so it is appropriate that, should independent examination of CLA IDSs need to be adjusted or focused on particular unforeseen elements of a CLA arrangement, that regulations can be drafted to facilitate this.

1363. As it is expected that a CLA piloting authority will be able to set out on a site-by-site basis what infrastructure is required on a site, the process of examining a CLA IDS may be bespoke to a CLA authority. Setting out how the conduct of examination may occur as a result of this is best done through regulations.

1364. In addition, it will be necessary to make detailed provision in CLA regulations about procedural matters connected with carrying out an examination, such as who is to carry out the examination, what the examination entails and how it is to be carried out. This kind of detail is best set out in delegated legislation, and this enables quick amendment as needed over time.

Justification for procedure selected

1365. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision for the independent examination of CLA infrastructure delivery strategies and how that is to be conducted.

Clause 132(8) for the Secretary of State to publish guidance in relation to the preparation, publication, revision or replacement of CLA infrastructure delivery strategies

Powers conferred on: Secretary of State
Powers exercised by: Guidance
Parliamentary Procedure: None

Context and Purpose

1366. This provision allows the Secretary of State to issue guidance to local planning authorities in relation to the preparation, publication revision or replacement of CLA IDSs.

Justification for delegation

1367. How a CLA IDS is to be embedded and put into operation will need to be subject to new guidance, given that both CLA arrangements generally, and specifically CLA IDSs, are novel changes to the planning system. How a CLA IDS interacts with any policy provisions set out by a CLA piloting authority (such as affordable housing requirements for allocated land) will need to be set out in guidance. How other administrative matters related to a CLA more generally will also be subject to guidance, and so it is sensible that guidance related to CLA IDSs can adapt accordingly to changes over time.

Justification for procedure selected

1368. We consider that the power to issue guidance is unlikely to be controversial as CLA arrangements are a novel process and CLA infrastructure delivery strategies are a new document which local planning authorities may need to produce, should CLA regulations impose such a requirement. Considering both of these factors, it is sensible that guidance relating to CLA IDSs can be adapted accordingly over the piloting period and it would be

impractical to bring a decision to Parliament each time guidance in relation to CLA IDSs are to be updated.

Clause 132(9) for the Secretary of State to make procedural and other provision about CLA infrastructure delivery strategies

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1369. These provisions consist of a list of general procedural and related types of provision which CLA regulations may make in connection with CLA IDSs.

Justification for delegation

1370. It is necessary to specify the detail of procedural and connected matters in secondary legislation. This will require a significant level of detail and, as piloting authorities put in place and run CLA arrangements, may require amendments over time as this policy embeds. Setting out procedures by way of regulation provides a suitable means for rapid revisions to be made, if necessary, in response to how CLA arrangements proceed in real-time. Ensuring compatibility with other elements of the planning system and wider planning considerations will also be necessary, which is also best accounted for by setting out CLA IDS related procedures in secondary legislation.

Justification for procedure selected

1371. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State to allow for CLA regulations to make procedural and other provisions about CLA infrastructure delivery strategies.

Clause 133(1) for the Secretary of State to make provision applying this Part to local planning authorities who are to prepare a joint local plan

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1372. Clause 133(1) allows CLA regulations to make provision applying any provision made by or under this Part to local planning authorities whose next local plan is to be a joint local plan (with or without modifications).

1373. Where such provision is made, the CLA regulations must include provision about how CLA receipts deriving from a joint community land auction arrangement are to be shared between the authorities.

Justification for delegation

1374. The provisions in Part 5 do not automatically apply to joint local plans (see clause 128(5)). We consider that the exclusion of joint local plans from CLA arrangements is an appropriate starting point, given that CLA arrangements are a novel process which are being piloted on a time-limited basis. As such, the Government considers that, in the first instance, CLA arrangements should be trialled in areas where a local plan (as opposed to a joint local plan) is being prepared. However, depending on the success of CLA arrangements in piloting areas, it may become suitable for joint local plans to be brought within the remit of CLA arrangements. This power allows for CLA regulations to make provision to apply all, or some, of Part 5 in relation to local planning authorities who are to prepare a joint local plan, and in doing so, the provisions can be modified if necessary to ensure that they work in the intended way. Therefore, this power is necessary in order for it to be possible to allow for local planning authorities who are to prepare joint local plans to be able to pilot CLA arrangements, should the Secretary of State consider that this is appropriate.

Justification for procedure selected

1375. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision applying this Part to local planning authorities who are to prepare a joint local plan.

Clause 135(1) for the Secretary of State to make provision about procedure in connection with CLA, including provision of various specified kinds

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1376. Clause 135(1) allows CLA regulations to make provision about a range of matters, including the procedures to be followed, how or when anything must be done under, or in connection with, a CLA arrangement, and about the provision or publication of information under, or in connection with, a CLA arrangement. They may also make provision about the leasehold interests in relation to which a CLA arrangement may, may not or must be capable of applying, permitting a local planning authority to exclude land from a CLA arrangement and clause 128(2), and about when a CLA arrangement is to be taken to be put in place or to come to an end.

1377. As well as these procedural matters regarding CLA arrangements, CLA regulations may make provision regarding the operation of section 106 of the Town and Country Planning Act 1990 where clause 128 applies or has applied (including provision about the circumstances in which a planning obligation under that section may constitute a reason for granting planning permission). There is also a power for CLA regulations to make provision about the exercise of any other power relating to planning or development, and for CLA regulations to make provision about anything else relating to planning or development.

1378. Provision may only be made under subsection (1)(h) to (j) if the Secretary of State thinks it necessary or expedient for any of the matters set out in subsection (3).

Justification for delegation

1379. CLA arrangements are a new process, untrialled in England previously, and so it is appropriate that powers are taken to ensure they can be adapted to real-world circumstances accordingly. Each of paragraphs (a)–(j) of clause 135(1) is imperative to allow CLA regulations to set out how a CLA arrangement will relate to specific areas of the planning system, and to be able to explore these matters in the appropriate level of detail such that CLA arrangements can function effectively.

1380. Subsection (1)(j) allows CLA regulations to make provision about anything else relating to planning or development, but is constrained by subsection (3), in that the Secretary of State can only make such provision if they consider it necessary or expedient in delivering the overall purpose of CLA arrangements, or any other purpose set out in subsection (3)(b)-(e). This is important as community land auction arrangements are a novel process, previously untrialled in England, and this will allow the Government to ensure that they can fit seamlessly within the existing planning system (which may change over time) and adapt to real-world circumstances accordingly.

Justification for procedure selected

1381. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make provision about procedure in connection with a CLA, including provision of various specified kinds.

Clause 135(2) for the Secretary of State to publish guidance about, or in connection with, CLA arrangements

Powers conferred on: Secretary of State
Powers exercised by: Guidance
Parliamentary Procedure: None

Context and Purpose

1382. This provision allows the Secretary of State to issue guidance to local planning authorities or other authorities, which they must have regard to, about, or in connection with, CLA arrangements (including guidance about how any power relating to planning or development is to be exercised in circumstances which include, or may include, a CLA arrangement).

1383. Such guidance may only be given if the Secretary of State thinks it necessary or expedient for any of the matters set out in subsection (3).

Justification for delegation

1384. As CLA arrangements are a new process, untrialled in England previously, we consider that it will be necessary to provide related guidance to relevant authorities on how CLA arrangements are to be embedded and operate, taking account of the wider planning system too. The guidance will be intended to, in particular, provide practical assistance to piloting authorities, and will contain a level of detail which would not be suitable for inclusion within primary legislation.

Justification for procedure selected

1385. We consider that the power to issue guidance in relating to CLA arrangements is unlikely to be controversial as the power is constrained by subsection (3), in that the Secretary of State can only issue guidance under subsection (2) if they consider it necessary or expedient in delivering the overall purpose of CLA arrangements, and any other purpose set out between subsection (3)(a)-(e). It would be impractical to bring a decision to Parliament each time guidance in relation to CLA arrangements are to be updated.

Clause 135(4) allowing CLA regulations to confer functions on any person, including functions involving the exercise of a discretion and make consequential supplementary or incidental provision under clause 219(1)(c) which disapplies, or modifies the effect of, any provision made by or under an Act of Parliament (whenever passed or made)

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1386. This provision allows the Secretary of State to confer, in CLA regulations, functions on any person, including functions involving the exercise of a discretion.

1387. It further permits the Secretary of State, in CLA regulations, to make consequential, supplementary or incidental provision under section 219(1)(c)

which disapplies, or modifies the effect of, any provision made by or under an Act of Parliament (whenever passed or made).

Justification for delegation

1388. CLA arrangements are a new process, untrialled in England previously, and so it is appropriate that powers are taken to ensure they can be adapted to real-world circumstances accordingly. These powers are important so that we can ensure that CLA arrangements can operate smoothly in cases where existing legislation may interact with policy direction. Given that this Part is temporary, we have only taken powers to disapply or modify any provision made by or under an Act of Parliament (whenever passed or mode), so as not to permanently alter legislation following the end of the piloting period.

Justification for procedure selected

1389. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow CLA regulations to confer functions on any person, including functions involving the exercise of a discretion, and to make consequential, supplementary, or incidental provision under section 219(1)(c) which disapplies, or modifies the effect of, any provision made by or under an Act of Parliament (whenever passed or made).

Clause 136(3) for the Secretary of State to make transitional, transitory or saving provision in connection with the expiry of this Part

Powers conferred on: Secretary of State
Powers exercised by: Regulations
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1390. Clause 136(1) is a sunset clause, which provides that this Part, other than this section, will expire at the end of the period of 10 years beginning with the date on which CLA regulations are first made.

1391. Subsection (2) sets out a list of savings, specifically that the expiry of this Part does not affect matters such as any CLA arrangement which is put in place before the expiry of this Part (regardless of whether or not it comes to an end before this Part expires); any CLA options, or allocation of land for development in a local plan, that is made under a CLA arrangement which is put in place before the expiry of this Part (whether or not it has come to an end); and the treatment of any CLA receipts.

1392. Subsection (3) then provides that CLA regulations may make transitional, transitory or saving provision in connection with the expiry of this Part, and subsections (1) and (2) are subject to any such provisions.

Justification for delegation

1393. When this Part expires 10 years after CLA regulations are first made (as per subsection (1)), there may still be CLA arrangements which have commenced but have not yet come to an end. This power is considered necessary as it allows for CLA regulations to provide for further transitional, transitory, or saving provision (beyond those savings already set out in subsection (2)), so that certain elements of the CLA process can run smoothly following expiry.

Justification for procedure selected

1394. We consider it appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to allow for CLA regulations to make transitional, transitory or saving provision in connection with the expiry of this Part.

PART 6 – Environmental Outcomes Reports

Clauses 138, 139 and 141 Power for the Secretary of State to make EOR regulations making provision requiring an Environmental Outcomes Reports to be prepared in relation to a proposed relevant consent or proposed relevant plan, to specify what those outcomes should be and to monitor and assess the extent to which a relevant consent or relevant plan affects the delivery of a specified environmental outcome

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *Affirmative procedure (in respect of clauses 138 and 139) and negative procedure (in respect of clause 141)*

Context and Purpose

1395. The provisions in clauses 138 and 139 contain the main powers in this Part and will provide powers for the Secretary of State to legislate in respect of the framework requiring environmental assessment, by requiring environmental outcomes reports to be prepared for relevant consents and plans (clause 139(1)) and by specifying what those outcomes should be (clause 138(1)).

1396. Clause 141 contains the power for the Secretary of State to make EOR Regulations that contain provisions around how to assess and monitor the impact of a relevant consent or relevant plan on specified environmental outcomes, including in respect of any proposal contained in an environmental outcomes report. It also provides a power (clause 141(3)) for EOR Regulations to make provision for action to be taken if monitoring and assessment

determines that it is appropriate, including, for example, to mitigate or remedy the effects of an outcome not being delivered.

1397. Environmental assessment informs decisions by public authorities whether and on what terms to authorise certain developments, plans and programmes. Several of the UK's international obligations require that environmental assessment be carried out in respect of certain developments, plans or programmes likely to impact upon the environment. Outside of the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) Directives, these international obligations give considerable latitude to individual states as to how to implement a domestic environmental assessment framework. The proposal is to introduce a new system of Environmental Outcomes Reports (EORs) to replace the existing environmental regimes for consenting relevant plans and projects. Each government department will be able to make EOR regulations relating to their policy areas. EORs support the introduction of an outcomes-focused model that seeks, wherever possible, to measure anticipated environmental effects against determined outcomes related to wider government targets and commitment

1398. Clause 138(1) provides that the Secretary of State may specify what the environmental protection outcomes should be ('specified environmental outcomes') in regulations. Clause 139(1) provides the power to require an environmental outcomes report to be prepared for relevant consents and plans and clauses 139(2) and (3) require such report to be taken into account or given effect in deciding whether and on what terms a proposed consent should be given or plan have effect. These powers are elucidated by clause 139(7) and other provisions in Part 5, including clause 141, which provides for EOR regulations to make provision about the ongoing monitoring and assessment of the extent to which a relevant consent or relevant plan actually affects the delivery of specified outcomes and to make provision requiring action to be taken if deemed appropriate.

Justification for delegation

1399. To date, most of the domestic environmental assessment framework has been brought forward by regulations implementing the EIA and SEA Directives, made under s.2(2) European Communities Act 1972. As the ability to introduce regulations under that section has expired, new regulation-making powers subject to suitable constraints are necessary in order to ensure that government is not left without the ability to regulate in this important area.

1400. Almost all of the existing environmental assessment framework is provided for by secondary legislation made by the relevant Secretary of State. There is therefore nothing new in these matters being the subject of delegated powers with suitable duties to consult and parliamentary scrutiny. Moreover, it would be odd if, going forward, the only ability to amend provision previously made by regulations is by way of primary legislation.

1401. While much of the substantive content of an environmental assessment regime is technical, procedural and detailed, and is therefore considered suitable for secondary legislation, it is the evolving nature of environmental matters that is the key driver for the need for delegated powers. The new system is designed to be more reactive to changing science and best practice so will require regular updating and amendment which would not be achievable through primary legislation.

1402. Moreover, there are currently 16 different regimes for the authorisation of developments, plans and programmes, which include a subsidiary environmental assessment regime. Each such regime has its own tailored set of legal provisions applying an environmental assessment sub-regime. Different regimes fall within the remit of different departments. Government envisages that this will continue to be the position and that regime-specific provision will continue to need to be made. In the absence of delegated powers, primary legislation would need to be amended every time there is a desire to amend an aspect of an individual environmental assessment sub-regime, which is considered to be neither desirable nor an effective use of Parliamentary time. In this context, it is noted that it may be necessary or desirable to reform aspects of one regime at a time when the same does not apply to all the other ones. By having the detail of the regimes in secondary legislation, the flexibility to amend the varying regimes as and when appropriate is preserved.

1403. In addition to the requirement for regulations made under the power contained in this clause to be subject to the affirmative resolution procedure (see section 'Justification for the procedure' below), these provisions place appropriate restrictions on the Secretary of State's ability to introduce regulations:

a. The Secretary of State must, before making any EOR regulations which contain provision about what the environmental outcomes are to be (clause 139(1)), have regard to the current environmental improvement plan (within the meaning of Part 1 of the Environment Act 2021) (see clause 139(5)). Clause 142 (*Safeguards: non-regression, international obligations and public engagement*) provides for a number of additional restrictions on Secretary of State, who must also be satisfied that the overall level of environmental protection provided by environmental law at the time this Act is passed is not reduced before making any regulations under this Part (clause 142(1)) and that regulations may not contain provision that is inconsistent with the international obligations of the UK (clause 142(2)). The Secretary of State will therefore not have a free hand to introduce any type of provision for any purpose they deem fit; Parliament will in this way have set out the objectives to be met and matters to which regard must be had;

b. Clause 147(1) *(Public consultation etc.*) requires that before making regulations which make provision under clause 138(1) or that amend, repeal or revoke existing environmental legislation, the Secretary of State must carry out a public consultation in accordance with the

requirements of that clause. More limited consultation of such persons as Secretary of State considers appropriate is required in respect of other aspects of EOR Regulations (clause 147(2)).

Justification for procedure selected

1404. Government wants the new system to benefit from close Parliamentary scrutiny and debate, and has therefore proposed that regulations made under these provisions be subject to the affirmative resolution procedure.

1405. Clause 147(1) requires that before making regulations which make provision under clause 138(1) or that amend, repeal or revoke existing environmental legislation, the Secretary of State must carry out such consultation in accordance with the requirements of that clause.

1406. We note that this increases the level of parliamentary oversight of environmental assessment secondary legislation. Previously, environmental assessment regulations were generally made under s.2(2) European Communities Act 1972, and so were subject to the negative resolution procedure.

