LEVELLING-UP AND REGENERATION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Levelling-up and Regeneration Bill Bill as brought from the House of Commons on 19 December 2022. (HL Bill 84)

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The Levelling-up and Regeneration Bill supports the Government's manifesto commitment to level up the United Kingdom. The Government's objective is to reduce geographical disparities between different parts of the United Kingdom by spreading opportunity more equally.

2 To this end, on 2 February 2022, the Government published the Levelling Up the United Kingdom White Paper[1]. This highlighted disparities between regions and within regions of the UK across economic, social and environmental measures, including that:

a. People living in the most deprived communities in England live up to 18 years less of their lives in good general health than the least deprived.

b. Nearly a quarter of all neighbourhood crime in 2018-19 was concentrated in just 5% of local areas.

c. London's transport and housing infrastructure, despite higher investment, is under the greatest strain and it has worse outcomes in subjective measures of social capital than many other parts of the county.

3 The White Paper outlined the causes of geographic disparities across the United Kingdom, before proposing a roadmap to reduce them by:

a. Boosting productivity, pay, jobs and living standards by growing the private sector, especially in those places where they are lagging;

b. Spreading opportunities and public services, especially in those places where they are weakest;

c. Restoring a sense of community, local pride and belonging, especially in those places where they have been lost; and

d. Empowering local leaders and communities, especially in those places lacking local agency.

4 The White Paper set out twelve missions, defined as medium-term areas of focus and goals to serve as an anchor for policy across government, as well as catalysing innovation and action by the private and civil society sectors, to reduce geographic disparities over the next decade.

5 The White Paper noted that by levelling up the UK has the potential to unlock tens of billions of pounds each year. For instance, if cities in the North and Midlands were as productive as London and the South East, UK GDP could be boosted by around £180bn.

6 To support the change needed, the Levelling-up and Regeneration Bill has four overarching objectives:

i. To place a duty on the Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the United Kingdom;

ii. To create a framework to support the devolution of powers through the creation of a new model of combined county authorities to support delivery of the Government's levelling up mission that 'by 2030, every part of England that wants one will have a devolution deal

[1] https://www.gov.uk/government/publications/levelling-up-the-united-kingdom

with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement';

iii. To deliver new powers for local authorities to regenerate their towns through high street rental auctions and reforms to compulsory purchase to support delivery of the Government's levelling up mission that 'by 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between top performing and other areas closing'; and

iv. To create a planning system which delivers more beautiful and greener homes, with the associated infrastructure and democratic support for neighbourhoods.

7 The Bill contains 13 parts and 18 schedules. The Bill makes a number of changes to existing local government, planning, and compulsory purchase legislation.

8 Part 1 establishes the concept of levelling-up missions and the framework in which they lie.

9 Part 2 deals with Local Democracy and Devolution in the form of combined county authorities and sets out provisions to empower local leaders.

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

11 Part 4 details the Infrastructure Levy which enables Local Authorities to raise money from developments to regenerate their areas through infrastructure in a manner which does not require negotiation with the developer.

12 Part 5 deals with Community Land Auctions.

13 Part 6 replaces the EU environmental assessment system with a new framework for Environmental Outcome Reports.

14 Part 7 is concerned with nutrient pollution standards.

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

16 Part 9 amends the powers and procedures of Compulsory Purchase to clarify the powers available to Local Authorities and ensure pursuit of regeneration.

17 Part 10 contains provisions that deal with vacant commercial properties in town centers and high streets

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

19 Part 12 details other provisions including short-term rental properties, pavement licensing, historic environment records, a review of governance of the Royal Institution of Chartered Surveyors, and marine licences.

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

Policy background

Framework for Levelling Up and setting and reporting on missions

21 The Levelling Up the United Kingdom White Paper sets out the Government's long-term programme for addressing geographic disparities across the United Kingdom. The Government concludes in the White Paper that no single policy or intervention can achieve levelling up on its own. Instead, it requires action from both the public and private sectors and cuts across almost all areas of central and local government – from education, criminal justice and health to transport, planning and the economy. Central to setting the right ambitions and driving change are the twelve cross-cutting missions set out below. The White Paper explained that the missions do not limit or constrain the Government's ambitions, but rather represent the first priorities in a medium-term, continuously evolving and collaborative programme across the UK.

The 12 Levelling Up Missions

Boosting productivity, increasing pay, and creating jobs

a. Increasing living standards: pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, and the gap between the top performing and other areas closing.

b. Backing Research and Development (R&D) by increasing public investment in R&D outside the South East by at least 33% over this Parliament and at least 40% by 2030.

c. Overhauling public transport so local connectivity will be significantly closer to the standards of London, with better services, simpler fares and integrated ticketing.

d. Transforming digital connectivity across the UK with nationwide gigabit-capable broadband with 4G and 5G coverage for the majority.

Spreading opportunity and improving public services

e. Improving education outcomes so that 90% of primary school children achieve the expected standard of reading, writing and maths.

f. Increasing the number of adults who complete high quality skills training, with 200,000 more people completing training annually in England.

g. Increasing healthy life expectancy, and narrowing the gap between areas where it is highest and lowest.

h. Improving wellbeing in every area of the UK with a closing gap between the top performing and low performing areas.

Restoring pride in place and community

i. Boosting satisfaction with town centres and engagement with local culture and community.

j. Increasing home ownership and housing standards, with more first-time buyers in all areas and the number of non-decent homes down by 50%.

k. Cutting crime with homicide, serious violence and neighbourhood offences falling, with a focus on the worst affected areas.

Empowering local leaders and communities

22 Giving every part of England that wants one a devolution deal, with powers at, or approaching, the highest level of devolution and a simplified long-term funding settlement.

23 The Bill creates a statutory duty for the Government to set missions (through a 'levelling -up missions statement'). The levelling-up missions statement will be laid before Parliament and published; and will be accompanied by the methodology and metrics the Government intends to use to evaluate its progress towards their delivery. The Bill also creates a statutory obligation for the Government to report annually (the 'annual report') on progress towards the delivery of each mission in the levelling-up missions statement. These reports are intended to use publicly available data to evaluate progress towards the delivery of missions. The object of this measure is to make sure this and future governments are held to account by Parliament; and that information on progress is transparently available to the public.

24 The legal framework in the Bill provides the foundation for a broader programme of government work to level up the United Kingdom. To support this, the Government is setting up an external Levelling Up Advisory Council, which will support Ministers by advising on the design, delivery and impact of government policy on the levelling up aims. The programme of further work includes: the creation of 55 Education Investment Areas in England; using the £1.4bn Global Britain Investment Fund to attract more major investments to all parts of the UK, and a £1.5bn Levelling Up Home Building Fund, which will provide loans to SMEs.

Devolution

25 Since 2010, the Government has increasingly sought to grant greater powers to local areas– with the passage of the Localism Act, the introduction of Police and Crime Commissioners, City Deals and democratically elected mayors in metropolitan areas. The Levelling Up White Paper also notes that the UK is a highly-centralised country compared to the OECD average, with less spent by subnational governments than in other peer countries. The Levelling Up White Paper attributed the cause of geographic disparities in part to low levels of 'institutional capital' (defined as local leadership, capability and capacity), in particular local leaders lacking the powers and accountabilities to design and deliver effective policies for tackling local problems and supporting local people.

26 There are currently twelve areas which have enhanced devolution in England:

- Greater London
- Cornwall
- Greater Manchester
- Liverpool City Region
- West Midlands
- Tees Valley
- Cambridgeshire and Peterborough
- West of England

- South Yorkshire
- North East
- North of Tyne
- West Yorkshire

27 The majority of these areas have been created on the current model of a mayoral combined authority (whereby they have a directly elected Mayor, such as in Greater Manchester, Liverpool City Region and the West Midlands). Combined authorities were first created under the Local Democracy, Economic Development and Construction Act 2009; mayoral combined authorities were introduced outside of London by the Cities and Local Government Devolution Act 2016. The specific powers devolved to each of these areas through secondary legislation are bespoke and were subject to negotiations with central government, but can include greater powers over transport, skills, employment, public health and Police and Crime Commissioner functions.

28 The Levelling Up White Paper set a mission to ensure that all areas of England would be offered a devolution deal by the end of 2030 with powers at or approaching the highest level of devolution with a simplified, long-term funding settlement.

29 The White Paper also set out the Devolution Framework, indicating what level of powers the Government would devolve to the different types of local government structures, with the fullest extent of powers being granted to a single institution with a directly elected mayor across a functional economic area or whole county geography. The White Paper also announced negotiations on devolution deals with the 13 areas listed below:

- Cornwall;
- Derbyshire and Derby;
- Devon, Plymouth and Torbay;
- Durham;
- Greater Manchester;
- Hull and East Yorkshire;
- Leicestershire;
- Norfolk;
- North East
- North Yorkshire and York;
- Nottinghamshire and Nottingham;
- Suffolk; and
- West Midlands

30 The Government has concluded and announced devolution deals with 5 areas: York and North Yorkshire; that part of the East Midlands which includes Derby, Derbyshire,

Nottingham, and Nottinghamshire; Cornwall; Norfolk; and Suffolk. The East Midlands deal is dependent on the enactment of provisions in the Levelling-up and Regeneration Bill necessary for the establishment of the proposed East Midlands Mayoral Combined County Authority and Norfolk and Suffolk are planning to use "mayoral title" provisions. All deals are now subject to the statutory processes, including secondary legislation to implement the deals.

Combined County Authorities

31 The Levelling Up, Housing and Communities Select Committee produced a report on their inquiry into the progress of devolution in England in October 20212. The Government responded in March 2022[3].

32 The Bill supports the delivery of the Local Leadership Mission, fundamental to deepening devolution across England, by including measures to create a new model of combined county authority, consisting of upper-tier local authorities only. At present, the available model for establishing a combined authority is primarily designed for urban areas. To address this, the Bill creates a new model for a 'combined county authority', which is made up of upper-tier local authorities only. The main difference between combined county authorities and combined authorities is the membership: a combined county authority must include one two-tier county council and at least one other upper tier county council or upper tier unitary authority (i.e. district councils cannot be members and do not consent to the forming of a combined county authority), whereas a combined authority has to include all the local authorities within the area it is to cover (i.e. in a two-tier area, the county council and all district councils must be members, and consent to the forming of the combined authority). In all other matters, there is parity between the two types of authority.

33 The new model for a 'combined county authority' provides a model which is more appropriate for non-metropolitan areas, many of which have two-tier local government. The Bill also streamlines the process for authorities to bring forward proposals for combined authorities. The Bill reduces the consenting requirements regarding changing the constitutions of combined authorities, which are required to extend or deepen devolution deals negotiated with central Government. The Bill also includes measures to enable local authorities to move into directly elected leadership governance models more quickly to support devolution deals. Measures in the Bill will also enhance the overview and scrutiny and audit of new and existing combined authorities by enabling remuneration for committee members to attend relevant meetings. Finally, the Bill provides for authorities with directly elected mayors to give those mayors a title reflecting the character and preferences of that area.

Local Government Borrowing

34 The Bill provides Government with means to investigate and remediate instances of local government borrowing. The Bill grants powers to the Secretary of State to set a trigger point in relation to borrowing risk, after which central Government will have powers to: request information, request a review, set a borrowing cap or require a local authority to reduce its risk.

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[2] https://publications.parliament.uk/pa/cm5802/cmselect/cmcomloc/36/3602.htm

[3] https://www.gov.uk/government/publications/progress-on-devolution-in-england-government-response-to-the-select-committee-report

Council Tax

35 The Bill introduces a discretionary council tax premium on second homes and changes the qualifying period for use of the long-term empty homes premium. Local authorities may levy a premium of up to an additional 100% on council tax bills for second homes and for empty homes after one year (as opposed to two years which is the current requirement). Neither of these are mandatory requirements. The Bill provides a power to vary the maximum percentage for the second homes premium. The Government plans to consult on exemptions to this policy during Bill passage.

Street names

36 The current system for changing a street name relies upon three Acts which date from the early 20th century. This mix of provisions across the country, many of which are over a century old, has led to a lack of transparency on where each Act applies. Under the available legislation, many councils can change the name of a given street unilaterally, without consulting the residents on that street.

37 The Bill grants a power to the Secretary of State to set out the process to secure consent on any proposed changes to a street's name. This will be supported by regulations (which may be supplemented by statutory guidance) on the process which local authorities will be required to have regard to. The Government published a technical consultation which ran from 11 April 2022 to 22 May 2022[4] on associated changes to regulations and statutory guidance in order to create a common requirement across England for votes on proposed changes of street names. The response was published on 5 July 2022[5]. This will ensure all local authorities follow the same process for changing street names and that they cannot do so without the consent of those who live on the street.