Power for the Secretary of State to make EOR Regulations to in relation to the meaning of "relevant consent" and "relevant plan" (clause 140)

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

1407. The power in clause 140(1) to (6) in effect allows the Secretary of State to make provision about what type of development, plans or programmes will be subject to the requirements of EOR Regulations and will therefore have to produce an Environmental Outcomes Report in order to be granted consent or approval under the relevant regime.

1408. The purpose of this power is to allow the Secretary of State, subject to consultation and the affirmative procedure (and bound by the principle of non-regression) to set what types of development, plans and projects are required to produce an Environmental Outcomes Report. This reflects the position in the current EU system where screening lists/thresholds are produced that determine where plans and projects require assessment.

Justification for delegation

1409. The Government wants to ensure the new system is capable of adapting quickly to new policies and scientific evidence. Detailing what requires assessment in primary legislation would restrict the ability of the Government

to react to changes in policy and scientific evidence that could affect whether a type of plan or development requires assessment. A delegated power will allow the Government to update the requirements/thresholds for what requires assessment based on relevant changes in policy or new scientific evidence. This power is also linked to the wider drive for certainty and clarity across assessment and the need to give those who bring forward plans / development clarity as to whether assessment is required.

Justification for procedure selected

1410. This is an area where the Government wishes to work closely with stakeholders and parliamentarians and has therefore proposed that regulations made under these provisions be subject to the affirmative resolution procedure.

1411. Clause 147(2)(a) requires consultation with persons the Secretary of State considers appropriate before making regulations under clause 140(1) to (6).

Power for the Secretary of State to direct that no environmental outcomes report is required to be prepared in relation to a proposed relevant consent which is solely for the purposes of national defence or civil emergency (clause 144(1))

Powers conferred on Secretary of State
Powers exercised by direction of the Secretary of State

Context and Purpose

1412. Clause 144(1) provides the main powers for the Secretary of State to direct that no environmental outcomes report is required for relevant consents that are solely for the purposes of national defence or civil emergency and clause 144(4) gives the Secretary of State the power to revoke such a direction.

Justification for power to direct

1413. The provisions in this section seek to replicate the current ability of the Secretary of State to direct that an environmental assessment is not required in specified circumstances. In order to be able to react effectively and expeditiously, it is the Government's view that, in matters of national defence and civil emergency, parliamentary scrutiny may inhibit the ability of the Secretary of State to act in a timely fashion in relation to matters of such urgency and/or importance.

1414. Further, under clause 144(3) a direction may provide that provisions in the EOR regulations specified in that direction (as may be modified) apply, despite the fact that no EOR is required. This could allow for, for example, post-consent monitoring in circumstances where no EOR was required.

Power for the Secretary of State to make EOR regulations which provide for further circumstances where the Secretary of State may direct that no environmental outcomes report is required to be prepared (clause 144(2))

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

1415. Under clause 144(2), the Secretary of State may, by regulations, expand the scope of the type of projects in relation to which the Secretary of State may direct that no Environmental Outcomes Report is required to be produced. Clause 144(4) gives the Secretary of State the power to revoke such a direction.

Justification for delegation

1416. While the primary focus of exemptions is on ensuring the Secretary of State has the ability to act for the purpose of national defence or civil emergency, the varied nature of the 16 different assessment regimes could present circumstances where it is necessary to provide a limited exemption from the need to produce an Environmental Outcomes Report. This is to ensure the Government is able to consider additional circumstances outside of national defence and civil emergency when the need to produce an environmental outcomes report should be removed.

1417. This, again, reflects the different potential requirements of the various consenting regimes and recognises the potential need to consider further exemptions on a limited basis. Given the breadth of subject matters and circumstances that can require an environmental assessment, it would not be practical to include an exhaustive list of possible exemptions on the face of the Bill.

1418. As with the power under clause 144(1), under clause 144(3) a direction may provide that provisions in the EOR regulations specified in that direction (as may be modified) apply, despite the fact that no EOR is required. This could allow for, for example, post-consent monitoring in circumstances where no EOR was required.

Justification for procedure selected

1419. Government's view is that this warrants close Parliamentary scrutiny and time for debate, and has therefore proposed that regulations made under these provisions be subject to the affirmative resolution procedure.

1420. Clause 147(2)(a) requires consultation with persons the Secretary of State considers appropriate before making regulations under Clause 144(2).

1421. The Government feels that the combination of a duty to consult on the use of the power and the affirmative procedure achieves a fair balance between retaining the flexibility to adapt to pressing circumstances and effective Parliamentary oversight.

Power for the Secretary of State to make EOR Regulations which make provision about or in connection with the enforcement of requirements imposed by or under this Part (clause 145 (Enforcement))

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

1422. Clause 145 provides that EOR regulations may include provision as to enforcement. Clauses 145(2) and (3) set out what such provisions may address.

Justification for delegation

1423. In introducing an outcomes-based approach to assessment, the Government is recasting its approach to environmental assessment. The powers are intended to replicate the powers currently available to Government and the enforcement powers listed in the Bill reflect the various provisions currently covered in the existing environmental legislation. However, the shift to an outcomes--based model of assessment will require the Government to consider its approach to enforcement across the various regimes framed against the environmental outcomes and related monitoring requirements. As such, it is not possible to specify the enforcement provisions required ahead of those policy decisions being made.

Justification for procedure selected

1424. Given the importance of enforcement provisions for the functioning of the new system, and for those affected, the Government believes these merit close Parliamentary scrutiny and time for debate, and has therefore proposed that regulations made under these provisions be subject to the affirmative resolution procedure.

1425. The various enforcement provisions, including the creation of criminal offences (albeit not ones that are punishable with imprisonment), civil sanctions and powers of entry, inspection seizure and detention are wide ranging and warrant Parliamentary scrutiny.

1426. Clause 145(2)(a) requires consultation with persons the Secretary of State considers appropriate before making regulations under clause 145.

Power for the Secretary of State to make EOR regulations requiring a public authority to report on or provide information in relation to the delivery of environmental outcomes (clause 146)

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *negative procedure*

Context and Purpose

1427. This provision provides the basis for reporting requirements on public authorities in relation to Environmental Outcomes Reports, the details of what may be required in such reports is elucidated in clause 146(2).

Justification for delegation

1428. As each environmental assessment regime covers a different form of consenting, it would not be appropriate to introduce a blanket reporting requirement on public authorities. A key policy driver behind the new system is to ensure environmental assessment is more targeted and the information captured is used to drive the evolution and refinement of policy. The level of detail captured, and frequency of reporting will necessarily differ between assessment regimes so this power to make regulations is required to accommodate the different policy profiles and priorities of the various regimes.

Justification for procedure selected

1429. Given the technical/procedural nature of these reporting provisions and that the reporting requirements will flow from regulations made under the affirmative procedure that have benefited from scrutiny and debate, the Government proposes that regulations made under these provisions be subject to the negative resolution procedure.

Power for the Secretary of State to make EOR Regulations requiring a public authority to respond to a consultation or to respond in a particular way or at a particular time (clause 147(3))

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *negative procedure*

Context and Purpose

1430. The Secretary of State may provide that public authorities must respond, or respond in a particular way or by a particular time, to a consultation in relation to EOR Regulations containing any provisions set out in clauses 147(1) and (2).

Justification for delegation

1431. The varied nature of the existing environmental assessment regimes means that EOR Regulations are likely to engage a wide range of public authorities. Given the need to allow for bespoke approaches across different types of regimes, it would not be possible to detail the individual requirements of such a wide range of bodies on the face of the Bill. Further, setting the requirements to respond to consultation in primary legislation would risk prejudicing wider policy development on related matters that needs to be progressed in collaboration with the public authorities affected.

Justification for procedure selected

1432. Given the procedural nature of regulations made under this power, the Government proposes that regulations made under these provisions be subject to the negative resolution procedure.

Power for the Secretary of State to make EOR Regulations requiring public authorities and any person carrying out a function under EOR regulations to have regard to any guidance issued by the Secretary of State (clause 148)

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *negative procedure*

Context and Purpose

1433. Clause 148(1) requires a public authority carrying out a function under Part 5, or under existing environmental assessment legislation, to have regard to any guidance issued by the Secretary of State in relation to that function.

1434. Clause 148(2) gives the Secretary of State power make EOR Regulations that require persons carrying out a function under EOR Regulations to have regard to guidance issued by the Secretary of State in relation to that function, failing which that function is not to be regarded as having been validly carried out.

Justification for delegation

1435. By introducing an outcomes-based approach to assessment, the Government is seeking to create a more clear and navigable system of environmental assessment. This is vital to ensuring that decision-makers are provided with relevant information when considering whether to grant consent to a relevant plan or project.

1436. In setting outcomes, the Government will need to provide guidance as to how relevant consents and relevant plans can demonstrate they are delivering on these outcomes. It will also be necessary to provide guidance on

how the transition from the existing environmental assessment regimes to the new system will be managed (see below in relation to clause 149). This guidance will be subject to consultation and will reflect current best practice to ensure those preparing assessments, and the consideration of those assessments, benefit from a consistent approach to assessment. The inclusion that regard must be taken to guidance issued under EOR Regulations reflects the need to maintain consistency of approach to support better decision-making and to ensure information produced across assessments can be consolidated to inform the ongoing development of the system. This is required to ensure decision-makers are provided with consistent, credible information as to whether the development or plan supports the delivery of outcomes. Failing to ensure that proper regard is given to relevant guidance would risk creating confusion and forcing decision-makers to make judgments on the credibility of the highly technical information provided.

Justification for procedure selected

1437. As the operative substance of the provision is set out in the primary – supported by the justification above – the Government propose that regulations made under these provisions be subject to the negative resolution procedure as in granting consent to the legislation, Parliament will have agreed to the terms of use for this power.

1438. There is a consultation requirement at clause 147(2)(b) requiring consultation is carried out before any guidance is issued, modified or withdrawn where such guidance relates to how the likely impact of a proposed relevant consent or plan on the delivery of an outcome should be assessed, or where it relates to how the extent of a relevant consent or plan actually affects the delivery of an outcome should be assessed or monitored.

Power for the Secretary of State to make EOR Regulations making provision regarding interaction with existing environmental assessment legislation and the Habitats Regulations (clause 149)

Powers conferred on Secretary of State
Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *Negative procedure*

Context and Purpose

1439. Clause 149(1) gives Secretary of State the power to make EOR Regulations that include provision about, or in connection with, the interaction of Part 6 with existing environmental assessment legislation (as defined in clause 152(1)) and the Habitats Regulations (as defined in clause 149(4)). Clause 149(2) makes further provision about particular matters which may be addressed including clause 149(2)(d) that provides for disapplying or otherwise modifying any provision of existing environmental assessment legislation or the Habitats Regulations.

1440. Clause 149(3) provides an ancillary power to amend, repeal or revoke by way of EOR Regulations 'existing environmental assessment legislation' (as defined in s.150(1)) that is otherwise within the EOR Regulations vires.

1441. To the extent that such existing legislation is in primary legislation this constitutes a Henry VIII power to disapply, otherwise modify, amend, repeal or revoke primary legislation. The legislation that could be disapplied, otherwise modified, repealed, amended or revoked in this way is set out in the definition of "existing environmental assessment legislation" in clause 152(1) and is limited to Schedule 3 to the Harbours Act 1964 and Part 5A of the Highways Act 1980, which implement the EIA Directive for those regimes. It is therefore a necessary and appropriate power.

Justification for delegation

1442. While the Government is clear in its intention to introduce Environmental Outcomes Reports, it recognises the need to manage transition to the new system. It would not be feasible or desirable to repeal the EU-derived system across all 16 environmental assessment regimes at the same time as this would cause uncertainty and disruption that could undermine the important role environmental assessment plays in decision-making. For this reason, the Government needs to take a power to manage the ongoing function of existing regimes (given the loss of powers under s2(2) of the European Communities Act 1972) and to manage the interoperability between regimes as they transition to Environmental Outcomes Reports. These powers will ensure that existing regimes are able to continue to function and react to changes in policy or case law while policy development progresses to support the transition to Environmental Outcomes Reports. For those regimes that introduce Environmental Outcomes Reports first, these powers will allow the government to ensure backwards compatibility to guard against unnecessary duplication and expense.

Justification for procedure selected

1443. As the focus of this power is to manage the technical interaction between regimes as we transition to the new system, the Government proposes that regulations made under these provisions be subject to the negative resolution procedure.

1444. Clause 147(2)(a) requires consultation with persons the Secretary of State considers appropriate before making regulations under Clause 149. This will ensure that due consideration is given to the use of these powers with the opportunity for relevant persons to be consulted.

Power for the Secretary of State to make EOR Regulations to make further provision regarding EOR regulations (clause 151)

Powers conferred on Secretary of State

Powers exercised by Regulations made by statutory instrument
Parliamentary Procedure: *negative procedure*

Context and Purpose

1445. This clause sets out further detail on what EOR Regulations may provide for in relation to largely procedural and technical matters for the operation of the EOR regime.

1446. Clause 151(2)(c) provides the power to make consequential, supplementary or incidental provision that amends, repeals or revokes any legislation (including primary legislation – clause 151(3)) under clause 219(1)(c) (the power to make regulations includes a power to make consequential, incidental, supplementary, transitional, transitory or saving provision).

Justification for delegation

1447. This power is necessary to ensure the Government is able to make EOR Regulations to meet the technical and procedural requirements of the various consenting regimes. This power provides the Government with the power to make provisions to replicate the various technical provisions of the 16 consenting regimes. A delegated power is required as this provision will be used to reflect technical details – such as fees and the format of reports – that can only be settled once related matters are finalised.

Justification for procedure selected

1448. Given the procedural nature of regulations made under this power, the Government proposes that regulations made under these provisions be subject to the negative resolution procedure. Regulations made under these provisions will reflect the agreed policy position flowing from the use of the substantive powers that will have benefitted from Parliamentary scrutiny and consultation.

PART 7 – Nutrient Pollution Standards

Clause 153 (inserting new section 96C(1) and (2) into the Water Industry Act 1991 (WIA91)) A power for the Secretary of State to designate a catchment area as a "nitrogen sensitive catchment area" or a "phosphorus sensitive catchment area" (or both)

Powers conferred on: *Secretary of State*
Powers exercised by*: Publication of a document*
Parliamentary procedure: *None*

Context and purpose

1449. Clause 153 inserts new section 96C(1) and (2) into the Water Industry Act 1991 (WIA91) and enables the Secretary of State to designate catchment areas for habitats sites if certain criteria are met. The SoS may make a designation where they consider that the habitats site is in an unfavourable condition due to nitrogen and/or phosphorus pollution. The effect of a designation is that the wastewater treatment works (referred to as "plants" in the legislation and this Memo) draining into the catchment area for a habitats site (meaning an area where water, if released, would drain into that site) will be subject to the nutrient pollution standards in new section 96B WIA91, unless exempt.

1450. A catchment can be designated as a "nitrogen sensitive catchment area" and/or a "phosphorus sensitive catchment area". Designations take effect on the day they are made, unless a later date is specified. If the designation takes effect within an initial period of 3 months after the Levelling-up and Regeneration Bill achieves Royal Assent, then the upgrade date for wastewater treatment standards at relevant plants will be 1 April 2030. If the designation takes affect after the initial 3 month period then the upgrade date will be specified and must be at least 7 years after the date of designation.

Justification for delegation

1451. This power is considered necessary to allow the SoS to identify and designate catchment areas where water, if released, would drain into the habitat site which is in an unfavourable condition due to nitrogen and/or phosphorus pollution.

1452. It is not appropriate to have a fixed list of catchment areas on the face of the Bill. If, in future, Natural England obtain additional environmental data that confirms further sites are in unfavourable condition due to nutrient pollution, they will need to move quickly to issue additional nutrient neutrality guidance to relevant competent authorities to avoid further damage to those sites. In turn, SoS will need to respond rapidly to this additional guidance and consider exercising their power to designate the associated catchment areas to ensure that the statutory duty applies to plants draining into these additional catchments as needed.

Justification for procedure selected

1453. The department considers that parliamentary scrutiny is not needed for this power to be exercised appropriately. It is intended that the catchments designated in the initial period will be those for which Natural England nutrient neutrality guidance has already been issued, and therefore where it is already publicly known and accepted that prompt action is needed to address nutrient pollution and unlock housing. The specifics of the duty to be applied in those catchments – i.e. the substance of the clauses – will be subject to parliamentary scrutiny.

1454. For future designations, the clause makes clear that relevant advice from - or guidance published by - Natural England, the Environment Agency or the

Joint Nature Conservation Committee in particular may be considered by the SoS when making a decision as to whether a catchment should be designated.

Clause 153, inserting new section 96D (1) into the Water Industry Act 1991. Power for the Secretary of State to designate a plant as exempt in relation to the nutrient pollution standard in a designated catchment (Section 96(1)(b))

Powers conferred on: *Secretary of State*
Powers exercised by*: Publication of a document*
Parliamentary procedure: *None*

Context and purpose

1455. Clause 153 inserts new section 96D(1)(a) into the WIA91 and provides a statutory exemption from the duty to meet the nutrient pollution standard in clause 153 (section 96F) based on plant capacity. Plant capacity is defined by the "population equivalent" served by a plant. The capacity at which plants are exempt from the duty is set on the face of the Bill - as a capacity of less than a population equivalent of 2000. New section 96D(1)(b) provides the Secretary of State with a power to designate individual plants as exempt from a nutrient pollution standard for either phosphorus or nitrogen. A designation will take effect on a day specified in the designation or, if none is specified, the day on which it is made.

Justification for delegation

1456. The delegation is necessary because it is not currently clear where complying with the new statutory duty will result in excessive and disproportionate costs being incurred by water companies, and therefore water bill customers. These excessive costs may be incurred due to site specific issues, such as needing to reroute or relocate critical infrastructure to make space for necessary upgrades to be made at plants.

1457. There is an established water industry business planning process, which is currently under way, through which these kinds of site-specific issues will be identified. Water companies are due to share their business plans with the Environment Agency within the coming months, at which point we will be able to take a view on whether any exemptions to the duty will need to apply.

Justification for procedure selected

1458. The policy intent is for this power to be used sparingly on the basis of technical, site-specific information. Given that an exemption is already provided for the smallest treatment works (those serving a population equivalent below 2,000), which are most likely to incur disproportionate costs, the Department does not anticipate that many – if any – further exemptions will be required in the initial round of designations. The Department considers that a Parliamentary procedure is likely to be disproportionate where the SoS may

only be looking to exempt a very small number of wastewater treatment works from the scope of the duty.

1459. Furthermore, given that the need for exemptions will be identified through the established water industry business planning process (outlined above) there is also a need to ensure that exemptions can be made in an agile way in response to the outcome of this business planning process, which the proposed procedure provides for.

Clause 153 inserting new section 96D(2) Power to designate a plant as not being exempt

Powers conferred on: *Secretary of State*
Powers exercised by*: Publication of a document*
Parliamentary procedure: *None*

Context and purpose

1460. Under new section 96D Water Industry Act 1991 (Exempt sewage disposal works) plants are exempt from the duty to achieve the nutrient pollution standards if the plant has a capacity of less than a threshold of 2000 "population equivalent". The population equivalent threshold exemption for plants of 2000 has been set on the basis of a comprehensive cost benefit assessment, and is designed to strike the right balance between improving water quality and unlocking development, whilst minimising impacts to customer bills.

1461. Clause 153 inserting new section 96D(2) provides the Secretary of State with a power to designate a plant as not being exempt in relation to the duty to achieve a nutrient pollution standard. The power provides for the Secretary of State to ensure that any plant in a designated catchment can cease to be exempt, and therefore come back within scope of the duty to meet the nutrient pollution standard.

1462. There is no time constraint on the use of the power if it is exercised for treatment plants with a capacity between 250 and 2,000 population equivalent. If the power is exercised for treatment plants with a capacity below 250, the de-exemption designation must take effect before the designation of the associated catchment area takes effect.

Justification for delegation

1463. The delegation is necessary because it is not currently clear which small plants should be "de-exempted" to ensure benefits to the environment and developers are realised in catchments with a greater proportion of plants serving a population equivalent below 2000. In these catchments, it is necessary to understand exactly where housing development is likely to come forward so that the relevant, smaller plants to be upgraded can be identified. At this stage the evidential picture is not complete, and furthermore, it is likely to

evolve over time. Therefore, it is not possible to make fixed provision on the face of the Bill.

1464. The determination of whether a plant should cease to be exempt and become subject to the duty is a technical decision assessed against the needs of a catchment, value for money considerations and the benefits to the environment. The use of the power will be limited and will work to make the provisions of the primary legislation effective in all designated catchments.

1465. There will need to be flexibility around the use of this power in order to ensure that relevant wastewater treatment works can be "de-exempted" in time for the designations to be made in the initial period. The use of an administrative process, rather than a parliamentary process, will permit this flexible approach and ensure that the provisions for tackling nutrient pollution are made effective.

Clause 153, inserting new section 96D(5) WIA91 Power to make regulations to exempt wastewater treatment works

Powers conferred on: *Secretary of State*
Powers exercised by*: Regulations by statutory instrument*
Parliamentary procedure: *Negative resolution procedure*

Context and purpose

1466. Clause 153 inserting new section 96D(5) WIA91 gives the Secretary of State the power to make regulations to exempt treatment plants from the duty to comply with the relevant nutrient pollution standards. The power can be used in relation to particular plants or categories of plant. The intention is to use the power to set out any further general exemptions – in addition to the exemption based on the plant capacity – to be applied to plants in scope of the duty.

Justification for delegation

1467. The policy intent is for this power to be used to introduce future "classes" of exemptions – similar to the exemption based on the size threshold exemption for plants serving a population equivalent below 2,000 – if needed to account for specific circumstances in catchments designated in future. Given that we do not know what site-specific issues might be present in catchments to be designated in the future, it is not possible to be certain that the exemption currently set out on the face of the Bill would be sufficient to ensure that the duty is applied across future catchments in a reasonable and proportionate manner.

Justification for procedure selected

1468. A negative procedure is considered appropriate for the exercise of this power, which is intended to make only limited, technical modifications to the exemptions framework.

1469. The use of statutory instrument will ensure a greater level of scrutiny is applied to the use of this power than to the Secretary of State's power to designate individual wastewater treatment works as exempt, which is appropriate given the potential for the regulations to apply exemptions on a broader scale.

Clause 153, inserting new section 96F(5) WIA91 Power to make regulations to specify how the concentrations of total nitrogen and total phosphorus in treated effluent are to be determined

Powers conferred on: *Secretary of State*
Powers exercised by*: Regulations by statutory instrument*
Parliamentary procedure: *Negative resolution procedure*

Context and purpose

1470. New Section 96F(5) provides the Secretary of State with a power to make negative resolution regulations to specify how the concentration of total nitrogen or total phosphorus in treated effluent is to be determined. The regulations may in particular require regular sampling of treated effluent; specify how nitrogen and phosphorus should be sampled and measured; and how it should be determined that a nutrient pollution standard is being met by a plant.

1471. The power will also allow the Secretary of State to confer functions on relevant bodies, in particular the Environment Agency and sewerage undertakers, to ensure that monitoring of compliance with the nutrient pollution standards is undertaken.

Justification for delegation

1472. The sampling and measurement of treated effluent is already regulated under the Environmental Permitting (England and Wales) Regulations 2016 and is relatively settled practice. It is necessary however for provision to be made in order to apply existing practice to the requirements of these amendments. In addition, there are likely to be technical changes to sampling and monitoring techniques and to the management of treated effluent in future, for which these powers will be required.

Justification for selected procedure

1473. The negative procedure will give Parliament the appropriate level of scrutiny over regulations that will be technical in nature, and that will be limited to specifying the details of a framework set out in primary legislation.

Clause 153 inserting new section 96I(1) WIA91 Power to amend any plant capacity specified in sections 96D(1)(a) or (4)(a)

Powers conferred on: *Secretary of State*

Powers exercised by*: Regulations made by statutory instrument* ***Henry VIII power***
Parliamentary procedure: *Affirmative resolution procedure*

Context and purpose

1474. Clause 153 inserting new section 96I(1) WIA91 gives the Secretary of State the power to amend any plant capacity specified in subsections 96D(1)(a) or (4)(a), under which the statutory duty to meet relevant nutrient pollution standards does not apply (unless powers are exercised to render it unexempt).

1475. The power can be used so that different population equivalent thresholds can apply in relation to the nitrogen nutrient pollution standard or the phosphorus standard, not least because the cost and value for money considerations may be different for each nutrient. The power may also be used to provide for different population equivalent thresholds to apply in different areas.

1476. This clause includes a “de-hybridising” provision as a precaution. In the instance of this technical matter, the Department does not consider that the absence of the hybrid instrument procedure will result in any prejudice to interests that would otherwise be safeguarded by that procedure.

Justification for delegation

1477. A comprehensive cost benefit assessment has been carried out for existing catchments in areas currently subject to Natural England nutrient neutrality advice to determine the most appropriate size threshold (i.e, the plant capacity) to apply to this statutory duty to strike the right balance between improving water quality and supporting sustainable development, whilst minimising impacts to customer bills.

1478. However, the Department recognises that, should further catchments be designated in future after the initial period, the cost benefit assessment may indicate that a lower or higher size threshold is appropriate, taking into account the site-specific conditions. Similarly, and as outlined under clause 153 (inserting new section 96D WIA91 Power to make regulations to exempt wastewater treatment works) it may be necessary to lower the size threshold in specified catchments designated in the initial period to ensure the statutory duty achieves the policy objectives in catchments that are served predominantly by small plants.

1479. It is therefore necessary to take a delegated power to amend the plant capacity as required on this basis.

Justification for procedure selected

1480. The affirmative resolution procedure will ensure Parliamentary approval of any changes to the plant capacity. This is appropriate given that the application of a different size threshold could bring more wastewater treatment

works within scope of the duty, which will have implications for water company business planning and the cost of water bills.

1481. The power is carefully restricted in the sense that it cannot be used in relation to catchment areas that are already designated. Any change in the population equivalent threshold will apply on a forward-looking basis in relation to newly designated catchment areas.

Clause 153 inserting new section 96I(4) WIA91 Power to make regulations to amend the nutrient pollution standard for nitrogen and phosphorus

Powers conferred on: *Secretary of State*
Powers exercised by*: Regulations made by statutory instrument* ***Henry VIII power***
Parliamentary procedure: *Affirmative resolution procedure*

Context and purpose

1482. Under new section 96I(4) (Nutrient pollution standards), the Secretary of State has a power to make affirmative resolution regulations to amend the technically achievable limit for Phosphorus or Nitrogen.

1483. This clause includes a "de-hybridising" provision as a precaution. In the instance of this technical matter, the Department does not consider that the absence of the hybrid instrument procedure will result in any prejudice to interests that would otherwise be safeguarded by that procedure.

Justification for delegation

1484. Technically achievable limits are standards that are agreed and recognised across the water industry and the regulators. The Environment Agency review technically achievable limits periodically in light of the availability of new technologies and improved treatment performance. This power will enable the provisions to keep pace with higher standards of treatment where necessary, and is essential to ensure the legislation does not become outdated or result in inconsistent regulation of water companies, who will be live to the latest technological developments and any associated review of technically achievable limits.

Justification for procedure selected

1485. An affirmative resolution procedure will ensure Parliamentary approval which the Department considers to be appropriate given that the application of new standards will have implications for water company business planning and, therefore, potentially water bills.

1486. The Department has included restrictions on the use of the power to ensure that it is not used in a way that could be detrimental to the environment or that could result in repeated significant investment in the same wastewater treatment works. Firstly, the power can only be used to replace TAL with a higher standard, and not to lower environmental protections. Secondly, the

regulations cannot have retrospective effect so they cannot be used to alter obligations already imposed on undertakers in relation to a particular wastewater treatment works.

Clause 153 inserting new section 96K WIA91 Power to make regulations to prescribe modifications to sections 96B to 96J to apply in relation to any plant that operates for the first time or is modified after the Levelling-up and Regeneration Bill 2022 is passed

Powers conferred on: *Secretary of State*
Powers exercised by*: Regulations made by statutory instrument*
Parliamentary procedure: *Negative resolution procedure*

Context and purpose

1487. Under new section 96K WIA91 (New and altered plants: modifications) the Secretary of State may by regulations prescribe modifications to the provisions of s96B to 96J WIA91 in relation to any plant that, after the Levelling-up and Regeneration Bill 2022 is passed, operates for the first time or is altered. Any such regulations may in particular provide for specified upgrade dates under s96C(4)(d) and 96D(4) and (7) to specify periods other than 7 years.

1488. The power will allow appropriate modifications to be made to the duties falling on sewerage undertakers in situations where:

a. A new plant has been planned and/or partially developed in a catchment area prior to its designation, but which then becomes subject the duty to upgrade to technically achievable limit treatment standards.
b. A plant is undergoing significant alteration and therefore where it is not reasonable to expect that the duty will be complied with by 1 April 2030 or within 7 years of designation.

1489. For example, the Environment Agency has previously exercised its enforcement discretion in a very limited number of cases for water companies who have encountered significant issues during the construction/alteration of plants. Such issues have included lengthy land purchase processes and the need to carry out additional work where vital infrastructure (e.g. trainlines) has cut through the land upon which wastewater infrastructure needs to be built.

Justification for delegation

1490. Given the current phase of water company business planning activities it is not currently known where the legislation will be modified to ensure it remains appropriate for new or altered plants. As such, a delegated power is necessary to ensure that the duty can be adapted once this information is known following consideration of water company business plans, which are due to be submitted to the Environment Agency in the coming months.

Justification for procedure selected

1491. The negative procedure is considered appropriate for the exercise of this power as it is intended to make only limited, technical modifications to the duty as it applies to new plants, or plants undergoing alterations, in order to ensure that the duty is deliverable. This will most likely mean an extension to the deadline (the "relevant date") by which the statutory duty must be met, which will have limited impact on the overall effectiveness of the policy or the costs entailed in upgrading the treatment works.

Clause 154 inserting new regulation 85C into the Conservation of Habitats and Species Regulations 2017: Power to direct that assumptions are not to apply

Powers conferred on: *Secretary of State*
Powers exercised by*: Direction*
Parliamentary procedure: *None*

Context and purpose

1492. New regulation 85C gives the Secretary of State the power to direct that the assumptions in regulations 85A(2) and 85B(2) do not apply in relation to a particular plant and a particular nutrient pollution standard. New regulations 85A(2) and 85B(2) require a competent authority to assume that a plant will meet the relevant nutrient pollution standard on and after the upgrade date, in line with the duty in new section 96B WIA91, when carrying out a relevant assessment in the process of making a relevant decision set out in regulations 85A(4) and 85B(1)(a).

1493. Under new regulation 85C(2) the Secretary of State may make such a direction only if satisfied the plant will not be able to meet the standard by the upgrade date. If subsequently satisfied that the plant will meet the nutrient pollution standard on the upgrade date the Secretary of State may then revoke the direction (regulation 85C(3)).

1494. New regulation 85A(5) places a consultation requirement upon the Secretary of State before making a direction under 85C(1) or revoking it.

Justification for delegation

1495. New section 96B WIA91 places a new statutory duty on sewerage undertakers to secure that plants will be able to meet nutrient pollution standards by a specified upgrade date. In turn, competent authorities must assume that those standards will be met on and after the relevant upgrade date. This power is needed for those cases, which are expected to be rare, where the required nutrient pollution standards will not be delivered by the relevant date. The Secretary of State needs to be able to take action to avoid irrational decisions i.e. planning permission granted on the basis of an assumption where it is clear the nutrient pollution standards will not be met. This in turn aims to prevent consequential damage to relevant habitat sites. As it is not possible to foresee the circumstances when the nutrient pollution standards will not be met it is not possible to provide for this on the face of the Bill. The power is therefore

essential to allow the Secretary of State to take action where circumstances support this.

Justification for procedure selected

1496. The purpose of the amendments inserting sections 96B to 96K into the WIA91 is to improve the overall environmental outcomes in protected sites affected by nutrient pollution. Where a wastewater treatment plant is not able to meet the nutrient pollution standards required by those amendments by the relevant date there is a risk of adverse impact on habitats sites if development continues to be permitted on the basis of the assumption. Whilst we have introduced an additional safeguard, via amendments to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, to enable remediation of sites should the standards not be met on time, swift action will still be needed by the Secretary of State to disapply the assumption and in turn remove or reduce the risk of such damage occurring. A requirement to disapply the assumption via regulations would make the power less agile, with the inclusion of Parliamentary process extending the time it would take to disapply the assumption, which risks irrational planning decisions and damage to habitats.

1497. The use of the power is subject to a range of requirements. There is a duty on the Secretary of State to consult a range of bodies and persons as set out in new regulation 85C(5). The Secretary of State also has the power to revoke a direction and a direction or revocation must be made in writing, be published and relevant bodies must be notified as set out in 85C(7) as soon as practicable.

Clause 154 inserting new regulation 110B into the Conservation of Habitats and Species Regulations 2017: Power to direct that assumptions are not to apply

Powers conferred on: *Secretary of State*
Powers exercised by*: Direction*
Parliamentary procedure: *None*

Context and purpose

1498. New regulation 110B gives the Secretary of State the power to direct that the assumptions in 110A(2) do not apply in relation to a particular plant and a particular nutrient pollution standard. New regulation 110A(2) requires a competent authority to assume that a plant will meet the relevant nutrient pollution standard on and after the upgrade date, in line with the duty in new section 96B WIA91, when carrying out a relevant assessment in the process of making a relevant decision. A relevant decision is a decision whether to give effect to a land use plan or a decision whether to modify or revoke a neighbourhood development plan (new regulation 110A(4)).