Regeneration

38 The Bill contains measures which enable local authorities and their leaders to regenerate their communities, in line with the mission to restore pride in place as set out in the Levelling Up White Paper. This also supports the mission that by 2030, people's satisfaction with their town centre, and engagement in local culture and community, will have risen in every area of the UK with the gap between top performing and other areas closing.

Compulsory purchase of land

39 Compulsory purchase is the power to acquire land and property without the consent of the owner. It is an important tool for assembling land needed to help deliver developments which regenerate areas to deliver social, environmental and economic change. The Government introduced a number of reforms through the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017 aimed at making the process clearer, faster and fairer. The Government's High Street Strategy[6], published in July 2021, emphasised the role of compulsory purchase as a catalyst for regeneration in town centres and high streets which are seeing persistent long-term empty properties, and where there are complex and fragmented land ownership patterns.

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[4] https://www.gov.uk/government/consultations/technical-consultation-on-street-naming/technical-consultation-on-street-naming

[5] https://www.gov.uk/government/consultations/technical-consultation-on-street-naming/outcome/government-response-to-the-technical-consultation-on-street-naming

[6] https://www.gov.uk/government/publications/build-back-better-high-streets

40 The Bill streamlines and modernises Compulsory Purchase Orders (CPO) and grants the power to local authorities to use CPO for regeneration purposes. These changes would empower local decision making and improve transparency regarding local authorities' power to acquire brownfield land compulsorily for regeneration in their area.

Development Corporations

41 Currently, there are four types of development corporation: the New Town Development Corporation, the Urban Development Corporation, the Mayoral Development Corporation and the locally-led New Town Development Corporation. Each model reflects the time and circumstances when they were introduced, and thus have varying powers and remits.

42 In October 2019, DLUHC launched a consultation on development corporation reform[7] to seek views on the current legal framework for the operation of development corporations and to invite ideas on how it might be reformed. The responses to the consultation identified instances where the available models of development corporation do not provide the scope or powers required. For example, there is no model for the purposes of regeneration available to local authorities outside of Mayoral areas.

43 This Bill makes provision for a new type of locally-led Urban Development Corporation, with the objective of regenerating its area and accountable to local authorities in the area rather than the Secretary of State. It also updates the planning powers available to centrally and locally-led development corporations, so that they can become local planning authorities for the purposes of local plan-making, overseeing neighbourhood planning and development management. This is to bring them in line with the Mayoral Development Corporation model. The Bill amends the process for establishing locally-led New Town Development Corporations, removes the cap on the number of board members and removes the aggregate limits to borrowing.

High Street Rental Auctions

44 High levels of vacant commercial property are a challenge for many places across the country. In November 2021, 14.5% of all high street units in retail and leisure were vacant.[8] This continues a pre-pandemic trend, where vacancy rates gradually increased from 10.9% in 2017 to 12.2% at the start of 2020. While some level of vacancy can be a sign of natural business churn and will include units that will be filled relatively quickly or are in the process of being filled, around 30 Local Authorities in England have a vacancy rate of above 20%, with some up to 32%.[9]

45 These vacancies are not evenly distributed, with seven local authorities in the north west and north east having particularly high vacancy rates. This has implications for the Government's levelling up agenda. Persistently high levels of vacant property can fuel a spiral of decline in places which poses an obvious form of scarring and can undermine pride in place.

46 In accordance with the Government's priority to regenerate high streets, as set out in the Levelling Up White Paper, the Bill gives local authorities powers to auction the rental rights for vacant commercial properties in town centres and on high streets, for leases from one to five years to attract new tenants. These powers can be exercised at the discretion of local

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[7] https://www.gov.uk/government/consultations/development-corporation-reform-technical-consultation

[8] https://www.localdatacompany.com/blog/q2-brc-retail-vacancy

[9] https://www.gov.uk/government/statistics/non-domestic-rating-stock-of-properties-2020

authorities, based on their local context and need, but only on properties which have been vacant for over 12 months.

47 High Street Rental Auctions will seek to increase cooperation between landlords and local authorities to address vacant premises, and to make town centre tenancies more accessible and affordable for tenants, including SMEs and community groups.

Land Transparency

48 The Bill includes measures that will facilitate a better understanding of who ultimately owns or controls land in England and Wales. It implements the 2017 Housing White Paper commitment to publish data on contractual arrangements used by developers and others to control land, short of ownership, to assist local communities in better understanding the likely path of development and identify anti-competitive behaviour. The Government consulted on the proposals in August 2020[10]. The Bill will also support the identification of attempts to evade sanctions or the new disclosure requirements placed on overseas entities owning land and property.

Planning

49 The planning measures in the Bill have been informed by more than 40,000 responses to the Government's 2020 White Paper 'Planning for the Future'[11], and the subsequent inquiry into planning reform by the Commons Housing, Communities and Local Government Select Committee[12].

50 Planning is critical to the Government's ambition to level-up the country. The new system will be based on the principles of: beauty, infrastructure, democracy, environment and neighbourhood engagement. How the Bill addresses each of these five principles is set out below.

Beauty

51 The Bill will require all local planning authorities to have a design code in place covering their entire area. The area-wide codes will act as a framework, for which subsequent detailed design codes can come forward, prepared for specific areas or sites and led either by the local planning authority, by neighbourhood planning groups or by developers as part of planning applications. This will help ensure good design is considered at all spatial scales, down to development sites and individual plots.

Infrastructure

52 The Bill replaces the current system of securing developer contributions (through section 106 agreements and the Community Infrastructure Levy) with a new Infrastructure Levy. The rates and thresholds will be contained in 'charging schedules' and set and raised by local planning authorities (rather than nationally), meaning that rates are tailored to local circumstances and deliver at least as much onsite affordable housing. Charging schedules must have regard to previous levels of affordable housing funded by developer contributions such that they are kept at a level that will exceed or maintain previous levels. All schedules will be subject to public examination.

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[10] https://www.gov.uk/government/consultations/transparency-and-competition-a-call-for-evidence-on-data-on-land-control

[11] https://www.gov.uk/government/consultations/planning-for-the-future

[12] https://committees.parliament.uk/work/634/the-future-of-the-planning-system-in-england/publications/

53 There will also be a process to require developers to deliver some forms of infrastructure that are integral to the design and delivery of a site. To make sure that infrastructure requirements and levy spending priorities are considered carefully, the Bill places a new duty on local authorities to prepare infrastructure delivery strategies to outline how they intend to spend the levy.

54 In preparing their development plans, local authorities may consult infrastructure providers where changes to or investment in their infrastructure is required to support development, such as providing for transport, education, the environment, healthcare, or blue light services. Under the Bill, those infrastructure providers will be obliged to respond and to assist as is reasonable in the preparation of the plan.

55 The Bill enables Community Land Auctions to be piloted. These are an innovative approach to identifying land for allocation for development in a local planning authority's area, in a way which seeks to improve land value capture for the benefit of local communities.

Democracy

56 Local plans will be given more weight when decisions are made on applications so that there must be strong reasons to override the plan, providing communities more certainty. The same weight will be given to other types of plan, including neighbourhood plans prepared by local communities and spatial development strategies produced by Mayors or combined authorities.

57 The Bill requires each local planning authority to prepare one local plan, with the content limited to locally specific matters such as allocating land for development, detailing required infrastructure and setting out principles of good design. General policies on issues that apply in most areas (such as general heritage protection) will be set out nationally and contained in a suite of National Development Management Policies, which will have the same weight as plans so that they are fully taken into account in decisions. Local plans will not be able to repeat these.

58 The Bill makes several other changes to improve the process for preparing local plans: new powers will enable the introduction of 'Gateway' checks so that issues are identified earlier during plan preparation, and allow time periods to be prescribed for different parts of the plan preparation process, enabling delivery of a timebound end-to-end process; digital powers in the Bill will allow use of more standardised and reusable data, there will be a new requirement for local planning authorities to produce a consolidated policies map of the full development plan for their area, improving the clarity and transparency of plans; and the 'duty to cooperate' contained in existing legislation is being repealed.

59 Local planning authorities will have a new power to prepare 'supplementary plans', where policies for specific sites or groups of sites need to be prepared quickly (e.g. in response to a new regeneration opportunity), or to set out design codes for a specific site or area or across their whole area.

60 The Bill will also enable groups of authorities to collaborate to produce a voluntary spatial development strategy, where they wish to provide strategic planning policies for issues that cut across their areas (echoing the powers conferred on some Mayoral combined authorities already).

Environment

61 A new system of Environmental Outcomes Reports will replace the EU processes of Environmental Impact Assessment and Strategic Environmental Assessment whilst retaining the UK's obligations under the UN Aarhus and Espoo Conventions.

62 The Bill introduces an outcomes-based approach that will allow the government to set clear and tangible environmental outcomes which a plan or project is assessed against. This will allow decision-makers and local communities to clearly see where a plan or project is meeting these outcomes and what steps are being taken to avoid and mitigate any harm to the environment. These outcomes will be set following consultation and parliamentary scrutiny and will, for the first time, allow the government to reflect its environmental priorities directly in the decision-making process.

63 By moving to an outcomes-based approach, and taking powers to address procedural issues with the current system, the Bill provides the opportunity to go further for the environment and to turn passive assessment into a more active tool to support environmental regeneration.

64 The Bill places a new statutory duty on water companies in England to upgrade wastewater treatment works to the highest technically achievable levels for nutrient removal in designated catchments by 1 April 2030. Treating the achievement of the nutrient pollution standards as certain in a Habitats Regulations Assessment will mean lower levels of mitigation will be required from developers, reducing costs and enabling sustainable development.

Neighbourhoods

65 The Bill introduces a new neighbourhood planning tool called a "neighbourhood priorities statement". This will provide communities with a simpler and more accessible way to set out their key priorities and preferences for their local areas. Local authorities will need to take these into account, where relevant, when preparing their local plans for the areas concerned, enabling more communities to better engage in the local plan-making process. Alongside this, the Bill will also prescribe in more detail what communities can address in their neighbourhood plans and amend the 'basic conditions' to ensure neighbourhood plans are aligned with wider changes to the planning system.

66 The Bill introduces a new planning consent regime that enables residents to propose development on their street and, subject to the proposal meeting certain requirements, to vote on whether that development should be given planning permission. This is intended to encourage residents to consider the potential for additional development on their streets, and support a gentle increase in densities, in particular, in areas where additional new homes are needed.

67 The Bill amends the Self-build and Custom Housebuilding Act 2015 to ensure that only planning permission made available explicitly for self-build and custom housebuilding qualifies towards the 'duty to grant planning permission etc' and is counted to meet the demand for self and custom build. This will enable relevant authorities to meet their statutory duties in a more consistent and focused manner.

The planning application process

68 The Bill will increase certainty in planning decisions by imposing a new duty on decision makers to make planning decisions in accordance with the development plan and national development management policies unless material considerations strongly indicate otherwise.

69 The Bill will enable improvements to the planning application process for all users with greater powers to regulate information requirements for planning applications (in particular in digital formats) to improve consistency and accessibility; improve community engagement by making permanent regulation-making powers to mandate consultation prior to planning applications being submitted; and introduce an improved process for making non-substantial

changes to existing planning permissions. The Bill will also enable temporary relief to be given for enforcement action against prescribed planning conditions, where it is necessary to lift constraints on operations (as occurred with construction and delivery hours during the recent pandemic).

70 The Bill will take powers to speed up the process of dealing with applications for nationally important Crown developments in the planning system. This includes a new process for nationally important and urgent developments, and a new route which will allow the Crown to apply directly to the Secretary of State for determination of nationally important development.

Enforcement

71 The Bill amends and strengthens the powers and sanctions available to local planning authorities to deal with individuals who fail to abide by the rules and process of the planning system. This includes facilitating enforcement action by closing existing loopholes which can be exploited to prolong unauthorised development, allowing more time for the investigation of breaches, introducing enforcement warning notices, making the enforcement timescales that currently apply more consistent, and increasing fines.

Protecting heritage

72 Measures in the Bill will also strengthen the critical role the planning system plays in protecting the historic environment. The Bill will make changes so that designated heritage assets, such as registered parks and gardens, World Heritage Sites, protected wreck sites, and registered battlefields, enjoy the same statutory protection in the planning system as listed buildings and conservation areas.

73 It will also put Historic Environment Records on a statutory basis, placing a new duty on local authorities to maintain one for their area. The enforcement powers available to protect historic buildings will be enhanced, by introducing temporary stop notices; strengthening the power to issue Urgent Works Notices by extending them to apply to occupied listed buildings; making the costs of carrying out works a local land charge to aid cost recovery by local planning authorities; and removing the compensation liability in relation to Building Preservation Notices.