1499. Under new regulation 110B(2) the Secretary of State may make such a direction only if satisfied the plant will not be able to meet the standard by the

upgrade date. If subsequently satisfied that the plant will meet the nutrient pollution standard on the upgrade date the Secretary of State may then revoke the direction.

1500. New regulation 110B(5) places a consultation requirement upon Secretary of State before making a direction under 110B(1) or revoking it.

Justification for delegation

1501. New section 96B WIA91 places a new statutory duty on sewerage undertakers to secure that plants will be able to meet nutrient pollution standards by a specified upgrade date. In turn, competent authorities must assume that those standards will be met on and after the relevant upgrade date. This power is needed for those cases, which are expected to be rare, where the required nutrient pollution standards will not be delivered by the relevant date. The Secretary of State needs to be able to take action to avoid irrational decisions i.e. planning permission granted on the basis of an assumption where it is clear the nutrient pollution standards will not be met. This in turn aims to prevent consequential damage to relevant habitat sites. As it is not possible to foresee the circumstances when the nutrient pollution standards will not be met it is not possible to provide for this on the face of the Bill. The power is therefore essential to allow the Secretary of State to take action where circumstances support this.

Justification for procedure selected

1502. The purpose of the amendments inserting sections 96B to 96K into the WIA91 is to improve the overall environmental outcomes in protected sites affected by nutrient pollution. Where a wastewater treatment plant is not able to meet the nutrient pollution standards required by those amendments by the relevant date there is a risk of adverse impact on habitats sites if development continues to be permitted on the basis of the assumption. Whilst we have introduced an additional safeguard, via amendments to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, to enable remediation of sites should the standards not be met on time, swift action will still be needed by the Secretary of State to disapply the assumption and in turn remove or reduce the risk of such damage occurring. A requirement to disapply the assumption via regulations would make the power less agile, with the inclusion of Parliamentary process extending the time it would take to disapply the assumption, which risks irrational planning decisions and damage to habitats.

1503. The use of the power is subject to a range of requirements. There is a duty on the Secretary of State to consult a range of bodies and persons as set out in new regulation 85C(5). The Secretary of State also has the power to revoke a direction and a direction or revocation must be made in writing, be published and relevant bodies must be notified as set out in 85C(7) as soon as practicable.

PART 8 – Development Corporations

Clauses 156 and 157 which amend section 134 of the Local Government, Planning and Land Act 1980 and insert new section 1ZB to the New Towns Act 1981 to provide a power for the Secretary of State to designate an urban development area or a site of a proposed new town if a proposal is made to the Secretary of State by a local authority or authorities and the Secretary of State is satisfied that it would be expedient in the local interest

Powers conferred on: *Secretary of State*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Negative*

Context and Purpose

1504. Clause 156(2) inserts subsection (1B) into section 134 of the Local Government Planning and Land Act 1980 (LGPLA 1980). This provides that the Secretary of State may designate an area as an urban development area (UDA) if:

a. a proposal is made by a local authority or authorities under new section 134A; and

b. the Secretary of State is satisfied that it would be expedient in the local interest to designate the area of land as an urban development area and establish a development corporation for the area.

1505. Paragraph 2(5) of Schedule 13 inserts subsection (3C) which provides that the Secretary of State may not make an order altering the boundary of an urban development area except with the consent of the oversight authority for an urban development corporation.

1506. Similarly, clause 157(2) inserts section 1ZB into the New Towns Act 1981 (NTA 1981). This provides that the Secretary of State may designate an area as the site of a proposed new town if:

a. a proposal is made by a local authority or authorities under new section 1ZA; and

b. the Secretary of State is satisfied that it would be expedient in the local interest to establish a development corporation for the area.

1507. Paragraph 8 of Schedule 13 inserts subsection (1A) to section 2 of the NTA 1981 to provide that the Secretary of State may not make an order excluding land from the area of a new town except with the consent of the oversight authority for a new town development corporation.

1508. Where a proposal for an UDA or site of a proposed new town comes from a local authority or authorities, the parliamentary procedure for designating the area is the negative procedure – see new s.134(4E) LGPLA 1980 (inserted

by clause 131(3)) and s.77(3D) NTA 1981 (inserted by clause 157(4)). For centrally-led urban development areas, the affirmative procedure will continue to apply.

Justification for delegation

1509. The technical consultation on development corporation reforms in 2019 revealed that there was a broad consensus among consultees that existing development corporation models had insufficient breadth in scope to meet current modern day conditions. In particular, consultees identified that outside of mayoral areas, there is no development corporation model available to local authorities that has a regeneration focus. The creation of Locally-led Urban Development Corporations (LUDCs) will provide local authorities with an important delivery tool for transformational housing and regeneration projects in their areas.

1510. Designating the area of a LUDC is a reactive process and therefore it would not be appropriate to include in primary legislation. A local authority or authorities wanting to designate an UDA will be able to come forward with proposals following public consultation. The Secretary of State must then consider whether the proposal is expedient in the local interest. The Secretary of State may only make the required secondary legislation if the test is met.

1511. Section 16 of the Neighbourhood Planning Act 2017 inserted s.1A into the NTA 1981 and permits the Secretary of State to make regulations providing for the establishment and operation of Locally-led New Town Development Corporations (LNTDCs) overseen by a local authority or authorities. There is, therefore, existing legislation that already contains a similar delegated power, which the Department considers is still appropriate and wants to extend to LUDCs.

1512. The legislation for the creation of LNTDCs is also being amended to reflect an even greater move towards a locally-led approach, with a legislative framework that allows the local authority or authorities wanting to propose a site for a new town to come forward with proposals for the Secretary of State to action.

Justification for procedure selected

1513. LUDCs and LNTDCs are not subject to central government control or oversight. Accountable local authorities will bring forward proposals for designation of the development area and will oversee the development corporation. It is therefore appropriate to align the parliamentary procedures designating development areas in respect of LUDCs and LNTDCs with the procedure used for Mayoral Development Corporations (MDCs) which are already subject to negative resolution and are overseen by the Mayor.

1514. For locally-led regeneration or new settlement projects and their associated development corporations the negative resolution procedure for the designation or establishment order provides an appropriate level of scrutiny.

This will be conducted at the local level via statutory consultation. We have included consultation provisions which will ensure that there are sufficient protections and safeguards, permitting local communities and business to have a say on the delivery of locally-led urban regeneration projects and new settlements in their areas. The consultation process will also be more accessible to those affected parties. The local authorities proposing these projects must have regard to comments made by consultees. If responses from the consultation include comments by a county or district council that the proposing authority or authorities do not accept, the proposing authority or authorities must publish a statement giving the reason for the non-acceptance (see new section 134A(5) of the LGPLA 1980 and new section 1ZA(4) of the NTA 1981).

1515. The affirmative parliamentary procedure currently applies to locally-led new town proposals and their development corporations. This could lead to uncertainty and delay concerning the designation of the development area and the establishment of the LNTDC, eroding business confidence and potentially discouraging inward investment in the project, and impacting the delivery of the new settlement.

Clause 156(7) and 157(3) insert subsection (4A) to (4C) into section 135 into the Local Government, Planning and Land Act 1980 and subsection (2B) to (2D) in section 3 of the New Towns Act 1981 providing that the Secretary of State, in an order establishing an LUDC or LNTDC, must (1) establish it with the proposed name; (2) designate one or more local authorities as an oversight authority; and (3) make any provisions proposed in respect of functions of oversight authorities and the number of members of the development corporation

Powers conferred on: *Secretary of State*
Powers exercised by: *Order made by statutory instrument*
Parliamentary Procedure: *Negative*

Context and Purpose

1516. Clause 156(7) inserts subsections (4A) to (4C) into section 135 of the LGPLA 1980. This requires the Secretary of State, when making an order establishing an urban development corporation for a locally-led urban development area, to designate one or more local authorities as an oversight authority. The role of the local authority or authorities will be to oversee the regeneration of the area by the urban development corporation.

1517. A local authority or authorities may only be designated as an oversight authority if it proposed the UDC and therefore the UDA must wholly or partly be within the area of the local authority or authorities.

1518. The Order must also provide that, specified functions are to be exercised by a specified local authority or are to be exercised by two or more local authorities jointly – as proposed by the authorities in question. The Order must also establish the UDC with the name proposed by the local authorities.

1519. Clause 156(10) also inserts subsection (3AA) which provides that, where an order made under section 135 is in respect of a LUDC, this is subject to the negative parliamentary procedure. For centrally-led UDCs, proposed by the government, the affirmative parliamentary procedure will continue to apply.

1520. Clause 157(3)(c) inserts subsection (2C) into section 3 of the NTA 1981 which makes identical provision in respect of the establishment of a LNTDC when a proposal for one is made by local authorities. Clause 157(4)(d) inserts subsection (3D) into section 77 of the same Act to provide that orders made under section 3 are subject to the negative procedure when made in respect of locally-led NTDCs. The replaces the provisions that currently exist in s.1A of the NTA 1981 to appoint oversight authorities to a NTDC, which are being omitted by paragraph 7 of Schedule 13 to the Bill. For centrally-led NTDCs, proposed by the government, the affirmative parliamentary procedure will continue to apply

Justification for delegation

1521. The establishment of the LUDC and LTNDC, and the appointing the oversight authority is a reactive process, and therefore it would not be appropriate to include in primary legislation. As with the LNTDC model introduced in 2018, a local authority or authorities wanting to become the oversight authority will be able to come forward with proposals to establish a LUDC.

Justification for procedure selected

1522. The creation of a new LUDC and LNTDC model will support and enable a strong, empowered local government sector. Using a negative procedure will support this aim. LUDCs and LNTDCs will not be subject to central government control or oversight. Accountable local authorities will bring forward proposals to establish a LUDC or LNTDC and will oversee the development corporation. It is therefore appropriate to align the parliamentary process with that of MDCs which are subject to negative resolution and are overseen by the Mayor.

1523. For locally-led regeneration or new settlement projects and their associated development corporations the negative resolution procedure for the designation or establishment order provides an appropriate level of scrutiny. This will be conducted at the local level via statutory consultation. We have included consultation provisions which will ensure that there are sufficient protections and safeguards, permitting local communities and business to have a say on the delivery of locally-led urban regeneration projects and new settlements in their areas. The consultation process will also be more accessible to those affected parties. The local authorities proposing these projects must have regard to comments made by consultees. If responses from the consultation include comments by a county or district council that the proposing authority or authorities do not accept, the proposing authority or authorities must publish a statement giving the reason for the non-acceptance (see new section 134A(5) of the LGPLA 1980 and section 1ZA(4) NTA 1981).

1524. The affirmative parliamentary procedure currently applies to locally-led new town proposals and their development corporations. This could lead to uncertainty and delay concerning the designation of the development area and the establishment of the LNTDC, eroding business confidence and potentially discouraging inward investment in the project, and impacting the delivery of the new settlement.

Clause 156(11) inserts new section 135A into the LGPLA 1980 providing for the Secretary of State to make provision in regulations about how an oversight authority is to oversee the regeneration of a locally-led urban development area

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative*

Context and Purpose

1525. Clause 156(11) inserts new section 135A into the LGPLA 1980 which provides that the Secretary of State may, by regulations, make provision about how an oversight authority is to oversee the regeneration of a locally-led urban development area. For example, provision can be made:

a. to provide that an oversight authority is to exercise specified functions that would otherwise be exercisable by the Secretary of State, Treasury or other Minister.
b. to provide that an oversight authority is to exercise such functions subject to specified conditions or limitations;
c. to provide that specified functions may be exercised only with the consent of an oversight authority;
d. about the membership of a Locally-led Urban Development Corporation;
e. modify provisions of the Act; make different provisions for different purposes; and make incidental, supplementary or consequential provision.

Justification for delegation

1526. Existing legislation relating to LNTDC already contains the delegated power which the Department considers is still appropriate. Subsections (4) to (6) of section 1A of the NTA 1981 permit the Secretary of State to make regulations about how a local authority is to oversee the development of an area as a new town. The regulations made under Section 1A of the NTA 1981 in 2018 (the New Towns Act 1981 (Local Authority Oversight) Regulations 2018 S.I. 2018/891) set out the transfer of functions relating to the oversight of a new town development corporation from the Secretary of State to the local authority or authorities covering the area of the new town. Those regulations also allow provisions relating to audit and accounts and planning, which require amendments to make them work in a context where the development corporation is accountable to the oversight authority.

Justification for procedure selected

1527. As with the regulations on LNTDCs, the Department will consult on draft regulations to ensure that they are appropriate, permitting local communities and business to have a say on how an oversight authority is to oversee the regeneration of a locally-led urban development area.

1528. The Department considers that the affirmative procedure is appropriate because it is consistent with the procedure under subsections (4) to (6) of section 1A of the NTA 1981. This procedure will ensure that regulations are adequately scrutinised by both Houses of Parliament.

Clause 159, 160 and 161 insert provisions into the LGPLA 1980, the NTA 1981 and the Localism Act 2011 providing for the Secretary of State to confer planning functions on Urban Development Corporations, New Town Development Corporations and Mayoral Development Corporations

Powers conferred on: *Secretary of State*
Powers exercised by: *Order*
Parliamentary Procedure: *Negative*

Context and Purpose

1529. Section 202 of the Localism Act 2011 provide that, for MDCs, the Mayor can decide that the development corporation is to be the local planning authority for the whole or any portion of the area for the purposes of Part 3 of the Town and Country Planning Act 1990 (TCPA 1990); and Parts 2 and 3 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004). This means that the MDC may be capable of being the local planning authority for the purposes of plan-making, development control and neighbourhood planning.

1530. Section 204 of the Localism Act 2011 provides that the Mayor may decide to remove the development corporation's planning functions or apply restrictions to their use.

1531. Clause 159 amends the LGPLA 1980 to make provision allowing the Secretary of State to provide that an urban development corporation shall be the local planning authority and/or minerals and waste planning authority (for centrally-led corporations) for its area for the purposes of Part 2 or 3 of the PCPA 2004. Provision already exists to allow the Secretary of State to provide that such corporations can be the local planning authority for the purposes of Part 3 of the TCPA 1990. Clause 159(4) also makes amendments to Schedule 29 of the LGPLA 1980 which is explained further in paragraph 1542 below.

1532. Clause 160 amends the NTA 1981 to make provision allowing the Secretary of State to provide that a New Town Development Corporation shall be the local planning authority and/or minerals and waste planning authority (for centrally-led corporations) for its area for the purposes of Part 3 of the TCPA 1990 or Parts 2 or 3 of the PCPA 2004. New section 7A(5) of the NTA 1981

will enable the Secretary of State to apply to New Town Development Corporations other enactments relating to local planning authorities for the purposes of any enactment listed in Schedule 29. This will ensure that new town development corporations have comparable existing powers to those available to Urban Development Corporations and Mayoral Development Corporations.

1533. Clause 161 amends the Localism Act 2011 to provide that, in addition to being able to provide that a mayoral development corporation shall be the local planning authority for its area, it can also be a minerals and waste planning authority. This change is required as minerals and waste planning authorities are a new concept being created by this Bill.

Justification for delegation

1534. The Government wants to ensure that all types of development corporation have access to up-to-date plan-making and development management powers, where these are the most appropriate route to deliver planning certainty and offer flexibility in addressing local circumstances. As proposals for UDCs and NTDCs may come forward in time it is therefore appropriate to provide for the conferral of planning powers by Order.

1535. It will be important to be able to calibrate which planning functions are to be provided based on the local context and stage of the project. The provisions therefore allow centrally and locally led UDCs and NTDCs to be able to take on the necessary planning powers needed to deliver. This could include, both plan-making and development management powers, plan-making powers only or development management powers only. It will also be an option that the development corporation does not take on any planning powers, and instead works with a local planning authority or authorities, which continue to exercise those functions. This calibration will ensure a fit for purpose body exist for all types of development corporations.

Justification for procedure selected

1536. The Department considers that the negative procedure is appropriate because this is analogous/consistent with the procedure for conferral of existing planning functions under Part 3 of the Town and Country Planning Act 1990 for Urban Development Corporations.

1537. As part of the consultation undertaken by the Department on the proposals to create an UDC at Ebbsfleet, the government included proposals on what planning powers should be conferred. We therefore consider it appropriate to include such questions on which planning powers would be appropriate to confer when designating any future centrally led UDC's or NTDC's, working with the local authority or authorities. A proposal can only be made to the Secretary of State by a proposing authority or authorities to designate a locally led UDC or NTDC where they have consulted. Therefore, if the proposing authority or authorities considered that planning powers should be conferred on the development corporation, then this must be one of the

matters a proposing authority would need to cover in the consultation in order for the Secretary of State to give effect to that proposal.

Clause 159 which amends the existing power for the Secretary of State to provide, by order, that a development corporation shall have the functions mentioned in Part 1 of Schedule 29 to the Local Government, Planning and Land Act 1980

Powers conferred on: *Secretary of State*
Powers exercised by: *Order*
Parliamentary Procedure: *Negative*

Context and Purpose

1538. Clause 159(4) of the Bill, amends Part 1 of Schedule 29 to the Local Government, Planning and Land Act 1980 (the 1980 Act), which sets out the enactments conferring supplementary planning functions capable of being assigned to urban development corporations. The provision added to Part 1 of Schedule 29, by new paragraph (4)(a), is section 17 of the Land Compensation Act 1961 (the 1961 Act), with the effect that the function in section 17 (considering applications for certifications of appropriate alternative development) can be performed by an urban development corporation. New paragraph (4)(b) corrects the numbering of the paragraph referring to provisions in the Town and Country Planning Act 1990, while new paragraph (4)(c) updates the provisions in the 1990 Act that can be transferred to an urban development corporation. New paragraph (4)(d) corrects the numbering of the paragraph in Part 1 of Schedule 29 that refers to enactments in the Planning (Listed Buildings and Conservation Areas) Act 1990. While new paragraph (4)(5) adds reference to new section 44AA of the Planning (Listed Buildings and Conservation Areas) Act 1990, which deals with temporary stop notices in England.

1539. Clause 159(2)(d) removes reference to the Town and Country Planning Act 1990 (the 1990 Act) and the Planning (Listed Buildings and Conservation Areas) Act 1990 from subsection 149(3) of the 1980 Act. Clause 159(2)(e) inserts new subsection (3A) into section 149 of the 1980 Act, which provides that planning functions set out in paragraph 1, 3 or 5 of Part 1 of Schedule 29 to the 1980 Act that can be transferred to urban development corporations, only apply to development corporations in England.

Justification for delegation

1540. There is no new delegation here; the effect of the amendment is that it will extend the supplementary planning functions that can be conferred on a development corporation. The Government wants to ensure that all types of development corporation have access to up-to-date planning powers where these offer flexibility in addressing local circumstances. However, the list of supplementary planning functions in Part 1 of Schedule 29 to LGPLA 1980 has not been updated since the early 1990s. The amendments therefore address this and ensures that these functions are up to date.

1541. As proposals for centrally and locally led Urban Development Corporations and New Town Development Corporations may come forward in time it is therefore appropriate to provide for the conferral of planning powers by Order, including supplementary planning functions in Schedule 29. It will be important to be able to calibrate which planning functions are to be provided based on the local context and stage of the project.

Justification for procedure selected

1542. This provision amends an existing power to make secondary legislation which is subject to the negative procedure.

PART 9 – Compulsory Purchase

Clause 166 introduces a new section 11(1)(b) into the Acquisition of Land Act 1981 which confers a power for the Secretary of State, or Welsh Ministers for compulsory purchases in Wales, to prescribe the form of notices to be published by acquiring authorities on an appropriate website. Clause 169 and paragraph 1(3)(b) of Schedule 15 make corresponding changes in respect of compulsory purchase orders made by Ministers

Powers conferred on: *Secretary of State or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

1543. Clause 166 makes amendments to section 11 of the Acquisition of Land Act 1981 which sets out how an acquiring authority must publicize that it has made a compulsory purchase order and is about to submit it for confirmation. It introduces a new subsection 11(1)(b) which requires that acquiring authorities

must publish a notice on an appropriate website, as well as in two or more local newspapers as is currently required.

1544. New subsection (1)(b) of section 11 of the Acquisition of Land Act 1981 gives the Secretary of State the power to prescribe the form that the website notification must take. This mirrors the existing power in section 11(1) of the Acquisition of Land Act 1981 which enables the Secretary of State to prescribe the form of the requisite newspaper notice in regulations.

132. Clause 169 and paragraph 1(3)(b) of Schedule 15 make corresponding changes where the compulsory purchase order is made by Ministers.

Justification for delegation

1545. The Bill sets out the purpose, scope and relevant time periods applying to the website notification on its face. The power taken in new section 11(1)(b) of (and in the case of compulsory purchase orders made by Ministers in new paragraph 2(1)(b) of Schedule 1 to the Acquisition of Land Act 1981 enables the Secretary of State, or Welsh Ministers for compulsory purchase orders falling to be made or confirmed by Welsh Ministers, to set out further detail of the form. This will be administrative in nature. We do not consider it is appropriate for such administrative information to be included in primary legislation.

1546. The form that newspaper notices must take is presently prescribed in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 and the Compulsory Purchase of Land (Prescribed Forms) (National Assembly for Wales) Regulations 2004, made under powers in section 11(1) and paragraph 2(1) of Schedule 1 to the Acquisition of Land Act 1981. Delegating the power to prescribe the form of website notifications is therefore consistent with the current practice. Additionally, the type of information required may change over time. It is likely that should there be a need to make changes to the newspaper notice, changes will also be required for the website notice, and it would better for these changes to be done in a consistent manner in the same regulations.

Justification for procedure selected

1547. The form that newspaper notices are required to take is set out in regulations made under the negative procedure under section 11(1) and paragraph 2(1) of Schedule 1 to the Acquisition of Land Act 1981. It is consistent with this position for the form that website notices must take to be set out in regulations made under the same procedure.

The regulations will be procedural and administrative in nature, and we expect their contents to be uncontroversial.

Clause 166(3) and 166(6) introduce new sections 11(2A) and 15(4A) into the Acquisition of Land Act 1981 which confer a power on confirming authorities to direct an acquiring

authority that, because of special circumstances, the requirement on it to make certain copy documents available for inspection at an appropriate place may not apply.

Clause 169 and paragraphs 1(6)(c) of Schedule 15 make corresponding changes where the compulsory purchase order is made by Ministers.

Powers conferred on: Confirming Authorities (the public authority confirming a compulsory purchase order, usually the Secretary of State or Welsh Ministers for compulsory purchase orders falling to be confirmed in Wales)
Powers exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

1548. Clause 166(3) and (6) makes amendments to sections 11 and 15 of the Acquisition of Land Act 1981 which set out the publicity requirements for certain documents and notices issued by acquiring authorities under the compulsory purchase order process. These amendments require that acquiring authorities must make these documents available on an appropriate website, as well as making them available for inspection at physical locations as is currently the case.

1549. New subclauses 11(2A) and 15(4A) of the Acquisition of Land Act 1981 give a power to confirming authorities to enable them, in special circumstances, to direct acquiring authorities that the requirement to make physical copies of the documents available for inspection does not apply where those circumstances make it impracticable. The requirement to make the documents available on an appropriate website remains.

1550. Before making any such direction, confirming authorities must satisfy themselves that the special circumstances in question make it impracticable for copy documents to be made physically available.

1551. This is intended to provide for unusual and extreme circumstances, such as those necessitated by the COVID-19 pandemic, where it would no longer be practicable for acquiring authorities to provide the public access to enable physical inspection of documents.

1552. Clause 169 and paragraph 1(6)(c) of Schedule 15 make corresponding changes where the compulsory purchase order is made by Ministers.

Justification for delegation

1553. The Government wants to ensure that all those with an interest in a compulsory purchase order are able to access the information that they need. This means that it should be available both electronically and in hard copy. However, we recognise that in extreme circumstances, such as during the COVID pandemic when there were restrictions on leaving home, the inspection of documents in physical locations may not be possible. The Government wants to ensure that if such extreme circumstances arise again in the future, it would

be able to act quickly to ensure that the compulsory purchase process can proceed without unnecessary delay. The direction power described here is intended only to be used in limited circumstances where the need to act is evident. We do not consider therefore, that Parliamentary debate is necessary before such action can be taken.

Justification for procedure selected

1554. The bar for use of this power is set high. Directions under this power would be made only in very limited circumstances: the confirming authority must be satisfied that the circumstances are special, and making physical documentation available for inspection is impracticable. In such circumstances the confirming authority may need to move quickly and a direction is therefore a more suitable mechanism than regulations. Furthermore, this power enables the confirming authority to make a case-by-case direction which is not possible through general regulations. For these reasons, the Government considers that it is appropriate to have no Parliamentary procedure in respect of this power to direct.

Clause 167 replaces subsections (2)-(6) of section 13A of the Acquisition of Land Act 1981 amending the procedures that a confirming authority may follow when considering objections to confirmation of a compulsory purchase order with new subsections (1A)-(1I).

New sub clause (1D) provides the Secretary of State, or Welsh Ministers, the power to make regulations prescribing the procedure to be followed.

Clause 169 and paragraph 2 of Schedule 15 makes corresponding amendments in relation to compulsory purchases made by Ministers.

Powers conferred on: *the Secretary of State, or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

1555. Clause 167 amends sections 13A and 13B of the Acquisition of Land Act 1981 which set out the procedure a confirming authority should follow when considering objections to a compulsory purchase order. Clause 144 and paragraph 2 of Schedule 15 make corresponding amendments to Schedule 1 to the Acquisition of Land Act 1981 for compulsory purchases made by Ministers.

1556. Under the current rules, there are three options for the procedure which can be used – written representations, public local inquiry or a hearing. However, the written representations procedure cannot be used where any remaining objector does not give consent. This measure aims to make the

confirmation process more efficient by combining the written representation and hearing procedure into a new representations procedure that includes the option for a hearing to take place where an objector requests it. It makes no change to the public local inquiry procedure.

1557. The power in new subsection (1D) of section 13A of the Acquisition of Land Act 1981 enables the Secretary of State, or Welsh Ministers for Welsh compulsory purchase orders, to set out the procedure to apply to the combined representations procedure in secondary legislation and to provide in that legislation for reasons to be given for decisions taken using this procedure. It replaces the existing provision in section 13A(6) enabling the Secretary of State to make regulations prescribing the written representations procedure.

1558. Clause 169 and paragraph 2 of Schedule 15 provide on their face for procedural matters that the secondary legislation under subsection (1D) and subparagraph (1D) should include. Subsection (1E), and subparagraph (1E) in respect of compulsory purchases made by Ministers, require the regulations to include provision:

a. Enabling each person who has made remaining objections to make representations in writing or, where that person requests to do so, at a hearing:
b. Enabling the acquiring authority (or Minister in the case of compulsory purchases made by Ministers) and any other person the confirming or appropriate authority thinks appropriate, to make those representations.

1559. Subsection (1F) and subparagraph (1F) provide that the regulations may provide for hearings to be held by the confirming authority (or the appropriate authority in the case of compulsory purchases made by Ministers) or a person appointed on their behalf.

Justification for delegation

1560. Of the present three procedures that a confirming authority may elect to follow, additional procedural rules are set out in secondary legislation for two of them. Procedural rules for the written representation procedure are set out in the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 and The Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004 made under the powers in section 13A(6) and paragraph 4A of Schedule 1 to the Acquisition of Land Act 1961, which this clause amends and replaces, and in the Compulsory Purchase (Inquiries Procedure) Rules 2007 and the Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 for public local inquiries. There are no procedural rules applicable to other confirmation process hearings.

1561. Having formal procedural rules will benefit those involved in the compulsory purchase confirmation process. Those rules will not be controversial and are likely to be subject to change from time to time. The key

procedural requirements of affording representation and appearance opportunities has been specified on the face of the clause. It is considered appropriate and consistent with existing practice that the remainder of those procedural rules are set out in secondary legislation.

Justification for procedure selected

1562. The procedural rules are unlikely to be controversial. In practice, they may be made through consolidation of the existing Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 or the Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004 as appropriate. The same procedure has been selected as applies to those regulations.

Clause 168 introduces new section 13BA into the Acquisition of Land Act 1981 to give confirming authorities a new option of conditionally confirming a compulsory purchase order. New subsection 13BA(4) gives the Secretary of State, or Welsh Ministers in relation to compulsory purchase orders to be made or confirmed by Welsh Ministers, power to make regulations in relation to the application procedure that acquiring authorities should follow when applying to discharge the conditions and make use of their compulsory purchase power.

Paragraph 3 of Schedule 15 makes corresponding amendments to introduce a new paragraph 4AA into Schedule 1 of the Acquisition of Land Act 1981 in respect of compulsory purchases by Ministers.

New paragraph 4AA(4) gives the Secretary of State, or Welsh Ministers in relation to compulsory purchase orders to be made or confirmed by Welsh Ministers, the same power to make regulations setting out the procedure to be followed in respect of compulsory purchases by Ministers.

Powers conferred on: *Secretary of State and Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

1563. Clause 168 introduces a new section 13BA into the Acquisition of Land Act 1981 which gives confirming authorities a new option of confirming a compulsory purchase order conditionally, in addition to the existing options of confirming (with or without modifications) or rejecting compulsory purchase orders.

1564. Paragraph 3 of Schedule 15 makes corresponding amendments to the confirmation process for compulsory purchases made by Ministers and

introduces a new paragraph 4AA to Schedule 1 to the Acquisition of Land Act 1981.

1565. These provisions give confirming authorities the option to set conditions on confirmation which the acquiring authority must apply to discharge before it can implement the compulsory purchase in question. In the case of compulsory purchase orders made by Ministers, the relevant confirming authority must consider whether the conditions have been discharged.

1566. The powers in new section 13BA(4) and new paragraph 4AA(4) of Schedule 1 to the Acquisition of Land Act 1981 enable the Secretary of State, or Welsh Ministers in relation to compulsory purchase orders that fall to be made or confirmed by Welsh Ministers, to make regulations prescribing the procedure that acquiring authorities should follow in making that application for discharge or, in the case of compulsory purchase orders made by Ministers, the procedure to be followed in connection with the appropriate authority's consideration of whether the conditions have been met.

1567. New section 13BA(5) and new paragraph 4AA(5) of Schedule 15 set out on the face of the Bill that the procedure must include provision for persons with objections to:

a. Be given notice of the application or that the question of whether the conditions have been met is to be considered; and
b. Be provided the opportunity to make written representations about that application or consideration.

Justification for delegation

1568. The regulations to be made under these powers are not expected to be controversial. The key procedural provision – that persons with objections must be notified that discharge of the conditions is to be considered and must be afforded the opportunity to make written representations about that consideration – is included on the face of the Bill. The remainder of the regulations will be procedural in nature and may be subject to amendment from time to time.

1569. There are a number of other sets of procedural regulations made under the Acquisition of Land Act 1981 in secondary legislation, including:

a. the Compulsory Purchase of Land (Written Representations Procedure) (Ministers) Regulations 2004 and the Compulsory Purchase of Land (Written Representations Procedure) (National Assembly for Wales) Regulations 2004;
b. the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 and the Compulsory Purchase (Prescribed Forms) (National Assembly for Wales) Regulations 2004 which specify the form

a compulsory purchase order is to take and specify the form of notifications made under the Act.

1570. In addition, the rules on an inquiry into a Compulsory Purchase Order are set out in the Compulsory Purchase (Inquiries Procedure) Rules 2007 and the Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010 made under section 9 of the Tribunals and Inquiries Act 1992.

1571. It is appropriate and consistent with prior practice for procedural rules of this kind to be set out in regulations.

Justification for procedure selected

1572. The procedural rules are expected to be uncontroversial in nature. The same Parliamentary procedure has been selected as is used for other procedural rules made under the same Act as these clauses are amending (the Acquisition of Land Act 1981).

Clause 173(1) contains the power for the Secretary of State to make Regulations for or in relation to requiring an acquiring authority to comply with published approved data standards process when preparing, holding or providing such relevant compulsory purchase data as will be specified or described in regulations.

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument and publication*
Parliamentary Procedure: *Negative procedure*

Context and Purpose

1573. This clause sets out a new provision enabling the Secretary of State to set data standards in relation to compulsory purchase data that is prepared, held and processed by acquiring authorities. The purpose of the clause is to enable the development of a compulsory purchase system that makes better use of digital technology to improve access to important compulsory purchase information, drive efficiencies in applications for confirmation and decision making, and facilitate better public engagement.

1574. The power in clause 173(1) will enable the Secretary of State to make provision in regulations to require acquiring authorities to prepare, hold and process certain compulsory purchase data, deriving from relevant compulsory purchase enactments defined in the clause, in accordance with data standards. The regulations will set out the compulsory purchase data in question.

1575. The clause sets out that this data is information that is contained in relevant compulsory purchase documentation which is itself defined in the clause as an order, notice or any other documentation that is to be prepared by

an acquiring authority under or for the purposes of relevant compulsory purchase legislation. This legislation is listed in 173(6).

1576. Clause 173(1) also enables the Secretary of State to publish written standards containing technical specifications or other requirements ('data standards') that acquiring authorities' compulsory purchase data should comply with.

1577. Data standards may, for example, be applied to the order and map that an acquiring authority produces for a compulsory purchase order to ensure they are provided in standard digital format, and are made accessible and searchable.