Legal background

74 A list of legislation referenced or amended by the Bill is as follows (alphabetised):

- Acquisition of Land Act 1981
- Anti-Social Behaviour, Crime and Policing Act 2014.
- Business and Planning Act 2020
- Charities Act 2011
- Cities and Local Government Devolution Act 2016
- Compulsory Purchase Act 1965
- Compulsory Purchase (Vesting Declarations) Act 1981
- Conservation of Habitats and Species Regulations 2017
- Conservation of Offshore Marine Habitats and Species Regulations 2017
- Criminal Justice Act 2003
- Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017
- Environmental Assessment of plans and programmes Regulations 2004
- Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Environmental Impact Assessment (Agriculture) (England) No 2 Regulations 2006
- Environmental Impact Assessment (Land Drainage Improvements Works) Regulations 1999
- Environmental Impact Assessment (Forestry)(England and Wales) Regulations 1999
- Greater London Authority Act 1999
- Harbours Act 1964
- Highways Act 1980
- Housing and Planning Act 2016
- Housing and Regeneration Act 2008
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Land Compensation Act 1961
- Land Registration Act 2002
- Local Authorities (Functions and Responsibilities) (England) Regulations 2000;
- Local Democracy, Economic Development and Construction Act 2009

- Local Government Act 1972
- Local Government Act 1999
- Local Government Act 2000
- Local Government Act 2003
- Local Government and Housing Act 1989
- Local Government Finance Act 1992
- Local Government, Planning and Land Act 1980
- Localism Act 2011
- Local Transport Act 2008
- London Building Acts (Amendment) Act 1939
- Marine and Coastal Access Act 2009
- Marine Works (Environmental Impact Assessment) Regulations 2007
- New Towns Act 1981
- Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999
- Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001
- Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
- Pipe-line Works (Environmental Impact Assessment) Regulations 2000
- Planning Act 2008
- Planning and Compulsory Purchase Act 2004
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning (Hazardous Substances) Act 1990
- Police Reform Act 2002
- Public Bodies (Marine Management Organisation) (Fees) Order 2014
- Public Health Act 1925
- Public Health Acts Amendment Act 1907
- Public Health Service Act 1990
- Public Gas Transported Pipe-line Works (Environmental Impact Assessment) Regulations 1999

- Self-build and Custom housebuilding Act 2015
- Town and Country Planning Act 1990 (TCPA)
- Town and Country planning (Environmental Impact Assessment) Regulations 2017
- Transport and Works Act 1992
- Transport and Works (Applications and Objections procedure) (England and Wales) Rules 2006
- Water Industry Act 1991
- Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003

75 Otherwise, the relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

76 Part 13 (General) Clause 221 (Extent) sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

77 The Bill extends to England and Wales only, except for:

a. Part 1 (Levelling Up Missions) which extends UK-wide.

b. Part 3 (Planning) Chapter 1 (Planning Data) which extends UK-wide.

c. Part 3 (Planning) Chapter 6 (Other Provision) Clauses 118, 119 and 120 (Nationally Significant Infrastructure Projects [NSIP] related clauses) which extend to England and Wales, and in limited circumstances to Scotland.

d. Part 3 (Planning) Chapter 6 (Other Provision) Clause 123 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which extends UK-wide.

e. Part 5 (Community Land Auction Pilots) which extends UK-wide.

f. Part 6 (Environmental Outcomes Reports) which extends UK-wide.

g. Part 12 (Miscellaneous) clause 213 (Review of governance etc of RICS) which extends UK-wide.

h. Part 12 (Miscellaneous) clause 214 (Marine Licensing) which extends UK-wide.

i. Part 13 (General) which extends UK-wide.

78 The Bill applies to England only, except for:

a. Part 1 (Levelling Up Missions) which applies UK-wide.

b. Part 3 (Planning) Chapter 1 (Planning Data) which applies UK-wide.

c. Part 3(Planning) Chapter 4 (Grant and implementation of planning permission) clause 100(2)(b) (street votes: community infrastructure levy) which applies to England and Wales

d. Part 3 (Planning) Chapter 6 (Other Provision) Clauses 118, 119 and 120 (NSIP related clauses) which apply to England and Wales, and in some circumstances to Scotland

e. Part 3 (Planning) Chapter 6 (Other Provision) Clause 122 (Regulations and Orders Under the Planning Acts) which applies to England and Wales.

f. Part 3 (Planning) Chapter 6 (Other Provision) Clause 123 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which applies UK-wide.

g. Part 5 (Community Land Auction Pilots) which applies UK-wide.

h. Part 6 (Environmental Outcomes Reports) which applies UK-wide.

i. Part 9 (Compulsory Purchase) which applies to England and Wales.

j. Part 11 (Information About Interests and Dealings in land) which applies to England and Wales.

k. Part 12 (Miscellaneous) clause 213 (Review of governance etc of RICS) which applies UK-wide.

l. Part 12 (Miscellaneous) clause 214 (Marine Licensing) amends Part 4 of the Marine and Coastal Access Act 2009 (Marine Licensing) and relates to functions of the Secretary of State as appropriate marine licensing authority in England and the English inshore and offshore regions, the Northern Ireland offshore region and in respect of certain reserved or excepted matters and matters not within the legislative competence of the devolved legislatures

m. Part 13 (General) which applies UK-wide.

n. Schedule 15 (Compulsory Purchase corresponding provision for purchases by Ministers) which applies to England and Wales.

79 There are provisions in the Bill that apply in England and have effect outside England, all of which are, in the view of the UK Government, minor or consequential. These provisions amend legislation which applies in a Devolved Government, but only amend this legislation for the purpose of restating the existing position in the Devolved Government:

a. Part 3 (Planning) Chapter 2 (Development plans) (clause 85-95) and (Local Plans) (clause 90) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

b. Part 3 (Planning) Chapter 3 (Heritage) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

c. Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) Clause 101 (Crown Development) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

d. Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) Clause 104 (Completion Notices) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

e. Part 3 (Planning) Chapter 5 (Enforcement of Planning Controls) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

f. Part 4 (Infrastructure Levy) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

g. Part 8 (Development Corporations) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

80 The Bill comprises of four elements which extend and apply to Wales, Scotland and Northern Ireland which are, in the view of the UK Government, within the legislative competence of those devolved legislatures:

a. Part 3 (Planning) Chapter 1 (Planning Data) provisions extend and apply UK-wide within, the legislative competence of those devolved legislatures.

b. Part 3 (Planning) Chapter 6 (Other Provision) Clause 122 (Regulations and Orders Under the Planning Acts) extends and applies to England and Wales, which is within the legislative competence of Senedd Cymru in the view of the UK Government.

c. Part 6 (Environmental Outcomes Reports) provisions extend, and apply UK-wide within, the legislative competence of those devolved legislatures.

d. Part 12 (Miscellaneous) clause 213 (Review of governance etc of RICS) provisions extend and apply UK-wide within, the legislative competence of the Senedd Cymru and the Scottish Parliament.

81 There is a convention that the United Kingdom Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.

82 A Legislative Consent Motion is being sought from Senedd Cymru, the Scottish Parliament, and the Northern Ireland Assembly for Part 3 (Planning) Chapter 1 (Planning Data); Part 6 (Environmental Outcomes Reports).

83 A Legislative Consent Motion is being sought from Senedd Cymru and the Scottish Parliament for Part 12 (Miscellaneous) clause 213 (Review of governance etc of RICS).

84 A Legislative Consent Motion is being sought from Senedd Cymru for the provision in Part 3 (Planning) Chapter 6 (Other Provision) Clause 122 (Regulations and Orders Under the Planning Acts).

85 Part 1 (Levelling Up Missions), Part 9 (Compulsory Purchase) extends UK-wide but will not engage the legislative consent processes of Senedd Cymru, the Scottish Parliament, or the Northern Ireland Assembly.

86 If, following introduction of the Bill, the Government introduces or accepts amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

87 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Levelling-Up Missions

Setting missions

88 Part 1 gives statutory force to the new requirement to report upon the Government's statement of levelling-up missions.

Clause 1: Statement of levelling-up missions

Background

89 This is a new provision and does not alter any existing legislation.

90 This clause creates a duty on a minister of the crown to prepare and lay a statement of levelling-up missions before Parliament. This statement will set the missions for a period of no less than five years (mission period).

Effect

91 Clause 1 establishes the concept of levelling-up missions, provides relevant definitions, and defines the 'statement of levelling-up missions'.

92 Subsections (1) to (2) establish the concept and obligation for a Minister of the Crown to prepare a statement of levelling-up missions. Subsection (2) specifies that the statement must set out the Government's objectives to reduce geographical inequalities and how the Government proposes to measure progress ("metrics").

93 Subsections (3) and (4) defines the period and target date of a mission.

94 Subsection (6) establishes that the first statement must be laid before each House of Parliament within a month of the section coming into force.

95 Subsection (7) establishes that levelling-up missions come into effect when the statement has been laid before each House of Parliament and is published, and when the missions period in the new statement begins.

96 Subsection (8) provides that there can be no period of interruption during which there is no statement of levelling-up missions in effect.

97 Subsection (9) provides for when a new statement of levelling-up missions comes into effect.

98 Subsection (10) concerns the effect of different statements of levelling-up missions.

99 Subsection (11) clarifies that the status of the currently in effect statement of levelling-up missions.

Reporting on missions

Clause 2: Annual etc reports on delivery of levelling-up missions

Background

100 This clause requires a Minister of the Crown to publish an annual report on the delivery of the levelling-up missions in the current statement of levelling-up missions under clause 1. These missions are those contained in the statement of levelling-up missions. The report will contain an assessment by the Minister of progress made towards achieving each mission including the latest data reflecting the mission methodology and metrics in the current statement of levelling-up missions.

Effect

101 Subsections (1), (2) and (3) establish the obligation to produce the annual report and define its content requirements. Under subsection (2) the report must set out the Ministers' assessment of progress, what has been done in the mission period to deliver each mission and what the Government plans to do in the future. This includes the provision in subsection (3) that the assessment of progress must be completed with regard to the metrics and methodology included in the statement.

102 Subsections (4) and (5) provides for a Minister to use the report to state the Government's intention to no longer pursue a levelling-up mission, which disapplies the requirements in subsection (2). Subsection (5) requires the report to set out the Government's reasons for not pursuing a mission.

103 Subsections (6) and (7) concern the timing of the annual reports.

Clause 3: Reports: Parliamentary scrutiny and publication

Background

104 This clause requires all reports to be laid before Parliament and sets out timings for doing so.

Effect

105 This clause provides that the report on the delivery of levelling-up missions must be laid before each House of Parliament before the end of the period of 120 days beginning immediately after the last day of the period to which the report relates. That report should be published as soon as is reasonably practicable. Subsection (3) excludes from the 120 days as days when Parliament is dissolved, prorogued or in recess for more than four days.

> Example
>
> A Minister of the Crown will produce an annual report on the delivery of the levelling-up missions. The report will contain information assessing progress against the levelling-up missions judged using the missions methodology and metrics contained in the statement of levelling-up missions. The Minister of the Crown adds to the list of metrics contained in the original statement of levelling-up missions to include new data sources that have been made available by the Office for National Statistics (ONS) recently and includes the relevant data in the report accordingly. The report would be laid in each House of Parliament every year, no more than 120 sitting days following the end of the previous annual period.

Revision of methodology and metrics or target dates

Clause 4: Changes to mission progress methodology and metrics or target dates

Background

106 Clause 4 provides the ability to amend the methodology and metrics supporting the levelling-up missions or to amend the target dates for delivery in between the normal reporting cycle. Clause 2 already allows the Minister of the Crown to update metrics and methodology in an annual report of they so wish.

Effect

107 Subsection (1) states that this procedure applies if the Minister of the Crown decides to update the metrics or methodology in the mission statement or to amend the target date.

108 Under subsection (2), the Minister of the Crown must as soon as possible after the change is made, publish a statement setting out reasons for the change and lay the revised mission statement before Parliament and publish it.

109 Subsection (3) makes clear that the new statement of missions has effect on and after it is laid before Parliament and published.

Review of missions

Clause 5: Reviews of statements of levelling-up missions

Background

110 Clause 5 provides for the statement of levelling-up missions to be reviewed periodically and defines the terms for such reviews.

Effect

111 Subsections (1), (2),(3) and(4) establish the requirement to conduct reviews of the statement of levelling-up missions and that such reviews should be completed within a period of five years from the first day of the first mission period or within 5 years of the date of the date of publication of the report for subsequent mission periods.

112 Subsection (5) sets out the purpose and content of the reviews including whether the current statement is effectively contributing to the reduction of geographical inequality across the UK and considering whether additional missions should be added.

113 Subsection (6) establishes that the review must be laid before each House of Parliament and published as soon as is reasonably practicable after the conclusion of the review.

114 Subsection (7) sets out what the report on the review should contain. The report must consider whether His Majesty's Government judges the pursuit of the missions to be effectively contributing to the reduction of geographic inequality in the UK and whether they will continue to pursue those missions and, if they will not, which missions will replace the existing missions. The report must include the Government's reasons for any conclusions it draws.