Justification for delegation

1578. The power in clause 173(1) is being taken to ensure that compulsory purchase data can be prepared, held or provided subject to approved data standards as and when the software to enable that preparation, holding and provision of data is developed and becomes available. The building of software to support the digitisation of the compulsory purchase system, like the planning system, will take time and will develop over time; it would be premature at this stage to specify the compulsory purchase data that will be covered on the face of the Bill.

1579. As with the power taken in clause 78(1) set out above, the power in clause 173(1) of the Secretary of State to publish approved data standards from time to time is being taken in line with other powers in planning legislation which allow the Secretary of State to publish data standards; see for example the power in section 36(3) of the Planning and Compulsory Purchase Act 2004 which was inserted by section 11 of the Neighbourhood Planning Act 2017. The setting of data standards is not suitable for legislation as the standards will comprise highly technical specifications for how information (data) is to be published in a file format structured so that software applications can easily identify, recognise and extract specific data to permit its re-use. The standards themselves are likely to be presented in a number of formats that will not necessarily be compatible with the requirements for the publication of secondary legislation. The standards may also need to change to respond to feedback from acquiring authorities and those affected by compulsory purchase to whom data is provided.

Justification for procedure selected

1580. The changes introduced by regulations will describe the compulsory purchase data which acquiring authorities must prepare, process and hold in accordance with the Secretary of State's approved data standards. The Government considers that this level of scrutiny is appropriate as the categories and types of compulsory purchase data in scope will be introduced over time as the appropriate software becomes available. Clause 173 limits the types of compulsory purchase data that may be covered to orders, notices and other

documentation that is, or is to be, prepared by an acquiring authority under a short list of compulsory purchase statues which are set out on the face of the provision. The categories or types of data within that subset are not of such import that Parliament should need to debate each exercise of the power. Therefore, the negative procedure is appropriate.

1581. In relation to the power in clause 173(1) for the Secretary of State to publish approved data standards from time to time, the lack of Parliamentary procedure is justified because the standards relate only to the *form* in which information is processed, where such information is already required under the compulsory purchase. This power builds on the approach in section 36(3) of the Planning and Compulsory Purchase Act 2004. Setting these standards by way of publication by the Secretary of State is the most appropriate way to disseminate this information.

1582. Engagement will be undertaken with experts in the area before formulating any data standards under regulations.

Clause 175 amends section 20(a) Land Compensation Act 1961 which provides for the Secretary of State to prescribe by order the time limit within which a certificate is required to be issued by section 17 of that Act

Powers conferred on: Secretary of State or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers
Powers exercised by: Development Order
Parliamentary Procedure: Negative procedure

Context and Purpose

1583. Clause 175(6) amends the wording of section 20(a) of the Land Compensation Act 1961 so that instead of providing for prescribing the time within which a certificate under section 17 of that Act is required to be issued, it will provide for prescribing the period within which an application under that section is to be determined. This is a minor change to the scope of the Secretary of State's (or Welsh Ministers' for compulsory purchase orders as fall to be made or confirmed by Welsh Ministers) existing delegated power to make secondary legislation setting out when local planning authorities must issue certificates of appropriate alternative development.

1584. This is a consequential amendment following a change made by subsection (3)(b)) of Clause 175 to section 17 of the Land Compensation Act 1961 in order to provide, by new section 17(1C)(b), for an alternative valuation date in circumstances where a certificate of appropriate alternative development is applied for before the relevant valuation date (as defined) occurs. In these circumstances, the relevant valuation date (as defined) is the date on which the application for a certificate of appropriate alternative development under section 17 of the Land Compensation Act 1961 is determined.

Justification for delegation

1585. The Orders made under the power provided for by section 20(a) of the Land Compensation Act 1961 are limited and entirely procedural, dealing only with time periods within which applications for a certificate of appropriate alternative development are to be determined by the relevant local planning authority. The appropriate period may need to change from time to time, reflecting the practicalities applicable to local planning authorities. The power already provides for this to be dealt with in secondary legislation. Our amendment to this provision is minor in nature and it does not change the underlying purpose of an Order made under section 20(a) of the Land Compensation Act 1961 which is for administrative and procedural purposes only. We do not consider it appropriate for the existing power to have been amended further in order to remove or amend the extent of its delegation.

Justification for procedure selected

1586. It is appropriate for the period within which a local authority must determine an application for a certificate of appropriate alternative development to be set out in secondary legislation made under the negative procedure. We have not therefore amended the extent of the delegation or the relevant procedure that already apply to section 20(a) of the Land Compensation Act 1961.

PART 10 – Letting by local authorities of vacant high street premises

Clause 178(5): power or the Secretary of State to make regulations to alter the circumstances in which the "vacancy condition" is satisfied.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1587. The "vacancy condition" is one of the conditions which must be satisfied before a local authority can start the initial process set out in Part 10 of the Bill, referred to as the 'procedure preliminary to letting'. This initial process starts with the local authority serving an "initial letting notice" on the landlord, which

gives the landlord 8 weeks to let the vacant premises - see clause 182(2)(a). During this period, the landlord will require the local authority's consent to grant a tenancy or licence to occupy the premises – see clause 181(1). The local authority will be obliged to give their consent where the conditions in clause 182(2) are met. Where no tenancy has been granted at the end of that 8-week period, the local authority will have the power to serve a "final letting notice" – see clause 183(1).

Justification for delegation

1588. The "vacancy condition" will have an important bearing on the availability of this power and/or the frequency in which the power can be used by local authorities. The Government may wish to adjust the vacancy periods in light of experience of local authorities using these powers.

Justification for procedure selected

1589. These regulations would amend primary legislation and relate to an important matter which determines when the process to serve an initial letting notice can be started by the local authorities. An amendment to the vacancy periods will have a significant impact on landlords, as well as local authorities looking to use these powers. We therefore consider any amendment justifies the level of scrutiny afforded by the affirmative procedure.

Clause 186(5): power for the Secretary of State to make regulations in relation to amending (including adding or removal) the landlord's grounds of appeal against the final letting notice (which triggers the local authority's power to make arrangements for a rental auction and enter into a tenancy contract).

Powers conferred on: *Secretary of State*
Powers exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

1590. The landlord will be able to appeal against a final letting notice (which triggers the local authority's power to make arrangements for a rental auction and enter into a tenancy contract) on a range of grounds as set out in Schedule 16. The grounds of appeal include:

a. Where the vacancy condition is not met;
b. Where the premises cannot reasonably be considered suitable for the high street use identified by the local authority;
c. Where the local benefit condition is not met;
d. Where the consent of the local authority to a letting by the landlord within 8 weeks of the initial notice should have been given;
e. Where the landlord intends to carry out development which affects the premises (and cannot be carried out without retaining possession of the premises);
f. Where the landlord intends to occupy the vacant premises itself for the purposes of its own business or residence.

1591. These grounds of appeal relate to important matters in the process, such as the conditions which need to be fulfilled before the new powers can be exercised, and safeguarding the opportunity of allowing the landlord to re-let the premises within an 8 week window following the initial letting notice (by ensuring the local authority consents where required by the primary legislation). They also provide for familiar grounds of appeal in other similar contexts, such as the opposed lease renewal process in the Landlord and Tenant 1954.

1592. The grounds of appeal are considered important safeguards for landlords who are affected by this new power. Equally, however, it is also important that these grounds of appeal are not used to undermine the effectiveness of these measures and the policy objectives.

Justification for delegation

1593. There may need to be amendment to these grounds of appeal in the future, in light of experience in operating this new power. There may, for instance, be found to be a need to increase the safeguards available to landlords, or to revise the grounds of appeal where they are found to undermine the effectiveness of the measures and the policy objectives.

Justification for procedure selected

1594. The exercise of this power would amend primary legislation insofar as it amended or removed an existing ground of appeal. Given this, and the importance of these grounds of appeal as outlined above, we consider any amendment justifies the level of scrutiny afforded by the affirmative procedure.

Clause 188: power for the Secretary of State to make regulations about certain matters in relation to the rental auction, including the procedure to be followed, how the "successful bidder" of the auction is identified and/or selected, and the terms upon which local authorities can enter into arrangements for the auction.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1595. The local authority will have the power to arrange for a rental auction if the landlord fails to relet the vacant premises within 8 weeks of the initial notice (subject to any landlord's rights of appeal) (see clause 188(1)). A rental auction is described as the process for finding persons who would be willing to take a tenancy of the premises and ascertain the consideration they would be willing to offer (clause 188(2)).

1596. We anticipate a need to set out clearly in regulations, and in some detail, the matters raised immediately below, so that local authorities know what is required of them in arranging the rental auction, and landlords can understand the procedure and what is required of them throughout the rental auction process.

1597. The Bill provides that regulations must make provision about the procedure to be followed in connection with a rental auction (clause 188(3)), and the regulations may allow the local authority to have a choice of procedure (clause 188(8)). It is important to note that the local authority must have regard to any representations made by the landlord in relation to procedure to the extent the local authority has a choice as to procedure (see clause 188(9)).

1598. The regulations must also provide for the suitable high-street use (or uses) of the premises to be specified by the local authority ahead of the auction (clause 188(4)). This is important because the high-street use which is specified ahead of the auction will determine the types of bidders who will be interested and the particular market for the premises.

1599. The regulations must also provide for the identification of a person as the "successful bidder", who is granted the tenancy, but there may also need to be provision for the situation where there is no successful bidder, perhaps where certain minimum criteria are not met (see clause 188(5)).

1600. There is a desire to involve the landlord in the auction process, insofar as is possible, whilst balancing this against another policy objective of having a relatively quick and effective scheme. This consideration is provided for in clause 188(9) as mentioned above, and clause 200(d) gives the Secretary of State the power to make provision about the manner of, or procedure to be followed in connection with the making of such representations by the landlord. There is also the possibility that the landlord may want to accept a bid that is not the highest, and there may also need to be the ability to provide for a tenancy to be granted to a runner-up of an auction if things fall through with the winner – this is provided for in clause 188(6).

1601. The local authority may also need to instruct third parties to run the auction for them, so the Bill provides for this in clause 188(7).

Justification for delegation

1602. As can be seen from the section immediately above, there is a significant amount of detail on rental auctions which will need to be provided for, of a procedural and technical nature. Local authorities may need some flexibility in the choice of procedure and other matters related to the auction, depending on factors such as their particular circumstances (which may vary across local authorities), the location of the vacant premises and the nature of the local market. The regulations may need to go to some length in prescribing such matters. The Government considers this amount of detail would more appropriately be dealt with in secondary legislation.

1603. There may need to be changes to the process in light of practical experience of how the rental auctions operate. This may flow from feedback from local authorities, who will be arranging the rental auction, landlords who will be involved in the process to some degree, and prospective tenants who will be submitting bids as part of the auction process. The rules around how the auctions operate may be better designed after some experience of administering the new act and therefore require frequent fine tuning. This process may need adjusting more often than Parliament can be expected to legislate by primary legislation. Secondary legislation allows for this flexibility.

Justification for procedure selected

1604. The Government considers the negative resolution procedure is appropriate given these are more detailed lower-level matters of a procedural nature, which may require flexibility in the future. Whilst the exercise of these powers does raise matters of some importance to landlords, such as the safeguards which are place to ensure the auction process is run properly, we consider Parliamentary oversight is not required, given the procedural and technical nature of the considerations involved.

Whilst no consultation was carried out before introduction, the Government is planning a formal consultation on details of the process during Bill passage to inform the content of these regulations and is looking for strong engagement from the property sector. This will include feedback from local authorities and landlords (and their representative bodies) on the process to be adopted around rental auctions.

Clauses 190(6) and 190(7): power for the Secretary of State to make regulations about the provisions to be included in the terms of the tenancy contract which is granted to the successful bidder at the rental auction.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1605. The regulations will make provision for the terms on which the tenancy contract can be granted to the successful bidder at the rental auction. The purpose of this contract is to allow the landlord and tenant to undertake works before the tenancy is granted.

1606. Clause 190(4) provides for the tenancy contract to make provision allowing the tenant to carry out works before the tenancy is granted (along with provision for the giving of landlord consent in relation to such works), as well as provision requiring the landlord to carry out works before the tenancy is granted (with provision around the remedies available to the tenant if the landlord fails to carry out these works). These works are referred to in the Bill as “pre-tenancy works”.

1607. The Secretary of State will have the power to impose restrictions or conditions on the ability to include provision in the tenancy contract for pre-tenancy works (clause 190(6)(a)), and the circumstances in which provision for pre-tenancy works must be included in the contract (clause 190(6)(b)), as well as other provision about the terms of the contract (see clause 190(6)(c)).

1608. In making the regulations, the Secretary of State must have regard to the terms on which contracts for the grant of short-term tenancies are typically granted on a commercial basis (see clause 190(7)).

1609. There is also a desire to involve the landlord in the process of deciding the terms on which to offer the tenancy. This needs to be balanced against another policy objective of having a relatively quick and effective scheme. This consideration is provided for in clause 190(8), as local authorities must have regard to any representations made by the landlord in deciding the terms of the contract (so far as it has a discretion do so). Clause 200(d) gives the Secretary of State the power to make provision about the manner of, or procedure to be followed in connection with the making of such representations.

Justification for delegation

1610. There will be a wide range of commercial premises which qualify for this power in relation to High Street Rental Auctions, in terms of (amongst other things) the nature of the premises, the location, the physical configuration, the state and condition of the premises and size.

1611. Provisions seeking to define the respective obligations in the tenancy contract, including provision for pre-tenancy works, in a reasonably precise way is likely to be long and technical, to involve different provision for different types of case, and may call for frequent adaptation in the light of practical experience. This adaptation may follow from feedback from local authorities, who will be granting the tenancy contract, as well as landlords and tenants who are undertaking any pre-tenancy works. Secondary legislation allows for this flexibility.

1612. The Government therefore considers these matters are more appropriately dealt with in secondary legislation.

Justification for procedure selected

1613. The Government considers the negative resolution procedure is appropriate given the regulations are likely to consist mostly of technical detail, including the mechanics of granting the tenancy and any pre-tenancy works. Owing to the range of circumstances in which these contracts may be entered into, these matters may require frequent fine-tuning.

1614. It is acknowledged that how these powers are used could be important, but the Bill introduces some safeguards by requiring the Secretary of State to have regard to the terms on which contracts for short-term tenancies are typically granted on a commercial basis, and local authorities must (so far as they have a discretion to do so) have regard to any representations made by the landlord on the terms which are offered.

1615. Given the above considerations, and in the context of Parliament having approved the principle of a scheme of compulsory letting, the contractual details are, on balance, thought appropriate for negative procedure.

Whilst no consultation was carried out before introduction, the Government is planning a formal consultation on details of the process during Bill passage to inform the content of these regulations and is looking for strong engagement from the property sector. This will include feedback from landlords and tenants and their representative bodies on the terms of the tenancy contracts to be offered at the rental auction.

Clauses 191(7), 191(8) and 191(9): power for the Secretary of State to make regulations about the provisions to be included in the terms of the tenancy.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1616. The regulations will make provision for the terms on which the tenancy is granted pursuant to the contract entered into under clause 189.

1617. The Bill provides for some of the key terms of the tenancy, such as length of term (1-5 years), rent (set by the rental auction), permitted use (as a "high street use", and clause 188(4) requiring the high-street use to be specified by the local authority ahead of the auction) and exclusion from the security of tenure provisions in the Landlord and Tenant Act 1954 (see clause 194).

1618. The Bill then sets out a high-level list of those matters that the tenancy must address. These are listed in Schedule 17 and include obligations on the landlord to repair and maintain anything outside the premises, the provision of utilities by the landlord (if any), tenant's repair covenants, alterations, insurance, service charge, alienation, deposits, forfeiture, and providing vacant possession at the end of the term.

1619. The Secretary of State will have the power to provide further detail (or exceptions) around these provisions. For example, it is anticipated that a rent deposit will be required from a tenant in most cases to provide landlords with some security, but it is possible it may not be required in certain circumstances.

1620. There are likely to be other matters dealt with in the tenancy and the Secretary of State has the power to make provision for these as well (see clause 191(7)). An example would be the landlord's covenant for quiet enjoyment, which is a common requirement in tenancies.

1621. In making the regulations, the Secretary of State must have regard to the terms on which short-term tenancies are typically granted on a commercial basis (see clause 191(8)).

1622. There is also a desire to involve the landlord in the process of deciding the terms on which to offer the tenancy. This needs to be balanced against another policy objective of having a relatively quick and effective scheme. This consideration is already provided for in clause 191(9), as local authorities must have regard to any representations made by the landlord in deciding the terms of the tenancy (so far as they have a discretion to do so). Clause 200(d) gives the Secretary of State the power to make provision about the manner of, or procedure to be followed in connection with the making of such representations.

Justification for delegation

1623. Again, there will be a wide range of commercial premises which qualify for this power in relation to High Street Rental Auctions, in terms of (amongst other things) the nature of the premises, the location, the physical configuration, the state and condition of the premises and size. This means there may need to be several forms of lease available for use by local authorities, which provide for different circumstances.