115 Subsection (9) provides the ability to make amendments to the current statement of levelling-up missions or to change the methodology and metrics in the event that the report has concluded it should not continue to pursue the levelling-up missions in the current statement. It requires the Government to lay the revised statement before both Houses of Parliament as soon as possible and to publish it.

116 Subsection (10) provides the ability to add missions in the current statement of levelling-up missions including the associated metrics and methodology needed to report on progress

towards delivering the mission. The updated mission statement must be laid before both houses of Parliament and published.

117 Subsection (11) provides for the modification of the current statements as a result of subsections (9) and (10).

> Example: A review of the statement of levelling-up missions resulting in a continuation of missions
>
> Five years has elapsed since the previous review and a Minister of the Crown initiates a review of the statement of levelling-up missions. The Minister lays a statement that affirms the existing levelling-up missions. The statement also contains an assessment of how the missions have been contributing to the reduction in geographic inequality. The statement also adds new metrics to some of the existing missions, to take account of new data that has become available from the ONS since the previous annual report, but otherwise keeps them unchanged.

General

Clause 6: Interpretation of Part 1

Effect

118 Clause 6 contains a list of relevant definitions that appear in the Chapter, including "geographic disparities" to which missions relate.

Part 2: Local Democracy and Devolution

Chapter 1: Combined County Authorities
CCAs and their areas

Clause 7: Combined county authorities and their areas

Background

119 This is a new provision establishing a new form of local government institution – a combined county authority (CCA) – which can be established in, and will enable devolution to, areas with two-tier local government. This type of institution is different to a combined authority, which can be established under Part 6 of the Local Democracy, Economic Development and Construction Act 2009, although has many similarities.

Effect

120 This clause provides that the Secretary of State can make regulations establishing a CCA for an area which meets conditions specified in clause 7(2) and (3). These conditions allow a CCA's membership to consist solely of upper-tier local authorities (county councils, unitary county councils and unitary district councils) and for the CCA to be established over an appropriate geography (e.g. a functional economic area or whole county geography), enabling functions to be effectively exercised and the economic, social and environmental wellbeing of those who live or work in the area to be improved.

121 Subsection (2) specifies that a CCA's area must consist of the whole area of a two-tier county council, plus a minimum of one or more whole area of a two-tier county council, unitary county council or unitary district council in England.

122 Subsection (3) requires that no part of a CCA's area may form part of another CCA's area, a combined authority's area or an integrated transport area.

123 Subsection (4) requires regulations under subsection (1) to specify the name that the CCA will be known by.

124 Subsection (5) provides definitions for terms used in this chapter, including "two-tier county council" and "unitary county council."

Constitution of CCAs

Clause 8: Constitutional arrangements

Background

125 This is a new provision enabling the Secretary of State to make regulations about the constitutional arrangements of an individual CCA. These regulations will establish a CCA's essential working mechanisms – such as membership, voting arrangements and quorum, amongst others.

Effect

126 Subsection (1) allows the Secretary of State to make regulations about the constitutional arrangements of an individual CCA.

127 Subsection (2) enables the regulations on constitutional arrangements to include the membership of the CCA, the voting power of its members, the executive arrangements of the CCA (which are defined in subsection (3)), and the functions of any executive body of the CCA.

128 Subsection (4) states that regulations on constitutional arrangements must provide for members of the CCA other than the mayor, the non-constituent members and associate members, to be appointed by the CCA's constituent councils, and for the constituent councils to appoint at least one of their elected members as a member of the CCA.

129 Subsection (5) enables the regulations on constitutional arrangements to include provisions in relation to a CCA's executive body. In practice, this will concern the functions which the executive body may perform on behalf of the CCA and the procedures for doing so.

130 Subsection (6) states that these regulations cannot provide for a CCA's budget to be agreed by anyone other than the CCA itself.

131 Subsection (7) provides that regulations regarding the constitutional arrangements of the CCA may not make provision conflicting with the provisions relating to appointment of non-constituent or associate members by that CCA or procedure for CCA consents in accordance with the relevant regulations.

132 Subsection (8) – (11) provide that the Secretary of State can only make regulations about a CCA's constitutional arrangements if the area's constituent councils and the CCA (where one already exists) consent, apart from where the regulations relate to changing an existing CCA area's boundaries (as set out in subsection (9)) or to the direct conferral of general functions on a mayor (as set out in subsections (10) and (11)).

133 Subsection (12) defines the term "constituent council" as used in Chapter 1 as a county council, or a unitary district council, for an area within the CCA's area or proposed areA.

Clause 9: Non-constituent members of a CCA

Background

134 This is a new provision enabling a CCA to appoint "non-constituent members" to a CCA.

135 A non-constituent member of a CCA is a representative of a local organisation or body - such as a district council, Local Enterprise Partnership or university - that can attend CCA meetings to input their specific local knowledge into proceedings.

Effect

136 Subsections (1) and (2) provide that a CCA may designate an organisation or body (other than a constituent council) as a "nominating body" of a CCA if that organisation or body consents to the appointment. A nominating body would be a local organisation, such as a district council.

137 Subsection (3) provides that a nominating body may appoint a representative person to represent their organisation or body at the CCA – a "non-constituent member". For example, if the nominating body were a district council, they may select their leader to be their representative at CCA meetings.

138 Subsection (4) provides that non-constituent members will be non-voting members, unless the voting members of the CCA resolve otherwise; Subsection (5) provides that an associate member cannot vote on such a resolution in (4).

139 Subsection (6) requires that voting rights conferred on non-constituent members do not extend to consenting to the Secretary of State making regulations about CCAs.

Clause 10: Associate members of a CCA

Background

140 This is a new provision enabling a CCA to appoint "associate members" to a CCA.

141 An associate member is an individual person - such as a local business leader or an expert in a local issue - that a CCA can appoint. This enables the associate member to be a representative at CCA meetings to input their specific local knowledge into proceedings.

Effect

142 Subsection (1) provides that a CCA may appoint an individual person as an "associate member" of the CCA.

143 Subsection (2) provides that an associate member will be non-voting member, unless the voting members of the CCA resolve otherwise; subsection (3) provides that a non-constituent member cannot vote on such a resolution in (2).

144 Subsection (4) provides that voting rights conferred on associate members do not extend to consenting to the Secretary of State making regulations about CCAs.

Clause 11: Regulations about members

Background

145 This is a new provision enabling the Secretary of State to make regulations about members of an individual CCA, including constituent members, the mayor, nominating bodies, non-constituent members and associate members.

Effect

146 This clause allows the Secretary of State to make regulations which will establish voting arrangements of a CCA and the role and working mechanisms – including the maximum

number, and appointment and disqualification processes - of non-constituent and associate members.

147 Subsection (1) allows the Secretary of State to make regulations about the members of a CCA; i.e. the constituent members, the mayor if there is one, the nominating bodies, the non-constituent members and associate members of an individual CCA.

148 Subsection (2) sets out what these regulations may provide for in relation to an individual CCA's non-constituent members and associate members.

149 Subsection (4) defines "constituent member" as used in this section as a representative of a constituent council; for example, the leader of that council.

Clause 12: Review of CCA's constitutional arrangements

Background

150 This is a new provision enabling a review of a CCA's local constitutional arrangements.

Effect

151 This clause allows the review of an individual CCA's locally agreed constitution where the regulations made for that CCA under s.8(1) enable that CCA to make provisions about its constitution.

152 Subsections (1) and (2) provides that a review of a CCA's constitutional provisions may be undertaken if regulations under section 8 creating the CCA's constitutional arrangements enable the CCA to make constitutional arrangements and if an appropriate person within the meaning of subsection (7) proposes the review and the CCA agrees to the review being undertaken. Subsection (4) states that this agreement needs to be reached at a meeting of the CCA by a simple majority of the voting members present at the meeting.

153 Subsection (3) provides that the person undertaking the review may propose changes to the CCA's constitutional provisions.

154 Subsections (5) provides that, for a mayoral CCA, a vote under section (2b) to carry out a review need not require the mayor to be in favour of it but a vote under subsection (3) on proposed changes must include the mayor in the majority.

155 Subsection (6) provides that a substitute member can vote in the place of a CCA's member where it is provided for in that CCA's regulations on constitutional arrangements or in any constitutional provision of that CCA, but non-constituent and associate members cannot vote on a review.

Clause 13: Overview and scrutiny committees

Background

156 This is a new provision requiring CCAs to have overview and scrutiny committees and audit committees, ensuring appropriate accountability.

Effect

157 Subsection (1) introduces Schedule 1 which requires CCAs to have at least one overview and scrutiny committees and an audit committee.

158 Subsection (2) provides that any regulations the Secretary of State provides on the constitutional arrangements of a CCA must be subject to Schedule 1.

Clause 14: Funding

Background

159 This is a new provision allowing the Secretary of State to make regulations that set out how a CCA will be funded.

Effect

160 Subsection (1) enables the Secretary of State to make provisions for how constituent councils will pay towards their CCA's costs, and how the amount to be paid by each constituent council is to be determined. Subsection (3) states these are subject to regulations under section 11(1) on combined authority membership.

161 Subsection (2) provides that regulations under subsection (1) must have the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Clause 15: Change of name

Background

162 This is a new provision providing that an existing CCA can pass a resolution to change its name.

Effect

163 Subsections (2) and (3) set out conditions which must be followed in a CCA passing a resolution to change its name. The change of name has to be considered at a meeting of the CCA specially called for this purpose; the particulars of the name change must be in the notice for the meeting; and the resolution to change the name is passed by no less than two-thirds of the CCA members who vote on it. The CCA must notify the Secretary of State that it has changed its name and must publish notice of the change. The Secretary of State can direct the CCA as to the manner of publication.

Functions of CCAs

Clause 16: Local authority functions

Background

164 This is a new provision allowing the Secretary of State to make regulations to confer on a CCA local authority functions such as transport, skills or economic development functions – to enable the CCA to exercise those functions in their area.

Effect

165 Subsection (1) allows the Secretary of State to make regulations that provides for functions of a county council or district council to be exercisable by a CCA. The functions must be exercisable by the council in relation to an area within the CCA's area.

166 Subsection (2) provides that this power applies only if the Secretary of State considers the functions can be appropriately exercised by the CCA.

167 Subsection (3) provides that regulations may specify that the function be exercised generally, or subject to conditions or limitations.

168 Subsection (4) allows the regulations to make provision for functions of a county council or unitary district council (i.e. local authorities which can be constituent members of a CCA) to be exercisable by the CCA instead of the by the council.

169 Subsection (5) allows the regulations to make provision for functions of a county council or a district council (both unitary district councils and district councils which form part of the area of a county council) to be exercisable by the CCA concurrently with that county council or district council, jointly with the county council or district council, or jointly with the county council or district council and continued to be exercisable by the council on its own.

170 Subsections (6) provide that any such regulations must have the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Clause 17: Other public authority functions

Background

171 This is a new provision allowing the Secretary of State to make regulations that confer on a CCA other public authority functions - such as functions held by the mayor of the Greater London Assembly or a Minister – to enable the CCA to exercise those functions in their area.

Effect

172 Subsection (1) enables the Secretary of State by regulations to confer on a CCA a function of a public authority that is exercisable in relation to the CCA's area; or confer on a CCA, in relation to its area, a function which corresponds to a function which another public authority has in relation to another area.

173 Subsections (2), (6), (7) and (8) provide that conditions or limitations may be specified together with any conferral of powers on CCAs.

174 Subsection (3) provides that any such regulations may make provision for the CCA to be able to exercise the function instead of the other public authority; for the public function to be exercisable concurrently with the other public authority; for the public function to be exercisable jointly by the CCA and the public authority; or for the function to be exercisable jointly by the CCA and public authority but also continue to be exercisable by the public authority alone.

175 Subsection (4) provides that any such regulations may make provision for abolishing the public authority if it will no longer have any functions.

176 Subsection (5) provides that, where there is an England-wide regulator of a function, a CCA cannot be conferred both the ability to perform that function and the ability to regulate the function.

177 Subsection (9) defines the terms "function", "Minister of the Crown", "public authority", "regulated function", and "regulatory function" as used in this section. "Function" does not include the power to make regulations or other instruments of a legislative nature.

Clause 18: Section 17 regulations: procedure

Background

178 This is a new provision specifying the procedure for the Secretary of State making regulations under section 17, which will give a CCA the functions held by a public authority to enable the CCA to exercise those functions in its area.

Effect

179 Subsection (1) provides that such regulations can only be made if (a) the appropriate authorities make a proposal for the making of regulations to the Secretary of State; or (b) the appropriate consent is given, and the Secretary of State considers that the making of the regulations is likely to improve the economic, social and environmental wellbeing of some or all of the people who live or work in the area.

180 Subsections (2), (3) and (4) define the consents process.

181 Subsection (5) defines a health service function of a CCA for the purposes of this clause.

182 Subsections (6) and (7) provide that, when laying before Parliament regulations which confer public authority functions on a CCA, the Secretary of State must also place a report before

Parliament which sets out the effect of the regulations and why the Secretary of State considers it appropriate to make them. The report must include any consultation and information which has been taken into account, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

183 Subsection (8) defines the term "the appropriate authorities" as used in this clause.

Clause 19: Integrated Transport Authority and Passenger Transport Executive functions

Background

184 This is a new provision allowing the Secretary of State to make regulations to transfer functions of an Integrated Transport Authority to and confer functions of a Passenger Transport Executive on a CCA to enable the CCA to run transport services in their area.

Effect

185 Subsections (1) and (2) enable the Secretary of State by regulations to transfer any function of an Integrated Transport Authority, which have responsibility for transport services across multiple local authority areas within the area of the CCA, to a CCA.

186 Subsection (3) enables the Secretary of State by regulations to provide for Public Transport Executive functions to be exercisable by a CCA, or the executive body of a CCA.

187 Subsection (4) enables regulations under subsection (3) to include any functions that have been conferred on an Integrated Transport Authority by any enactment and relate to the functions of a Public Transport Executive.

188 Subsection (5) provides that any such regulations have to have the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Clause 20: Directions relating to highways and traffic functions

Background

189 This is a new provision enabling the Secretary of State to make regulations which confer a power to direct on a CCA.

Effect

190 Subsections (1), (2), (3) and (4) allow, where the power to direct is conferred on it, a CCA to be able to issue a direction to a county council or unitary district council in the area of the CCA as to how they should exercise their functions as a local highway authority or local traffic authority.

191 Subsection (5) provides that the power to give such directions may only be conferred in relation to specific roads or descriptions of roads (for instance, major bus routes).

192 Subsection (6) makes it clear that directions cannot apply to roads covered by concession agreements under the New Roads and Street Works Act 1991.

193 Subsections (7) and (10) list the matters to which a direction can relate.

194 Subsection (8) provides that a such a power of direction can be conferred subject to conditions.

195 Subsection (9) provides that any such directions have to be given in writing; can be changed by a further direction in writing; and may differ for different areas.

196 Subsection (11) provides that any such regulations can be made only with the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Clause 21: Contravention of regulations under section 20

Effect

197 This section provides that, if a CCA to which the Secretary of State has granted the power to direct under section 20 issues a direction to a local highways authority or local traffic authority and the authority to which the direction is issued fails to comply with it, then the CCA can take the necessary steps to rectify the matter.

198 Subsections (2) and (3) provide that this includes the ability for the CCA to take over the relevant powers of the directed authority for the purposes of putting matters right and to recoup the costs of doing so from that directed authority.

Changes to CCAs

Clause 22: Designation of Key route networks

Background

199 This is a new provision that establishes the concept of key route network roads in combined county authorities (CCAs) and changes the consent requirements for conferring a power of direction in relation to the performance of highways and traffic functions in respect of such roads. Where such a power of direction is to be exercisable only by the mayor then, subject to the mayor consenting, it will be able to be conferred without the consent of the CCA and the constituent councils.

Effect

200 This clause provides for the designation of roads as key route network roads and introduces alternative consent requirements for conferring on a CCA a power, that is to be exercised by the mayor, to give a direction in relation to highways and traffic functions in respect of such roads.

201 Subsection (1) enables a CCA to designate or remove roads as key route network roads with the consent of the council in whose area the road is and, in the case of a mayoral CCA, the mayor.

202 Subsection (2) enables the Secretary of State to designate or remove roads as key route network roads if requested to do so by the CCA, mayor or council within whose area the road is. This may be necessary where, for example, the CCA, mayor and council cannot all agree.

203 Subsection (3) requires that a designation or removal of a key route network road must be in writing and state when it comes into effect.

204 Subsection (4) requires that, where the Secretary of State designates or removes a key route network road, a copy of that designation or removal must be provided to the CCA at least 7 days before it comes into effect.

205 Subsection (5) requires a CCA to publish all designations and removals of key route network roads before they come into effect.

206 Subsection (6) requires a CCA to publish a list or map showing all key route network roads within the CCA's area.

207 Subsection (7) provides that a power of direction in relation to key route network roads may be conferred on a mayoral CCA with only the consent of the mayor where that power is to be exercisable exclusively by the mayor.

208 Subsection (8) requires that, when consenting under subsection (7), a mayor must make a statement that all the constituent councils agree to the granting of the power of direction or, if they do not all agree, give reasons why the power of direction should nevertheless be granted.

209 Subsection (9) provides definitions for the terms "eligible power", "key route network road", and "proposed highway" that are used in this section.

Clause 23: Changes to boundaries of a CCA's area

Background

210 This is a new provision enabling the Secretary of State to make regulations which change the boundary of the area of an existing CCA.

Effect

211 Subsections (1) and (2) provide that regulations may either add or take away from a CCA's area the whole of the area administered by a two-tier county council, a unitary county council or a unitary district council. This would enable a CCA's area to expand or to contract in size, and the CCA to add or remove a constituent member.

212 Subsection (3) provides that regulations to remove a local government area may transfer functions for that area to another public authority or for CCA functions no longer to be exercisable in that area. Subsection (4) defines "public authority", for the purposes of subsection (3) as including Ministers of the Crown, a government department, a county council, and a district council.

213 Subsection (5) provides that regulations may be made if the new area meets the conditions in section 7.

214 Subsection (6) provides that, where a CCA is already in existence and is mayoral, any such regulations must have the consent of the relevant council and the mayor of the CCA.

215 Subsections (7) provides that, where a CCA is already in existence and is not mayoral, any such regulations require the consent of relevant council and the CCA, which must be decided at a meeting of the CCA by a simple majority of voting members who are present at the meeting (subsection (9)).

216 Subsection (8) defines the term "relevant council" as used in this section.

217 Subsections (10) disapplies subsections (5), (6) and (7) where such regulations are made in as a result of the duty in section 25(3).

218 Subsections (11) and (12) provide that, where set out in a CCA's local constitution, a decision to change that provision must be decided at a meeting of the CCA by a simple majority of voting members who are present at the meeting.

219 Subsection (13) defines the term "voting member" as used in this section.

Clause 24: Dissolution of a CCA's area

Background

220 This is a new provision enabling the Secretary of State to make regulations which dissolve a CCA's area and abolish the CCA.

Effect

221 Subsection (1) enables the Secretary of State to make regulations to dissolve a CCA's area and abolish the CCA for that area.

222 Subsection (2) provides that any such regulations may transfer functions from the dissolved CCA to any other public authority (the definition of which includes the list at subsection (3)), or may provide for any function to no longer be exercised in the area.

223 Subsection (4) provides that any such regulations require the consent of a majority of a CCA's constituent councils and, where the CCA is mayoral, the consent of the mayor.

Mayors for CCA areas

Clause 25: Power to provide for election of mayor

Background

224 This is a new provision enabling the Secretary of State to make regulations to provide for there to be an elected mayor of a CCA's area.

Effect

225 Subsection (1) enables the Secretary of State to make regulations to provide for there to be an elected mayor of a CCA area, who will be a member of, and chair, the CCA.

226 Subsection (2) provides that the electorate for the election of a mayor of a CCA is the local government electorate for the CCA area; subsection (3) states that "local government elector" has the same meaning as in section 270(1) of the Local Government Act 1972.

227 Subsection (4) introduces Schedule 2, which makes provision for a default term of office for a mayor; default dates on which elections for mayors are to take place; the voting system and franchise; and provisions for regulations to be made as to the dates on which and years in which elections for the return of an elected mayor will 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.

228 Subsections (5) and (6) provide that the mayor of a CCA area can be titled "mayor" and will be a member of, and chair, the CCA.

229 Subsection (7) provides that regulations made under subsection (1) providing for there to be an elected mayor of a CCA area cannot be revoked to make a CCA non-mayoral via further regulations made under subsection (1); however, a mayoral CCA can be dissolved – including the office of mayor – by regulations made under section 23.

230 Subsection (8) defines "mayoral CCA" as used in this Chapter.

Clause 26: Requirements in connection with regulations under section 25

Background

231 This is a new provision which sets out requirements for regulations made under section 25(1), which provide for there to be an elected mayor of a CCA area.

Effect

232 Subsection (1) provides that a Secretary of State may make regulations under section 25(1) for there to be an elected mayor of a CCA area where the appropriate authorities have made a proposal for this to the Secretary of State, and that a proposal for a CCA to have a mayor may be included in a proposal for a new CCA or proposals for changes to an existing CCA.

233 Subsections (2) and (3) provide that such regulations can be made without a proposal being made by the appropriate authorities to the Secretary of State where the appropriate authorities consent or, where a CCA is already in existence, the CCA and at least two

constituent councils consent; any non-consenting constituent authority must be removed from the area of the existing CCA.

234 Subsection (4) defines "appropriate authorities" as used in this section.

Clause 27: Deputy mayors etc

Background

235 This is a new provision requiring the mayor of the area of a CCA to appoint a deputy mayor.

Effect

236 Subsection (1) requires the mayor of the area of a CCA to appoint a deputy mayor from the members of the CCA.

237 Subsections (2) and (3) provide that the deputy mayor must remain in office until the end of the mayor's term, unless the mayor removes the deputy mayor, the deputy mayor resigns, or the deputy mayor stops being a member of the CCA. Subsection (4) provides that the mayor must nominate another deputy mayor from the members of the CCA if there is a deputy mayor vacancy.

238 Subsection (5) provides that the deputy mayor would exercise the functions of the mayor in the event that the mayor is unable to act or if the office of the mayor is vacant (e.g. the mayor resigns).

239 Subsection (6) provides that, in the event both the mayor and the deputy mayor are unable to act, or both offices are vacant, the other members of the CCA must act together, taking decisions by simple majority.

240 Subsection (8) provides that references to members of the CCA in this section do not include non-constituent or associate members.

Clause 28: Functions of mayors: general

Background

241 This is a new provision enabling the Secretary of State to make regulations for any function of a CCA to be a function only exercisable by the mayor of that CCA area.

Effect

242 Subsection (1) allows the Secretary of State to provide by regulations that any function that is a function of the CCA is exercisable only by the mayor.

243 Subsection (2) defines the term "general functions" in relation to the mayor of a CCA area as used in this chapter as any functions exercisable by the mayor other than police and crime commissioner functions.

244 Subsections (3) and (4) provide that the mayor may arrange (a) for the deputy mayor to exercise any function exercisable by the mayor or (b) for any other member or officer of the CCA to exercise any such function, excluding any non-constituent or associate members. Subsection (3)(c) provides that the mayor may delegate a function to a committee appointed by the mayor, or to the deputy mayor for policing and crime appointed under paragraph 3(1) of Schedule 3, if authorised in regulations by the Secretary of State. Subsection (6) provides that such a committee cannot solely consist of non-constituent and associate members. Subsection (7) provides that the Secretary of State may by regulations place limitation on the authorisation of the exercise of functions under subsection (3).

245 Subsection (5) sets out what regulations may be made in relation to (3)(c)(ii), where a function is being delegated to a committee appointed by the mayor.

246 Subsection (8) provides that any general function exercisable by a CCA's mayor by virtue of this Act is to be taken as a function of the CCA either exercisable by the mayor individually, or in line with arrangements made in this section, section 29 (joint exercise of general functions) or 31 (exercise of fire and rescue functions).

247 Subsection (9) provides that regulations made under this section may provide for members and officers of a CCA to assist the mayor in the exercise of their functions; confer ancillary powers on the mayor; authorise the mayor to appoint a political adviser; provide for the terms and conditions of any appointment of a political adviser; and provide for any arrangements for the discharge of functions under section 101(1)(b) of the Local Government Act 1972 to be treated as general functions to be exercisable by the mayor.

248 Regulations under this clause may subject a function exercisable only by the mayor to conditions or limitations in certain circumstances - for instance, that a general function may only be exercisable by the mayor with the consent of appropriate authorities. Subsection (10) refers to the separate provisions which enables the mayor to be conferred a functional or general power of competence. This power of general competence does not include a power to borrow money.

249 Subsection (11) stipulates that such regulations may only be made with the consent of all appropriate authorities and, in the case of an existing mayoral CCA, the mayor; subsections (12) and (13) disapply subsection (11) in some circumstances.

Clause 29: Procedure for direct conferral of general functions on mayor

Background

250 This is a new provision enabling the Secretary of State to make regulations providing for general functions to be exercisable personally by the mayor of a CCA. This provision applies where a new public authority function is being conferred on the CCA and, within the same regulations, is being specified as exercisable personally by the mayor.

Effect

251 Subsection (1) provides that this clause applies to regulations made under sections 17(1) (other public authority functions) and 27(1) (functions of mayors: general) for an existing CCA providing for a function to be a function of the CCA and only exercisable by the mayor.