1624. Provisions seeking to define the respective obligations of the landlord and tenant in a reasonably precise way is likely to be long and technical, to involve different provision for different types of case, and may call for frequent adaptation in the light of practical experience. This adaptation may follow from feedback from local authorities, who will be offering the tenancy at auction, as well as landlords and tenants who will be subject to the terms of the tenancy. Secondary legislation allows for this flexibility.

1625. The Government therefore consider these matters are more appropriately dealt with in secondary legislation.

Justification for procedure selected

1626. The Government considers the negative resolution procedure is appropriate given the regulations are likely to consist mostly of technical details which, owing to the range of circumstances in which leases may be granted, may require frequent fine-tuning.

1627. It is acknowledged that how these powers are used could be important, but the Bill includes some safeguards by setting out parameters for the key terms of the tenancy (length of term, rent, permitted user and security of tenure), as well as provision for certain matters which must be included in the tenancy (as set out in Schedule 17).

1628. It also requires the Secretary of State to have regard to the terms on which short-term tenancies are typically granted on a commercial basis (clause 191(8)), and local authorities (in so far as they have a discretion to do so) must have regard to any representations made by the landlord on the terms of the tenancy which are offered 191(9). We are implicitly concerned with the sort of requirements that could appear in a commercial lease in any event, so the regulations are unlikely to contain anything surprising.

1629. Given the above considerations, and in the context of Parliament having approved the principle of a scheme of compulsory letting, the contractual details are, on balance, thought appropriate for negative procedure.

Whilst no consultation was carried out before introduction, the Government is planning a formal consultation on details of the process during Bill passage to inform the content of these regulations and is looking for strong engagement from the property sector. This will include feedback from landlords and tenants and their representative bodies on the terms of the tenancies to be offered at the rental auction.

Clauses 199(2) and 199(3): power for the Secretary of State to make regulations about the forms of the initial letting notice and final letting notice and rules around service of these notices and when they take effect.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1630. Service of the initial letting notice and the final letting notice (together the 'letting notices') are important steps in the 'procedure preliminary to letting' (as it is referred to in Part 10), as the initial notice triggers the requirement for the landlord to re-let the premises within 8 weeks, and the final notice triggers the powers of the local authorities to arrange an auction (subject to the landlord's right of appeal).

1631. The Bill provides that regulations must makes provision about the form and content of the letting notices, the service of these letting notices and when they take effect (clause 199(2)). The notices must also identify the premises to which they relate and their suitable high-street use, explain the reasons for service of the notice and explain the consequences of the notice having been served, in such detail as is adequate for the recipient of the notice to be able to decide how to act in response to it (see clause 199(3)).

1632. In making the regulations, the Secretary of State must seek to secure that, in the ordinary course of events (taking into account the method of service employed), the landlord will become aware of the notice by the time it takes effect (clause 199(5)).

1633. The regulations may also provide for copies of these notices to be served on superior landlords and mortgagees who may be affected by the measures (clause 199(8)).

Justification for delegation

1634. These matters are of a procedural and technical nature and more appropriately dealt with in secondary legislation. Setting out forms of notice is also more appropriately dealt with through regulations. It is not unusual for such procedural matters to be dealt with in regulations.

Justification for procedure selected

1635. We consider the negative resolution procedure is appropriate given these are procedural matters.

Clause 200 for the Secretary of State to make regulations about the manner of, or procedure to be followed, in relation a number of matters including the designations of high streets / town centres by local authorities, the seeking, giving or refusing of consent by local authorities, the making of representations by the landlord to the procedure to be followed in the auction and the terms on which to offer the contract and tenancy, the power of the local authority to require provision of information, and the giving of notice where the local authority exercises its power of entry.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1636. Clauses 200 allows the Secretary of State to make regulations in relation to the manner of or procedure to be followed in connection with:

g. The designation of high streets and town centres by local authorities;
h. The seeking, giving or refusing of consent by local authorities to either the grant of a tenancy by the landlord during the 8-week period following service of the initial notice, or the grant of a tenancy by the landlord during the period in which a final notice is in force;
i. the making of representations by the landlord as to the procedure to be followed by the local authority in connection with the rental auction, and as to the terms on which the local authority is to offer the contract and tenancy;
j. the power of the local authority to require those who appear to have an interest in the premises to provide information about the premises;
k. the giving of notice by the local authority where it exercises its power of entry.

1637. We anticipate a need to set out clearly in regulations, and in some detail, the manner and procedure around these matters, so that local authorities know what is required from them and landlords can understand the procedure around these matters and what is required from them. For example, it is anticipated there may need to be more detail around the manner and procedure for the provision of information from the landlord to the local authority as part of the rental auction.

Justification for delegation

1638. The Government considers these matters are of a more procedural and technical nature and more appropriately dealt with in secondary legislation.

1639. There may also be a need to change the process in light of practical experience of how these measures operate, and secondary legislation allows for this flexibility.

Justification for procedure selected

1640. We consider the negative resolution procedure is appropriate given these are procedural matters.

Whilst no consultation was carried out before introduction, the Government is planning a formal consultation on details of the process during Bill passage to inform the content of these regulations and is looking for strong engagement from the property sector. This will include feedback from local authorities and landlords on the manner of and procedure around these matters.

Clauses 202: power for the Secretary of State to modify or disapply enactments applicable to letting

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Affirmative procedure

Context and Purpose

1641. The granting of the tenancy through the exercise of this power by the local authority has the potential to impose non-contractual liability on landlords pursuant to various enactments applicable to lettings.

1642. The tenancy contract will also make provision for any works which are required to be carried out prior to the grant of the tenancy. The marketing of the premises and the letting itself may trigger a requirement to carry out works to the premises.

1643. In some cases, the tenancy contract and/or terms of the tenancy may be able to pass the responsibility for compliance with these enactments onto the tenant, particularly where this is typically done on a commercial basis.

1644. There may be cases where this is not possible or where it would not be fair to apply these enactments to landlords (particularly as the letting is by compulsion).

1645. One example would be the Energy Performance of Buildings (England and Wales) Regulations 2012 (2012/3118) which apply minimum energy performance requirements to premises which are marketed and let. Compliance with these regulations may require works to be carried out by landlords to improve the energy performance of premises, to enable the premises to be marketed and let. This may in some cases impose a significant burden on landlords.

Justification for delegation

1646. The modification or disapplication of enactments needs to be considered alongside the terms of the contract and tenancy, which are dealt with through regulations under clauses 190(6) and 190(7)/(8) respectively. The modification or disapplication of statutes applicable to lettings will have an important bearing in deciding these terms.

1647. The disapplication and modification of certain statutes is also likely to be of a technical and detailed nature, and may possibly involve different provision for different types of case. These matters are therefore more appropriately dealt with in secondary legislation.

1648. The terms of the contract and tenancy may also need to evolve in light of practical experience. Secondary legislation allows for this flexibility.

Justification for procedure selected

1649. We consider the affirmative procedure is appropriate because the disapplication or modification of these enactments is likely to have a material impact on both landlords and tenants, as well as raise wider issues which justify Parliamentary oversight, such as the energy performance of buildings in the case of EPC Regulations.

Whilst no consultation was carried out before introduction, the Government is planning a formal consultation on details of the process during Bill passage to inform the content of these regulations and is looking for strong engagement from the property sector. This will include feedback from local authorities, landlord and tenants on the modification or disapplication of enactments applicable to lettings.

PART 11 – Information about interests and dealings in land

Clause 204, power for the Secretary of State to make regulations requiring provision of information about ownership and control if it appears to the Secretary of State that such information would be useful for:

(a) identifying persons who (from time to time):
(i) own relevant interests in land and;
(ii) have relevant rights concerning land; or
(iii) have the ability to control or influence (directly or indirectly) the owner of a relevant interest in land, or a person with a relevant right concerning land, in the exercise of that ownership or right; or
(b) ascertaining the nature, extent or duration of that ownership, those rights or that ability.
Regulations under clause 204 must for each requirement imposed specify:
(a) the description of person on whom the requirement falls;
(b) the occurrence or circumstances that give rise to the requirement;
(c) the time limit for complying with the requirement;
(d) the person to whom the required information is to be provided.
The person to whom the required information must be provided must be:
(a) the Chief Land Registrar; or
(b) another person exercising public functions on behalf of the Crown.
Regulations under clause 204 may make provision about how information is to be provided including provision requiring it to be provided by electronic means.
Regulations under Section 204 may be exercised retrospectively in that they may related to things done or arising before the coming into force of Section 204.
Relevant definitions:
"control or influence" (clause 204(3))
"ownership" (clause 209)
"person" (clause 209)
"relevant interest in land" (clause 209)
"relevant right concerning land" (clause 209)

Powers conferred on: Secretary of State
Powers exercised by: Secretary of State
Parliamentary Procedure: Affirmative

Context and Purpose

1650. The purpose of this power is three-fold:

(a) to support efforts to trace the proceeds of crime and to discourage money laundering by ensuring that the actual ownership and control of real property in England and Wales can be better understood, discouraging the investment of the proceeds of crime in land and buildings through such transparency;

(b) in the context of Russia's invasion of Ukraine to help ensure that the actual ownership and control of real property is better understood, to identify attempts to evade sanctions or the new disclosure requirements placed on companies owning UK law and property contained in the Economic Crime (Transparency and Enforcement) Act 2022;

(c) to improve the transparency of arrangements used to control developable land by developers in order to meet the 2017 housing white paper commitment to publish data on options and other arrangements used by developers to exercise control over land.

Justification for delegation

1651. The information required under the regulations will take many different forms and a comprehensive succinct list set out in primary legislation is not feasible as it runs a significant risk of leaving gaps in the information needed to understand the ownership or control of land. It is also important that required information can be reviewed in light of experience and amended as necessary.

Justification for procedure selected

1652. The Affirmative procedure has been chosen given the broad nature of the power conferred as this will allow the regulations to be laid in draft and allow Parliament the opportunity to debate and approve them.

Clause 205, power for the Secretary of State to make regulations requiring provision of transactional information about instruments, contracts or other arrangements relating to relevant interests in land or relevant rights concerning land.:

(a) creating, altering, extinguishing, evidencing or transferring relevant interests in land; or
(b) conferring, amending, assigning, terminating or otherwise modifying relevant rights concerning land.
Regulations under clause 205 must for each requirement imposed specify:
(a) the description of person on whom the requirement falls;
(b) the occurrence or circumstances that give rise to the requirement;
(c) the time limit for complying with the requirement;
(d) the person to whom the required information is to be provided.
The person to whom the required information must be provided must be:
(a) the Chief Land Registrar; or
(b) another person exercising public functions on behalf of the Crown.

Regulations under clause 205 may make provision about how information is to be provided including provision requiring it to be provided by electronic means.
Regulations under clause 205 may be exercised retrospectively in that they may related to things done or arising before the coming into force of clause 205
Relevant definitions:
"relevant interest in land" (clause 209)
"relevant right concerning land" (clause 209)
"transaction" (clause 205(3))
"transactional information" (clause 205(2))

Powers conferred on: Secretary of State
Powers exercised by: Secretary of State
Parliamentary Procedure: Affirmative

Context and Purpose

1653. The purpose of this power is three-fold:

a. to support efforts to trace the proceeds of crime and to discourage money laundering by ensuring that the actual ownership and control of real property in England and Wales can be better understood, discouraging the investment of the proceeds of crime in land and buildings through such transparency;
b. in the context of Russia's invasion of Ukraine to help ensure that the actual ownership and control of real property is better understood, to identify attempts to evade sanctions or the new disclosure requirements placed on companies owning UK land and property contained in the Economic Crime (Transparency and Enforcement) Act 2022; and
c. to improve the transparency of arrangements used to control developable land by developers in order to meet the 2017 housing white paper commitment to publish data on options and other arrangements used by developers to exercise control over land.

Justification for delegation

1654. The information required under the regulations will take many different forms and a comprehensive succinct list set out in primary legislation is not feasible as it runs a significant risk of leaving gaps in the information needed to understand the ownership or control of land. It is also important that required information can be reviewed in light of experience and amended as necessary.

Justification for procedure selected

1655. The Affirmative procedure has been chosen given the broad nature of the power conferred as this will allow the regulations to be laid in draft and allow Parliament the opportunity to debate and approve them.

Clause 207(1), power for the Secretary of State to make Regulations providing for:

(a) retention of information provided further to a requirement imposed under clause 204 or 205;

(b) the sharing of such information with persons exercising functions of a public nature for use for the purposes of such functions; and

(c) the publication of such information.

Powers conferred on: Secretary of State
Powers exercised by: Secretary of State
Parliamentary Procedure: Affirmative

Context and Purpose

1656. As above for clauses 204 and 205. The power to require publication of information is likely to be used to publish data on options and other arrangements used by developers to exercise control of developable land in accordance with the housing white paper commitment.

Justification for delegation

1657. Different information will be collected for different purposes and held separately from the statutory register of title. Only a relatively small part will be published, with access to the bulk of the information limited to a select number of Government departments and/or public authorities. The granular detail needed to set out exactly how different pieces of information is to be used is too detailed to be sensibly included in primary legislation.

Justification for procedure selected

1658. The Affirmative procedure has been chosen given the broad nature of the power conferred as this will allow the regulations to be laid in draft and allow Parliament the opportunity to debate and approve them.

Clause 207(2), power for the Secretary of State to make Regulations providing for fees to be payable by the persons complying with requirements under clause 204 or 205. Such fees to be payable to the person to whom the information is provided

Powers conferred on: Secretary of State
Powers exercised by: Secretary of State
Parliamentary Procedure: Affirmative

Context and Purpose

1659. As above for clauses 204 and 205. Additionally, this is required to meet costs incurred in administering the provision and publication of relevant transactional information.

Justification for delegation

1660. The Chief Land Registrar has a delegated power to charge fees in respect of dealings with HM Land Registry. Fees are prescribed in fee orders. This provision would allow the Chief Registrar (or another person exercising public functions) to charge fees on a similar basis in connection with the provision of information.

Justification for procedure selected

1661. As above.

Clause 208(1) and (2), power for the Secretary of State to make Regulations providing for the creation of new offences in connection with

(a) failure to comply with a requirement under regulations made under clauses 204 or 205; or

(b) providing false or misleading information in purported compliance with such a requirement.

Regulations made under clause 208(1) may at most make a person liable to:

(a) on summary conviction to imprisonment for a term not exceeding the general limit in a magistrates' court or to a fine (or both);

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine (or both).

Powers conferred on: Secretary of State
Powers exercised by: Secretary of State
Parliamentary Procedure: Affirmative

Context and Purpose

1662. As above for clauses 204 and 205.

Justification for delegation

1663. Details of offences are on the face of the bill (clause 204(1) as are potential sanctions (clause 205(2)).

Justification for procedure selected

1664. The Affirmative procedure has been chosen given the broad nature of the power conferred as this will allow the regulations to be laid in draft and allow Parliament the opportunity to debate and approve them.

Clause 208(3), (4) and (5), power for the Secretary of State to make Regulations:

(a) preventing a relevant registration act being carried out in relation to a relevant interest in land or relevant right concerning land in relation to which a requirement imposed under clause 204 or clause 205 has not been complied with; and

(b) in connection with this, to amend

(i) Land Registration Act 2002;

(ii) make consequential amendments to any other enactment.

Powers conferred on: Secretary of State
Powers exercised by: Secretary of State
Parliamentary Procedure: Affirmative

Context and Purpose

1665. As above for clauses 204 and 205.

Justification for delegation

1666. It is necessary to ensure that for information collected by HM Land Registry, the information collection process remains aligned with the land registration process as far as possible.

Justification for procedure selected

1667. As above.

PART 12 – Miscellaneous

Clause 210 provides that the Secretary of State must by regulations make provision requiring or permitting the registration of specified short-term rental properties in England

Duty conferred on: *Secretary of State*
Duty exercised by: *Regulations made by statutory instrument*
Parliamentary Procedure: *Affirmative procedure*

Context and Purpose

1668. This clause forms part of a package of measures intended to address issues relating to the availability of housing, and the proliferation of holiday

accommodation in some areas. A register will support local authorities where a high number of short-term lets is adversely affecting the local housing market by providing them with better information on the number of short-term lets in their area. It will also 'level the playing field' by ensuring consistency in the regulatory framework across the wider guest accommodation sector, and provide visible assurance to visitors about the quality of guest accommodation in England.

1669. The clause imposes a duty on the Secretary of State to make regulations requiring or permitting the registration of specified short-term rental properties in England. 'Short-term rental property' is defined in clause 210(2)(a) as a dwelling provided in the course of a business or trade to another person for use as accommodation other than their only or principal residence. The accommodation must be in return for payment. Clause 210(2)(b) enables other dwellings or premises (or parts thereof) to be added to that definition ('premises' is defined in clause 210(9) and includes vehicles, vessels and tents). The regulations will be able to specify which types of short-term rental accommodation are to be included (see the meaning of 'specified' in clause 210(9)), and exemptions can also be made (clause 210(5)(j)). This is therefore a broad power, with scope to narrow its application to particular types of accommodation.