252 Subsection (2) provides that a mayor of a CCA may make a request to the Secretary of State to make regulations, without which the Secretary of State may not make those regulations. Subsection (3) requires the mayor to consult the constituent councils of a CCA before making the request.

253 Subsection (4) requires the mayor to include within such a request a statement that all the constituent councils agree that these to the regulations or, if this statement cannot be made, the mayor's rationale for proceeding.

Clause 30: Joint exercise of general functions

Background

254 This is a new provision enabling the Secretary of State to make regulations providing for mayoral functions to be jointly exercised. This would, for example, enable a CCA to jointly exercise a function of the mayor with a neighbouring local authority.

Effect

255 Subsections (1), (2), (3) and (4) provide that regulations may be made for a mayor of a CCA to jointly discharge a general mayoral function and another authority's function, and that such

regulations may provide for membership, chairing, appointment, voting powers and political balance requirements for a joint committee set up to discharge powers.

256 Subsection (5) defines the term "joint committees" as used in this section.

Police and crime and fire and rescue functions

Clause 31: Functions of mayors: policing

Background

257 This is a new provision enabling the Secretary of State to make regulations providing for the mayor of a CCA to exercise police and crime commissioner functions for that area.

Effect

258 Subsections (2) and (3) define the police and crime commissioner functions that can be exercised by a mayor of a CCA if such regulations are made under subsection (1).

259 Subsection (4) provides that, for an existing mayoral CCA, such regulations may only be made with the consent of the mayor of the CCA.

260 Subsections (5) and (6) require, where such regulations are made, the Secretary of State to provide that there will be no Police and Crime Commissioner for that area from a specified date (in practice this will be the date that the mayor takes office) and enables the Secretary of State to cancel any Police and Crime Commissioner ordinary election that would otherwise take place in the area (whether before the date that the mayor takes over or after). Such regulations can also extend the term of the existing Police and Crime Commissioner for the area and cancel any Police and Crime Commissioner by-election to fill a vacancy that arises in the six-month period before the date that the functions of a Police and Crime Commissioner pass to the mayor.

261 Subsection (8) introduces Schedule 3.

262 Subsection (9) provides that any police and crime commissioner function exercised by the mayor of a CCA is a function of the CCA exercisable by the mayor acting as an individual, or another individual under arrangement with the mayor under Schedule 3.

Clause 32: Exercise of fire and rescue functions

Background

263 This is a new provision enabling the Secretary of State to make regulations providing for the mayor of a CCA who has been conferred the functions of the police and crime commissioner and the fire and rescue service, 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; i.e. the single employer model.

Effect

264 Subsection (1) limits the application of this section to a mayor of a CCA who has been conferred both the fire and rescue authority functions and police and crime commissioner functions.

265 Subsections (2), (3) and (4) enable the Secretary of State to make provision, by regulation, that enables a CCA mayor 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; that is, to members of their police force, to the civilian staff of their police force, to members of fire and rescue staff appointed by the chief constable, or to any fire and rescue staff transferred to the chief constable under a transfer scheme made

under this Act. Regulations made by the Secretary of State can determine which functions of the fire and rescue authority can or cannot be delegated by the mayor to the chief constable, and can or cannot be sub-delegated by the chief constable to their fire or police personnel.

266 Subsection (6) provides that this section is subject to section 32 of this Bill (Section 31 regulations: procedures), and section 37 of the 2004 Act, which restricts the employment of police in fire-fighting.

267 Subsection (7) defines "fire and rescue functions" as used in this section

Clause 33: Section 32 regulations: procedure

Background

268 This is a new provision specifying the procedure for the Secretary of State making regulations under section 32 to put in place the single employer model for fire and rescue services in an area of a CCA.

Effect

269 Subsection (1) provides that the Secretary of State can only make regulations under section 31(2) where a CCA mayor has made a request to the Secretary of State.

270 Subsections (2) and (3) provide that a report must be submitted with a such a request which sets out why it would be in the interests of a) economy, efficiency and effectiveness, or b) 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. Where a mayor has undertaken public consultation, the mayor must publish a response to that consultation in the manner they deem appropriate.

271 Subsections (4), (5), (6) and (7) provide that, where there is not local agreement to the mayor's proposal (that is, where two-thirds or more of the constituent members of the combined county authority have indicated that they disagree), the mayor may still make a request to the Secretary of State but they would additionally be required to provide copies of any representations made by the constituent members of the combined county authority and include in the proposal their response to these representations and to the views expressed in any public consultation undertaken. The Secretary of State would then be required to secure an independent assessment of the mayor's proposal. Such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any such other independent person as the Secretary of State deems appropriate. In the interests of transparency, the Secretary of State must publish the independent assessment secured.

272 Subsections (8) and (9) provide that the Secretary of State may not make such regulations unless it appears to them that it is in the interests of economy, efficiency and effectiveness or public safety to do so (and they may not make such regulations on the grounds of economy, efficiency and effectiveness if they think that it would have an adverse effect on public safety).

273 Subsections (10) and (11) provide that the Secretary of State may give effect to the mayor's proposals with any modifications that they think appropriate. However, before doing so, the Secretary of State must consult the mayor and the CCA.

274 Subsection (12) defines "constituent member" as used in this section.

Clause 34: Section 32 regulations: further provision

Background

275 This clause makes further provisions in relation to the procedure for the Secretary of State making regulations under section 31to put in place the single employer model.

Effect

276 Subsection (1) 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 section 31 delegating fire and rescue functions to that chief constable. It also provides that transfer schemes can be made transferring properties, rights and liabilities back to the CCA from the chief constable. Such transfer schemes could include personnel; the personnel that transfer will be dependent on the functions that are proposed to be delegated by the mayor to the chief constable.

277 Subsections (2), (3) and (4) provide that the chief constable of the mayor's police area can employ staff for the purposes of exercising their fire and rescue functions and may pay remuneration pensions and allowances to fire and rescue staff.

278 Subsection (5) provides that, subject to subsections (6), (7) and (8), a person cannot be jointly appointed by the chief constable as a member of fire and rescue staff and of the police force. This does not prevent a member of police personnel being delegated fire functions and vice versa, subject to existing legal restrictions.

279 Subsection (6) provides that where a chief constable is delegated fire and rescue functions by a mayor of a CCA under the single employer model, the police force's chief finance officer will be responsible for the proper administration of both police and fire and rescue financial affairs. Subsections (7) and (8) clarify that the subsection (5) – preventing a person from being appointed jointly in relation to both police and fire functions – does not apply to finance officers.

280 Subsections (9) and (10) provide that the CCA must pay any damages or costs awarded against, any costs incurred by, and any settlement sum required in relation to the chief constable and their fire and rescue staff in certain proceedings.

281 Subsection (11) defines the terms "fire and rescue functions" and "fire and rescue staff" as used in this section.

Clause 35: Section 32 regulations: exercise of fire and rescue functions

Background

282 This is a new provision applying where fire and rescue functions have been delegated to the chief constable by the mayor of a CCA under the single employer model and makes provision for the respective accountabilities of the mayor and chief constables when discharging these functions.

Effect

283 Subsections (2) and (3) place a duty on 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.

284 Subsection (4) 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.

285 Subsection (5) requires the mayor to hold the chief constable to account for the exercise of their functions.

Clause 36: Section 32 regulations: complaints and conduct matters etc

Background

286 This is a new provision in relation to complaints and conduct matters where regulations have been made under section 31 to provide for the single employer model.

Effect

287 Subsection(1) confers a power on the Secretary of State to, by regulations, amend Part 2 of the Police Reform Act 2002 as a consequence of regulations being made under section 32 of this Act.

288 Subsections (2) and (3) enable the Secretary of State by regulations to make provision for the handling of complaints about fire and rescue service authority staff so that the approach broadly mirrors that of the complaints procedure for police officers and police staff under Part 2 of the Police Reform Act 2002. This applies to staff transferred to a chief constable under a scheme made under section 33(1) or members of staff appointed by a chief constable under section 33(2).

289 Subsection (4) enables the Secretary of State by regulations to make any necessary amendments to Part 2 of the Police Reform Act 2002 as a consequence of regulations made subsection (2). Subsection (5) states that, 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.

Clause 37: Section 32 regulations: application of fire and rescue provisions

Background

290 This is a new provision enabling the Secretary of State to make regulations applying fire and rescue enactments in relation to a CCA.

Effect

291 Subsections (1), (2) and (3) enable the Secretary of State to make further provisions applying 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.

292 Subsections (4), (5) and (6) ensure that any necessary consequential provisions may be made when the Secretary of State makes regulations implementing the single employer model under section 31.

Clause 38: Section 32 regulations: application of local policing provisions

Background

293 This is a new provision enabling the Secretary of State to make regulations applying local policing provisions.

Effect

294 Subsections (1), (2) and (3) enable the Secretary of State to make further provisions applying 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.

295 Subsections (4), (5) and (6) ensure that any necessary consequential provisions can be made when the Secretary of State makes regulations implementing the single employer model under section 31.

Financial matters relating to mayors

Clause 39: Mayors for CCA areas: financial matters

Background

296 This is a new provision enabling the Secretary of State to make regulations for the costs of a mayor of the area of a CCA in relation to mayoral functions to be met by precepts.

Effect

297 Subsection (1) enables the Secretary of State to make regulations 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 by precepts issued by the CCA under section 40 of the Local Government Finance Act 1992.

298 Subsection (2) provides that only the mayor, acting on behalf of the CCA, may issue precepts for mayoral functions within the meaning of subsection (8).

299 Subsection (3) allows the Secretary of State to make regulations to modify the application of Chapter 4 or 4ZA of Part 1 of the 1992 Act to apply where a mayoral CCA is a precepting authority.

300 Subsection (4) provides that, where a mayor has functions of a Police and Crime Commissioner, the precept is required to have two components: one for the mayor's PCC functions and one for their general functions. Calculating the PCC component of the precept will be a PCC function exercisable only by the mayor.

301 Subsection (5) provides that the Secretary of State may by regulations make provision (a) requiring the mayor to maintain a fund in relation to receipts arising and liabilities incurred, in the exercise of the mayor's general functions, and (b) about the preparation of an annual mayoral budget for general functions. Provisions relating to the mayor's police and crime commissioner functions are in Schedule 3 paragraph 7.

302 Subsection (6) provides that regulations about the preparation of a mayoral budget may in particular make provision for (a) the mayor to prepare a draft budget, (b) the scrutiny of the draft budget, (c) the making of changes to the budget following scrutiny, (d) the approval of the draft budget by the CCA, and (e) the basis on which such approval is to be given.

303 Subsection (7) provides that reference to a member of the CCA for the purposes of scrutinising the draft budget does not include non-constituent or associate members.

Alternative mayoral titles

Clause 40: Alternative mayoral titles

Background

304 This is a new provision allowing a mayor of a new mayoral CCA to be known by an alternative title to mayor.

Effect

305 Subsection (1) provides that, at the first meeting of a mayoral CCA after regulations providing for a mayor for the area of a CCA come into force, the CCA must resolve for the mayor to be known by the title of mayor or an alternative title.

306 Subsection (2) sets out the alternative titles by which the mayor for the area of the CCA could be known. (2)(e) gives CCAs the power to resolve to choose a title other than those listed in paragraphs (a) to (d), providing the CCA has had regard to the title of other public office holders in the area of the CCA.

307 Subsection (3) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known. The resolution must be included in the notice of the meeting; if proposing using an alternative title under (2)(e), the resolution must say why it is more appropriate than other titles listed in subsection (2); and the resolution must be passed by a simple majority of the CCA's members who vote on it.

308 Subsection (4) applies subsections (5) and (6) when a mayoral CCA changes the title by which the mayor for the area of the CCA is to be known to an alternative title. If the CCA decides to retain the title of mayor, these subsections do not apply.

309 Subsection (5) requires the CCA to send notice of the change of title to the Secretary of State and to publish the notice in the area of the CCA. The Secretary of State can direct the CCA to publish the notice of the change of title in a set manner, and the CCA must comply with this direction.

310 Subsection (6) provides that where the title of mayor has been changed by resolution of the CCA, then the adopted alternative title is read in place of every legislative reference to mayor; references to mayoral (other than "mayoral CCA") and deputy mayor should be read in the same pattern.

311 Subsection (7) provides that, where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

312 Subsection (8) provides that non-constituent and associate members are not included in any reference to a member of the CCA in this section.

313 Subsection (9) defines the term 'enactment'.

Clause 41: Alternative mayoral titles: further changes

Background

314 This is a new provision allowing a change to a mayor of a mayoral CCA's title where a previous resolution in relation to their title has been passed.

Effect

315 Subsection (1) applies this section where a resolution under section 39 or this section has been passed previously changing the title of the mayor of a CCA to an alternative title; a resolution under section 39 has been passed previously providing the mayor of a CCA to be known by

the title of mayor; or where a resolution under this section has been passed previously providing that the mayor of a CCA is no longer be known by an alternative title.

316 Subsection (2) provides that a CCA may by resolution adopt the title of mayor again, or adopt an alternative title.

317 Subsection (3) sets out the alternative titles by which the mayor for the area of the CCA could be known. (3)(e) gives CCAs the power to resolve to choose a title other than those listed in paragraphs (a) to (d), providing the CCA has had regard to the title of other public office holders in the area of the CCA. Subsection (4) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known. The resolution must be considered at a relevant meeting of the CCA; the resolution must be included in the notice of the meeting; if proposing using an alternative title under (3)(e), the resolution must say why it is more appropriate than other titles listed in subsection (3); and the resolution must be passed by a simple majority of the CCA's members who vote on it.

318 Subsection (5) defines the meaning of 'relevant meeting' in subsection (4)(a) and outlines when such a further resolution can be held – this has to be at the first meeting of the CCA held after a qualifying election for the return of mayor, provided that the election is at least the third ordinary election since the resolution mentioned in subsection (1) was passed.

319 Subsection (6) requires that, where a CCA has passed a resolution that the mayor of the CCA is no longer to be known by the alternative title but by the title of mayor, the CCA must send notice of the change of title to the Secretary of State and to publish the notice in the area of the CCA. The Secretary of State can direct the CCA to publish the notice of the change of title in a set manner, and the CCA must comply with this direction.

320 Subsection (7) applies subsections (8) and (9) where the CCA has resolved to change the title by which the mayor of the CCA is known to an alternative title than mayor.

321 Subsection (8) requires the CCA to send notice of the change of title to the Secretary of State and to publish the notice in the area of the CCA. The Secretary of State can direct the CCA to publish the notice of the change of title in a set manner, and the CCA must comply with this direction.

322 Subsection (9) provides that where the title of mayor has been changed by resolution of the CCA, then the adopted alternative title is read in place of every legislative reference to mayor; references to mayoral (other than "mayoral CCA") and deputy mayor should be read in the same pattern.

323 Subsection (10) provides that, where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not changed the mayor's title.

324 Subsection (11) provides that, where a mayoral CCA has not passed a resolution in relation to the mayoral title as required by section 39(1), the CCA should be treated for the purposes of this section as if it passed a resolution under s.39(1)(a) to retain the title of mayor.

325 Subsection (12) provides that non-constituent and associate members are not included in any reference to a member of the CCA in this section.

326 Subsection (13) defines the terms 'enactment' and 'qualifying election' as used in this section.

Alternative Mayoral Titles

Clause 42: Power to amend list of alternative titles

Background

327 This is a new provision enabling the Secretary of State to add, modify or remove alternative titles to mayor from the lists in this Chapter.

Effect

328 Subsection (1) allows the Secretary of State by regulations to add, modify or remove an alternative title or description of an alternative title to mayor from the lists in section 39(2) and 40(3).

329 Subsection (2) introduces section 192(1)(c), which gives the Secretary of State the power to make these consequential amendments.

Requirements in connection with regulations about CCAs

Clause 43: Proposal for new CCA

Background

330 This is a new provision enabling one or more relevant authorities to prepare and submit a proposal for a CCA to the Secretary of State.

Effect

331 Subsections (1) provides that one or more relevant authorities (defined in subsection (2)) can prepare and submit a proposal to the Secretary of State for a CCA to be established over a proposed area (defined in subsection (3)).

332 Subsection (4) provides that, prior to submitting a proposal for a CCA to the Secretary of State, the authority or authorities must undertake a public consultation on the proposal in the proposed CCA area and consider the consultation responses in the proposal.

333 Subsection (5) provides that the requirements in subsection (4) – the public consultation on a proposal and the consideration of the responses in the proposal– can be undertaken prior to this section coming into force.

334 Subsection (6) states that, if the proposal is not being submitted by all of the authorities who would be consistent members of the CCA, those authorities must consent to the proposal being submitted to the Secretary of State. For example, one upper tier local authority within the proposed CCA area could draw up and submit the proposal on behalf of the other upper tier local authorities within the proposed CCA area if they consent to the proposal being submitted.

335 Subsection (7) provides that a proposal must specify what the establishment of a CCA would achieve.

336 Subsections (8) and (9) enable the Secretary of State to make regulations setting out what information and materials must be included in or submitted with a proposal for a CCA.

Clause 44: Requirements in connection with establishment of CCA

Background

337 This is a new provision setting out requirements in relation to the establishment of a CCA.

Effect

338 Subsections (1) and (2) specify that the Secretary of State may make regulations establishing a CCA for an area if, having regard to the submitted proposal, the Secretary of State considers 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.

339 Subsection (3) provides that the Secretary of State must undertake a public consultation on the establishment of a CCA unless they are satisfied that no further public consultation is necessary following a proposal has been prepared under s.42, a public consultation undertaken on it and the summary of responses provided to the Secretary of State, and the Secretary of State considers no further consultation is needed. This is to ensure that there has been sufficient public involvement in the consideration of whether it is appropriate to establish the proposed CCA.

340 Subsections (4) and (5) provide that, when the Secretary of State is considering making regulations establishing a CCA for an area and part of the area is separated from the rest of it by one or more local government areas not within the area of the CCA or the middle of the CCA's area contains a local government area that is not part of the CCA, the Secretary of State must have regard to the likely effect of the establishment of the CCA on the exercise of functions proposed to be conferred on the CCA in those local government areas, and any other local government area next to the proposed CCA's area.

341 Subsection (6) defines "local government area" as used in this Part.

Clause 45: Proposal for changes to existing arrangements relating to CCA

Background

342 This is a new provision allowing relevant authorities to change existing arrangements of a CCA.

Effect

343 Subsection (1) and (2) provide that one or more relevant authorities – an existing CCA, a county council whose area is within an existing or proposed area of a CCA, and a unitary district council whose area is within an existing or proposed area of a CCA – can prepare a proposal for the making of regulations under sections 8, 14, 16, 17, 19, 20, 22, 23, 24, 27 or 30 for an existing CCA and submit the proposal to the Secretary of State. In the case of regulations under section 22, the authority seeking to join the CCA could prepare the proposal.

344 Subsection (3) provides that, prior to submitting a proposal under this section to the Secretary of State, the authority or authorities must undertake a public consultation on the proposal in the proposed CCA area – and the area which they are seeking to add to a CCA area in such an instance - and consider the consultation responses in the proposal.

345 Subsection (4) provides that the requirements in subsection (3) – the public consultation on a proposal and the consideration of the responses in the proposal– can be undertaken prior to this section coming into force.

346 Subsections (5), (6) and (7) provides that every party who would have to consent to the making of regulations being requested in the proposal has to consent to the proposals prior to it being submitted to the Secretary of State. An authority's submitting of a proposal to the Secretary of State is to be treated as them having consented to the proposal.

347 Subsection (8) provides that a proposal must specify what the establishment of a CCA would achieve.

348 Subsections (9) and (10) enable the Secretary of State to make regulations setting out what information and materials must be included in or submitted with a proposal under this section. For example, this could include a summary of consultation responses, how it will affect the delivery of public services in the area, and any required amends to the decision-making process, including voting rights.

Clause 46: Requirements for changes to existing arrangements relating to CCA

Background

349 This is a new provision setting out requirements in relation to changes to the arrangements of an existing CCA.

Effect

350 Subsections (1) and (2) specify that the Secretary of State may make regulations under sections 8, 14, 16, 17, 19, 20, 22, 23, 24, 27 or 30 for an existing CCA if, having regard to the submitted proposal, the Secretary of State considers that doing so 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 making of the regulations will achieve the proposal's purpose; and public consultation on the proposal has been carried out.

351 Subsection (3) provides that 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 section 43, a public consultation undertaken on it and the summary of responses provided to the Secretary of State, and the Secretary of State considers no further consultation is needed.

352 Subsections (4) and (5) provide that, when the Secretary of State is considering making regulations under section 22 changing the boundaries of a CCA and part of the area to be created is separated from the rest of it by one or more local government areas not within the area of the CCA or the middle of the CCA's area to be created contains a local government area that is not part of the CCA, the Secretary of State must have regard to the likely effect of the change of the CCA's boundaries on the exercise of functions in those local government areas and any other local government area next to the proposed CCA's area to be created.

353 Subsection (6) provides that this section does not apply to regulations made section 22(1)(b) as a result of the duty to remove a non-consenting constituent council from a CCA where they have not consented to a CCA becoming mayoral.

General powers of CCAs

Clause 47: General Power of CCA

Background

354 This is a new provision providing powers for combined county authorities.

Effect

355 Subsection (1) provides what a CCA may do in relation to carrying out its functions and functional purposes. This is anything it considers appropriate for the purposes of carrying out its functions, including anything incidental to that end.

356 Subsections (2) and (3) provide that, where a power is conferred on a CCA by subsection (1), it is United Kingdom-wide and not limited by other powers.

357 Subsection (4) states this section does not apply for a CCA where regulations conferring the wider general power of competence on a CCA has effect.

Clause 48: Boundaries of power under section 47

Background

358 This is a new provision setting out boundaries to the powers for CCAs provided for in section 46.

Effect

359 This section imposes limitations on a CCA to be consistent with a combined authority's functional power of competence.

360 Subsections (1) and (2) set out boundaries in relation to a CCA's exercise of a power.

361 Subsection (3) provides that a CCA cannot exercise its functional power of competence to borrow money.

362 Subsections (4), (5) and (6) set out boundaries on the CCA's exercise of its functional power of competence in relation to charging persons commercial purposes.

Clause 49: Power to make provision supplemental to section 47

Background

363 This is a new provision giving the Secretary of State power by regulations to prevent CCAs from doing something under section 47, or to impose conditions on the exercise of those powers.

Effect

364 Subsections (1) and (2) provide that the Secretary of State may make regulations to prevent a CCA from doing something, or impose conditions on, the exercise of powers set out in regulations under section 47(1).

365 Subsection (3) provides that the Secretary of State can make such regulations in relation to all CCAs, certain CCAs, or a particular CCA.

366 Subsections (4) and (5) provide that, prior to making such regulations, the Secretary of State must consult representatives of CCAs and local government, and anyone else the Secretary of State considers relevant, unless such regulations are to extend or stop previous such regulations.

Clause 50: General power of competence

Background

367 This is a new provision giving the Secretary of State power by regulations to confer a general power of competence on CCAs thereby aligning with the general power of competence available to its constituent councils. The general power of competence gives CCAs the same power to act that an individual authority generally has.

Effect

368 Subsection (1) enables the Secretary of State by regulations to confer the general power of competence, found in Chapter 1 of Part 1 of the Localism Act 2011, on a CCA. Subsections (2) and (3) require such regulations to have the consent of the appropriate authorities.

Supplementary

Clause 51: Incidental etc provision

Effect

369 This clause 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 section 15 – 17 of and Schedule 1 to the Local Government and Housing Act 1989.

Clause 52: Transfer of property, rights and liabilities

Effect

370 This clause specifies that the Secretary of State may make provision by regulations for the transfer of property, rights and liabilities for the purpose of, or in consequence of, regulations under this Chapter. This includes the transfer of rights and liabilities under a contract of employment, to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Clause 53: Guidance

Effect

371 Subsection (1) provides that the Secretary of State may issue guidance about anything which could be done under or by virtue of this Chapter by an authority referred to in subsection (5). For example, this could include how to exercise certain functions by a new CCA.

372 Subsection (2) stipulates that the authority must have regard to any guidance given in exercising any function conferred or imposed by virtue of this Chapter.

373 Subsections (3) and (4) specify that the guidance must be given in writing and may be varied or revoked by further guidance in writing, and that the guidance may make different provision for different cases.

Clause 54: Consequential amendments

Effect

374 This section introduces Schedule 4, which makes a number of amendments to apply provisions of local government and transport legislation to CCAs.

Clause 55: Interpretation of this Chapter

Background

375 This section provides definitions for this Chapter.

Chapter 2: Other Provision

Combined authorities

376 This chapter (clauses 55 to 70) makes various amendments to existing legislation to support the establishment of combined authorities and conferral of powers on combined authorities and local authorities.

Clause 56: Review of combined authority's constitutional arrangements

Background

377 Section 104 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) enables the Secretary of State, by order, to make provision for constitutional

arrangements for a combined authority; this includes provision for a combined authority to make arrangements locally for constitutional matters. It makes no provisions about the circumstances in which combined authorities can review their local constitutional arrangements.

378 This clause inserts a new Section 104D to the 2009 Act (constitution and functions) to enable combined authorities to instigate a review of their local constitutions and make changes where agreed.

Section 104: New section 104D Review of combined authority's constitutional arrangements

Background

a. Section 104 of the Local Democracy, Economic Development and Construction Act 2009 (constitution and functions, transport) makes provision for orders relating to the constitutional arrangements of a combined authority. Clause 56 inserts a new section 104D which makes provisions for the review and changes to constitutional arrangements made by a combined authority.