1670. Clause 210(5) sets out a range of things that may be part of the statutory registration scheme set up by the regulations and deals with practical matters including who will be responsible for maintaining the register, who may or must register a short-term rental property and any conditions on such registration. This also deals with procedural matters such as applications, variations, and the form or content of the register itself and documents relating to it. Any such regulations may also address, for example, appeals against decisions made in relation to the registration of a property as a short-term rental property and how details of the register may or must be publicised, the consequences of non-registration, and enforcement including civil sanctions. Clause 210(8) includes the power to provide for the charging of fees, conferring of a function and for the regulations to be limited in geographical scope.

Justification for delegation

1671. This measure brings forward a government commitment to address the specific issue of short-term lets in England. The growth in short term lets has led to inconsistency in the regulatory framework in the guest accommodation sector, and wider negative impacts on communities and the availability of housing in areas with a high concentration of short term lets. A call for evidence on the latter issue was held between June and September 2022 to understand the problem better and seek views on potential interventions. However, further consultation will be needed on the exact design of the scheme. The scale of the challenge will vary by area and detailed feedback is required on the likely impacts of a registration scheme, which will inform the final design. Taking powers to set out the detail of the scheme in regulations means this can be done before the detail of the registration scheme is committed to statute to avoid the risk of having to make significant amendments to primary legislation

through Henry VIII powers. This will enable the design of the registration scheme in England to be informed by more detailed evidence and data.

1672. There is also a benefit in being able to determine and limit through the regulations the categories of short-term rental accommodation that are captured, not least a degree of future-proofing will be required to reflect legislative changes which may be made subsequently. The task of specifying precisely the category of short-term residential accommodation is a technical one and best suited to regulations. In addition, residential accommodation generally, and accommodation which is rented to others more specifically, is an area subject to a lot of regulation which changes not infrequently, and there are potentially overlapping obligations for registration or licensing which may need to be avoided. The power to specify a sub-set of accommodation will enable that risk to be managed in response to any wider legal changes which might otherwise affect the register and properties that are required to be registered.

1673. The clause seeks to list clearly the types of provision that could be made using the power. The Secretary of State is required and committed to consulting the public before any such regulations can be made, meaning local authorities and other relevant bodies will have the opportunity to comment on the detail of the scheme. Regulations made under this provision will be subject to the affirmative procedure meaning Parliament will have the opportunity to debate and vote on the detailed scheme before it comes into law.

Justification for procedure selected

1674. Given the legislative requirement to consult the public, the clauses as tabled necessarily only provide a framework for regulations to be made. That being the case, it is appropriate for Parliament to have the opportunity to debate and vote on the detailed scheme when this is brought forward.

Clause 211 and Schedule 18: power for Secretary of State to make regulations in relation to pavement licenses application fee

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure

Context and Purpose

1675. Under sections 1 to 10 of the Business and Planning Act 2020 (BPA), Part 1, a person is able to apply to the local authority for a pavement licence in order to put removable furniture on part of the highway next to their premises for purposes related to the consumption of food and drink outdoors. This was

introduced as a temporary measure to assist businesses to deal with the effects of coronavirus.

1676. Schedule 18 amends Part 1 of the BPA to make the temporary pavement licensing regime a permanent one, and to make some minor changes to that regime.

1677. Paragraph 3 of Schedule 18 amends section 2 of the BPA which relates to applications for pavement licences. Applicants are required to pay a fee to the local authority which may not exceed either £350 or £500 under new section 2(1A), depending on the particular circumstances of the application. New section 2(1B) will delegate power to the Secretary of State to make regulations to substitute different amounts for the amounts specified under section 2(1A).

Justification for delegation

1678. Allowing the Secretary of State to amend the level of the application fee in regulations is appropriate as it allows the provisions to be future proofed and amended in line with increases in local authority costs, and potentially to take account of any new national conditions set by the Secretary of State under existing section 5(8) which might increase local authority costs.

Justification for procedure selected

1679. The use of the negative resolution procedure is appropriate as the regulations provide a means by which the amounts already specified under section 2(1A) may be amended.

Clause 212

Power for the Secretary of State to:

i. **add to the list of minimum, standard information to be included in a Historic Environment Record;**
ii. **prescribe how information is to be stored and made available on the Record; and**
iii. **regulate the charging of fees by local authorities in connection with the Record.**

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

1680. Clause 212 introduces a statutory requirement for Local Authorities to maintain a publicly accessible Historic Environment Record that contains specified minimum information.

1681. A Historic Environment Record is an information service that seeks to provide resources relating to the historic environment of a defined geographic area for public benefit and use. Historic Environment Records currently exist on an informal basis and are important sources of information for:

a. Local Planning Authorities when preparing their local plan for the future development of their area;
b. those wishing to make planning applications for development;
c. statutory consultees dealing with proposals for developments;
d. Government Departments;
e. those interested in the history of their area.

1682. For Historic Environment Records to be most effective, all Local Authorities need to have, or have access to, a Historic Environment Record and ensure that it is maintained to provide a consistent and up-to-date evidence base for a range of purposes. The primary use of a Historic Environment Record is to facilitate and bolster individual and community knowledge and understanding the history and archaeology of their area. Historic Environment Records are also an important evidence base for local heritage policy, in particular when a Local Planning Authority is developing a Local Plan for their area. The Record can similarly be utilised as an information source when determining planning applications. Clause 212 places Historic Environment Records on a statutory footing. The Secretary of State will be taking delegated powers to:

i. add to the list of minimum information to be included in a Historic Environment Record;
ii. prescribe how information is to be stored and made available on the Record; and
iii. regulate the charging of fees by local authorities in connection with the Record.

(i) A delegated power to add to the list of minimum information to be included in a Historic Environment Record.

Justification for delegation

1683. Historic Environment Records are an existing concept, providing an evidence base for the historic environment in each local authority area. Government policy currently requires local planning authorities to maintain or have access to a Historic Environment Record (paragraph 192 of the National Planning Policy Framework) but evidence demonstrates variations in approach by local planning authorities. Historic England audit Historic Environment Records and have identified the current variation in scope and practice regarding the Records The purpose of placing Historic Environment Records on a statutory footing is to ensure all local authorities maintain

and provide access to a Historic Environment Record that is consistent and up-to-date. A key part of this is prescribing nationally the list of minimum information to be included in a Historic Environment Record.

1684. A power for the Secretary of State to add to the list of minimum information to be included in a Historic Environment Record will provide the flexibility to recognise additional heritage assets that may have a greater status/significance in the future, which would warrant their inclusion in the Record as 'minimum information'. For example, the future designation of a heritage asset. The Government will continue to take advice from Historic England on the content of Historic Environment Records to inform any exercise of this power.

Justification for procedure selected

1685. The types of information that can be added, by regulations, to the list of minimum information in clause 212 subsection (2)(a) is limited to the description set out in subsections (2)(a)(vii) and (3). Historic environment records are an established concept with established uses which provides a starting point for consideration of the exercise of this power. The parameters are clearly defined so that the intended use and extent of the power by the Secretary of State is evident. For this reason, the Government considers that that it is appropriate that regulations under this clause are enacted without Parliamentary debate; the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny here.

(ii) Power to prescribe how information is to be stored and made available on the Record

Justification for delegation

1686. The purpose of placing Historic Environment Records on a statutory footing is to ensure all local authorities maintain and provide access to a Historic Environment Record, which is consistent and up to date. Data standards and technology will evolve over time, which is why it is appropriate to prescribe how information is to be stored and made available on the Record in regulations, allowing for them to be updated in future to reflect best practice and evolving technology. There are international standards for recording cultural information, including applying the correct terminology to the classification of heritage assets, which may require updates to how information is to be stored and made available on the Record from time to time.

Justification for procedure selected

1687. The scope of the delegated power is limited to prescribing how information is to be stored and made available on the Record by local authorities. This may need to change over time to reflect changes in technology and standards. The Government considers that it is not necessary or practicable to bring such decisions before Parliament for a debate each time and the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny.

(iii) Power to regulate the charging of fees by local authorities in connection with the Record

Justification for delegation

1688. The purpose of placing Historic Environment Records on a statutory footing is to ensure all local authorities maintain and provide access to a Historic Environment Record, which is consistent and up to date. To ensure proper maintenance of Historic Environment Records by local authorities, ongoing resourcing will be required. Allowing local authorities to charge a fee to recover the costs incurred for providing advice or assistance to individuals intending to use the Record and providing copies of any documents held by the Record, will be pivotal to ensuring the ongoing maintenance of these Records. The Government will have a better understanding of the costs associated with maintaining these Records once the standards for storing and making available information on the Record have been established.

Justification for procedure selected

1689. Given the scope of this delegated power is to introduce, and occasionally amend, a fee charged by local authorities to recover their costs for providing access to Historic Environment Records, the Government considers that it is not necessary or practicable to bring such decisions before Parliament for a debate each time an update to the fee may be required. The Government considers that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny.

Clause 214 Marine licensing

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: negative procedure (amendments to ss72A, 98, 107A and 107B of Marine and Coastal Access Act 2009); draft affirmative procedure (amendments to s108 of the Marine and Coastal Access Act 2009)

Context and Purpose

1690. The delegated powers give the Secretary of State powers, for the UK marine licensing area, to set fees payable for post-consent marine licence monitoring and variations to licences, to charge a deposit on account of fees payable, to establish an appeals process against certain notices, and to revoke an earlier fees order. The UK marine licensing area consists of the UK marine area (inshore and offshore regions) other than the Scottish inshore region.

1691. The new charging powers apply where the Secretary of State is the appropriate licensing authority (ALA) under Part 4 of the Marine and Coastal Access Act 2009 (MCAA). The Secretary of State is ALA in the England inshore and offshore regions, the Northern Ireland offshore region and elsewhere in the UK marine area in relation to certain excepted matters.

1692. The Secretary of State formerly had powers to modify the funding arrangements of the Marine Management Organisation, including conferring power on the MMO to charge fees for the exercise of a function (and to determine their amount), under s4 of the Public Bodies Act 2011 (the Act). An order was made using those powers, the Public Bodies (Marine Management Organisation) (Fees) Order 2014 (the Fees Order), but the power in the Act to modify MMO's funding arrangements has expired in accordance with s12 of the Act. This means that without new powers the Secretary of State is unable to make replacement provisions for higher fees to be charged and to allow for future amendment

Justification for delegation

1693. The powers in clause 214 enable the Secretary of State to set out the detail of fees structure for monitoring and variation of marine licences, to update the level of fees from time to time, and to establish an appeals process against certain notices. This is appropriate as it allows the provisions to be future proofed and amended in line with actual marine licensing costs from time to time.

Justification for procedure selected

1694. It is proposed that the delegated powers introduced by clause 214 which amend ss72A, 98, 107A and 107B of MCAA will be subject to the negative resolution procedure and preceded by consultation as required. This is consistent with the negative resolution under which similar amendments to charging powers in the Marine Licensing (Fees) (Wales) Regulations 2017 were made, and also the Marine Licensing (Application Fees) Regulations 2014.

1695. It is proposed that the delegated powers introduced which amend s108 of MCAA will be subject to the draft affirmative resolution procedure to give an appropriate level of Parliamentary scrutiny to a new appeals process, and in accordance with s11 of the Act.

PART 13 – General

Clause 218: Power to make consequential provision.

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Negative procedure unless the power is exercised to amend or repeal any provision of primary legislation in which case, the affirmative procedure

Context and Purpose

1696. Clause 218 of the Bill confers on the Secretary of State a regulation-making power to make further consequential amendments which arise from this Bill or regulations made under it. Regulations that make consequential provision may amend, repeal or revoke an enactment. Any regulations that amend or repeal primary legislation are subject to the affirmative procedure. Any other regulations under this clause are subject to the negative procedure

Justification for delegation

1697. This power may only be exercised in connection with a provision of the Bill or regulations made under it. It is not possible to establish in advance all consequential provision that may be required as a result of the Bill. A power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force.

Justification for procedure selected

1698. We consider it is appropriate that amendments to primary legislation will follow the affirmative procedure in both Houses of Parliament, and that amendments to secondary legislation will follow the negative procedure

Clause 219: Power to make regulations.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Affirmative or negative as applicable

Context and Purpose

1699. Clause 219 sets the framework for making regulations using the powers in the Bill including the Parliamentary procedure which applies in respect of the relevant power.

De-hybridising provision

1700. The purpose of the de-hybridising provision in clause 219(10) is to enable secondary legislation to be made to establish, confer functions or make other changes in respect of proposed new county combined authorities ("CCA"s) and mayoral county combined authorities ("MCCA"s) both promptly and flexibly. CCA's are similar institutions, although different to existing combined authorities (CAs and mayoral combined authorities MCAs) which can be established under Part 6 of the Local Democracy, Economic Development

and Construction Act 2009. The need for this provision is to avoid procedural delay in either following the hybrid procedure for Parliament or, the practice, of waiting until we have a group or "class" of M/CCAs (CCAs and MCCAs) before we can make secondary legislation to effect or change powers. A de-hybridising provision is therefore required to ensure devolution deals can be implemented promptly and flexibly without delay. This clause will also mean that all secondary legislation to establish devolution institutions, confer functions or make other changes in respect of CCAs, MCCAs, CAs and MCAs, are on the same footing (all are considered not to be hybrid). Section 117 subsection (4) of the Local Democracy, Economic Development and Constructions Act 2009 already contains a de-hybridisation clause which applies to CAs and MCAs.

1701. Clause 210 (regarding the power to make regulations concerning a register for short-term lets) is also listed in clause 219(10) to bring this measure within the scope of the de-hybridisation clause, because the power can be used to apply regulations to only some areas of England, which might otherwise trigger the hybrid procedure. The types of issues which the register will seek to address will be much more significant in some areas of the country than others, and it may be proportionate to limit application to those rather than on a national basis. This could also change over time. The need for the de-hybridising provision is to avoid procedural delay in following the hybrid procedure in Parliament. The Secretary of State will be required to consult the public before making the regulations, which will be subject to affirmative procedure, so relevant interests will have an opportunity to be consulted whilst the policy is still at a formative stage.

Clause 222: Power to make commencement and transitional provision.

Powers conferred on: Secretary of State
Powers exercised by: Regulations made by statutory instrument
Parliamentary Procedure: None

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Context and Purpose

1702. Clause 222 of the Bill confers on the Secretary of State a regulation-making power to bring into the force the provisions of this Bill. As listed in clause 222(2) to (10) a number of sections come into force when the Bill becomes law. Clause 222(12) allows those commencement regulations to appoint different commencement dates for different purposes or areas. Clause 222(13) and (14) gives the power to make transitional, transitory or saving provision in connection with the commencement of any provision of the Bill.

Justification for delegation

1703. This is a standard clause for commencing the provisions of an Act, and making saving and transitional provisions related to commencement, by regulations. Leaving a subset of provisions in the Bill, other than those for which the Bill itself provides the commencement date (see above), to be brought into

force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

1704. The power includes a discretion to determine how something is treated under provision made in respect of transitional, transitory or saving provision Clause 222(12). This is linked to the transition arrangements for Chapter 2 of Part 3 and moving from the existing plan-making system to the new system. It will, for example, allow for staggering of the production of new-style local plans in order to manage the impact on the system and encourage joint working between local planning authorities. Although the sequencing will be set out in regulations, there might be exceptional circumstances whereby the Secretary of State will need to direct that the arrangements do not apply to a particular local area – for example if those arrangements meant that the 'old style' local plan would be switched off with nothing to replace This is precedented. For example paragraph 1(3) to Schedule 8 of the Planning and Compulsory Purchase Act 2004 provided that the Secretary of State may direct that a 3-year transitional period did not apply to certain development plan policies when the planning-framework was last reformed.

Justification for procedure selected

1705. As is usual with commencement powers, regulations made under clause 194 are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

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[i] Note that there are separate provisions in the Bill which provide for the digital provision and processing of planning data. The powers in new section 327ZA to set standards and enable the use of digital technology for planning applications discussed here have been deliberately kept distinct due to the particular status of planning applications in the planning system and the related legislative appeal process.

[ii] Planning and Compulsory Purchase Act 2004 c. 5 Pt 4 s.42(1)

[iii] Article 4E of the Town and Country Planning (General Development Procedure (England) Order 1995 as inserted by article 2(3) S.I. 2008/550

[iv] https://www.gov.uk/government/publications/planning-application-forms-templates-for-local-planning-authorities

[v] https://www.planningportal.co.uk/planning/planning-applications/paper-forms/find-and-download-paper-forms

[vi] S.I. 2021/746

[vii] Section 36(3) of the 2004 Act was inserted by section 11 of the Neighbourhood Planning Act 2017.