Effect

b. Subsection (1) sets out that section 104D applies if the Secretary of State has made an order under section 104 for a combined authority to make provision about its constitution.

c. Subsection (2) provides for an appropriate person to carry out a review of the combined authority's local constitutions if this is proposed by an appropriate person, and the combined authority agrees to the review.

d. Subsection (3) sets out that the appropriate person undertaking the review may propose changes to the constitutional arrangements of a combined authority which must be agreed by the combined authority for them to come into effect.

e. Subsections (4) and (6) provide for the "consent" of the combined agreement to the proposal for a review and for adopting any changes proposed. A simple majority of combined authority voting members present at the meeting at which these matters are discussed must consent for a review to take place and for changes to be made to the local constitution.

f. Subsection (5) sets out the simple majority provisions in 104D(4) for mayoral combined authorities. The simple majority of the combined authority in favour of carrying out a review following its proposals by an appropriate person does not need to include the agreement of the mayor. For the changes proposed as a result of a review to be adopted, simple majority of the combined authority in favour of the changes must include the vote of the mayor.

g. Subsection (7) provides that the arrangements in this section take precedence over any arrangements made in any order made before this section came into force or anything in a combined authority's local constitution

h. Subsection (8) defines an 'appropriate person' the purposes of this section.

Clause 57: Consent to changes to combined authority's area

Background

379 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 Act (the 2009 Act) provides for the establishment of and changes to combined authorities by order, subject to various consent requirements.

380 Section 106 of the 2009 Act enables the area of a combined authority to be changed, by order, through the addition or removal of a whole local government area. Clause 57 amends the consent requirements in section 106 before the Secretary of State can make an order changing a combined authority's boundary. It also makes changes to provisions in section 104 of the 2009 Act about the combined authority's constitutional arrangements which are a direct result of an order changing the area of a combined authority

Effect

381 Clause 57(2) amends section 104 of the 2009 Act to insert new section (11A) – this makes corresponding changes to replace the existing consent requirements to an order making constitutional changes to a combined authority (under section 104) as a direct result of an order changing the area of the combined authority (under section 106) to the new consent requirement in (4) which replaces section 106 (3A) of the 2009 Act with subsections (3A) and (3AA). These new consent requirements for expanding or reducing the area of a mayoral combined authority or a non-mayoral combined authority provide that the Secretary of State may make an order changing a mayoral combined authority's area with consent of the mayor and council(s) whose area(s) is joining or leaving and the Secretary of State may make an order changing a non-mayoral combined authority's area with consent of the combined authority and council(s) whose area (s) is joining or leaving.

382 Subsection (7) inserts new section 106 (3CA) and (3CB) which provide that a non-mayoral combined authority decision on such consent is to be made by simple majority vote at a meeting of the combined authority, by its voting members, and this takes precedence over any provisions about such decision making in a combined authority's constitutional arrangements in an order or in the authority's own arrangements for its constitution made prior to commencement of this section

383 Subsection (8) inserts section 106(3D) which makes exceptions to these consent arrangements where a local government area is being removed from the area of a combined authority by order under section 105A or 107D(4) of the 2009 Act

384 Subsection (9) inserts new sections 106(3E), (3F) and (3G). These apply the same consent requirements as in (3CA) to constitutional changes made under section 104 where these constitutional changes relate to or are consequential on the change of the combined authority's area such that they override any relevant provisions and local constitutional arrangements even if they were made prior to coming into force of these provisions. It also adds new section 106(3H) which confirms that voting members include substitute members but not non-constituent or associate members.

Clause 58: Consent to conferral of general functions on mayor

Background

385 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) provides for public authority function to be conferred onto a combined authority subject to various requirements about authorities locally consenting. Such functions can be exercisable by the combined authority or by the mayor personally. This clauses changes the

operation of this for a public authority function to be conferred on the combined authority and exercisable on the mayor.

Effect

386 Clause 58 amends section 105B, section 107(D) and section 104 of the 2009 Act.

387 Subsection (2) inserts a new subsection into 104(11B) of the 2009 Act which disapplies the existing consents required under 104(10) where an order is made under S107 DA and specifies new consents required for orders made under S107 DA.

388 Subsection (3) inserts 105B(5A) which disapplies the existing consent needed in the case where the Secretary of State is making a single order (under 105A and 107D) to confer a new public authority function onto the combined authority to be exercisable by the mayor.

389 Subsection (4) inserts a new subsection 107D(11) which makes a corresponding change within section 107D.

390 Subsection (5) inserts a new Section 107DA which provides a new procedure where the Secretary of State is making a single order to confer a public authority function on a combined authority, to be exercisable by the mayor, under S105A and S107D.

391 107 DA(2) provides that a mayor of a combined authority may make a request to the Secretary of State to make such an order.

392 107 DA(3) requires the mayor to consult the constituent councils of combined authority (defined in 107DA(5) before making the request and 107 DA(4) requires the mayor to include within such a request to the Secretary of State a statement that all the constituent councils agree to the making of this order or, if this statement cannot be made, the mayor's rationale for proceeding.

Clause 59: Consent to conferral of police and crime commissioner functions on mayor

Background

393 Part 6 of the Local Democracy, Economic Development and Construction Act 2009 Act (the 2009 Act) provides for a combined authority mayor to be given, by order, the functions of a police and crime commissioner for the area (section 107F). This clause amends the consent needed before such an order can be made.

Effect

394 Section 107F of the 2009 Act (functions of mayors: policing) enables the Secretary of State by order to provide for the mayor for the area of a combined authority to exercise the functions of a police and crime commissioner in that area. The power is subject to the consent of the combined authority, constituent councils of the combined authority and, in the case of an existing mayoral combined authority, the mayor.

395 Clause 58 amends section 107F of the 2009 Act to provide that only the mayor needs to consent to an order conferring police and crime commissioner functions on the mayor.

Clause 60: Functions in respect of key route network roads

Background

396 This clause makes amendments to the Local Democracy, Economic Development and Construction Act 2009 (2009 Act) by inserting a new section that establishes the concept of key route network roads in combined authorities (CAs) and changes the consent requirements for making orders that confer a power of direction in relation to highways and

traffic functions in respect of such roads. Where such a power of direction is to be exercisable only by the mayor then, subject to the mayor consenting, it will be able to be conferred without the consent of the CA and the constituent councils.

Effect

397 Subsections (2) and (3) amend section 104 and section 107D of the 2009 Act to make clear that the consent requirements for making an order under those sections are subject to the new section 107ZA.

398 Subsection (4) inserts a new section 107ZA to the 2009 Act to provide for the designation of roads as key route network roads and introduce alternative consent requirements for conferring on a CA a power, that is to be exercised by the mayor, to give a direction in relation to highways and traffic functions in respect of such roads.

New Section 107ZA: Designation of key route network roads

a. Subsection (1) enables a combined authority to designate or remove roads as key route network roads with the consent of the council in whose area the road is and, in the case of a mayoral CCA, the mayor.

b. Subsection (2) enables the Secretary of State to designate or remove roads as key route network roads if requested to do so by the CA, mayor or council within whose area the road is. This may be necessary where, for example, the CA, mayor and council cannot all agree.

c. Subsection (3) requires that a designation or removal of a key route network road must be in writing and state when it comes into effect.

d. Subsection (4) requires that, where the Secretary of State designates or removes a key route network road, a copy of that designation or removal must be provided to a CA at least 7 days before it comes into effect.

e. Subsection (5) requires a CA to publish all designations and removals of key route network roads before they come into effect.

f. Subsection (6) requires a CA to publish a list or map showing all key route network roads within the CA's area.

g. Subsection (7) provides that a power of direction in relation to key route network roads may be conferred on a mayoral CA with only the consent of the mayor where that power is to be exercisable exclusively by the mayor.

h. Subsection (8) requires that, when consenting under subsection (7), a mayor must make a statement that all the constituent councils agree to the granting of the power of direction or, if they do not all agree, give reasons why the power of direction should nevertheless be granted.

i. Subsection (9) provides definitions for the terms "eligible power", "constituent authority", "key route network road", and "proposed highway" that are used in this section.

Clause 61: Membership of combined authority

Effect

399 This clause amends The Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) by inserting three new sections that provide for combined authorities to appoint non-constituent and associate members. It also makes corresponding amendments to

section 104 of the 2009 Act, relating to its application of section 84 and 85 of The Local Transport Act 2008.

Background

400 Subsection (8) inserts new section 104A (Non-constituent members of a combined authority). This enables the appointment of non-constituent members to a combined authority.

104A (Non-constituent members of a combined authority)

a. Subsections (1) and (2) of new section 104A provide that a combined authority can designate a body other than an individual or a constituent council as a nominating body for the purposes of this section, subject to that body's consent to the designation.

b. Subsection (3) provides that the nominating body may appoint a representative of the organisation to be a member of the combined authority – to be known as a "non-constituent member".

c. Subsections (4) (5) and (6) set out the voting rights of non-constituent and associate members (associate members are provided for in new section 104B).

d. Subsections (7) makes this section subject to regulations under 104C(4) to disapply this section in relation to a combined authority established by an order which came into force before the coming into force of this section.

e. Subsection (8) defines the meaning of constituent council.

401 Subsection (8) also inserts new section 104B (Associate members of a combined authority) which enables combined authorities to appoint individuals to be associate members of the combined authority

104B (Associate members of a combined authority)

a. Subsection (1) provides for the appointment of an individual to the combined authority and define the term of 'associate member'.

b. Subsections (2), (3), and (4) set out the voting rights of non-constituent and associate members (non-constituent members are provided for in 104A).

c. Subsection (5) makes this section subject to regulations under 104C(4) to disapply this section in relation to a combined authority established by an order which came into force before the coming into force of this section.

402 Subsection (8) also inserts new section 104C (Regulations about members).

104C (Regulations about members)

a. This enables the Secretary of State to make regulations about the constituent members, nominating bodies, non-constituent members and associate members of combined authorities.

b. Subsection (2) lists specific provisions that could be included in these regulations such as the process of designation of a nominating body, the number of nominating bodies, non-constituent members and associate members that a combined authority can have, the making by the nominating body of a combined authority of payments towards the cost of the authority, the appointment, disqualification, resignation or removal of an associate member.

c. Subsection (4) allows the Secretary of State to make regulations about the application of this section to existing combined authorities.

d. Subsection (5) defines the meaning of 'relevant provisions about membership' in subsection (4).

403 Subsections (6) and (7) make provisions about regulations under subsection (1) and (4).

404 Subsection (7) defines constituent member of a combined authority in this section.

405 Subsections(9)-(13) make corresponding changes to sections 105, 107C, 107D, 107G and 120 of the 2009 Act.

Clause 62: Proposal for establishment of combined authority

Background

406 This clause makes amendments to The Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act), to replace the governance review and scheme processes in sections 108 and 109 with a new procedure in section 109A and section 110 to allow one or more authorities in a local government area to prepare and submit a proposal to the Secretary of State for a new combined authority. This is in line with the procedures for local authorities wishing to establish a combined county authority.

Effect

407 Subsection (2) removes sections 108 and 109 from the 2009 Act which sets out the process an area currently undertakes when they wish to establish a combined authority in their area.

408 Subsection (3) inserts a new section 109A into the 2009 Act.

109A (Proposal for new combined authority)

a. Subsection (1) (2) and (3) provides that one or more authorities may prepare and submit a proposal to the Secretary of State for a combined authority to be established over a proposed area (defined in subsection 3) and defines which authorities can submit a proposal.

b. Subsection (4) provides that, prior to submitting a proposal for a CA to the Secretary of State, the authority or authorities must undertake a public consultation on the proposal in the proposed CA's area and consider the consultation responses in the proposal.

c. Subsections (5) and (6) sets out the consent arrangements if the proposal is not submitted by all of the authorities who will be constituent members of the combined authority to who this section applies.

d. Subsection (7) provides that the proposal must set out what will be achieved by the establishment of the combined authority.

e. Subsection (8) allows the Secretary of State to make regulations about information and materials must be included in or submitted with a proposal for a combined authority.

409 Subsections (4)-(8) amend section 110 (requirements in connection with establishment of combined authority) of the 2009.

410 Subsection (5) amends the statutory requirements the Secretary of State must consider when assessing a proposal for a combined authority and (6), (7) and (8) amend section 110 of the 2009 Act to refer to this new process.

411 Subsections (9) and (10) disapply section 109A if authorities have commenced a governance review and scheme under sections 108 and 109 of the 2009 Act before the Bill comes into force, and the making of an order in relation to such an area.

Clause 63: Proposal for changes to existing combined arrangements

Background

412 This clause amends the 2009 Act, to replace the governance review and scheme processes in sections 111 and 112 with a new procedure in section 112A and amends section 113 to allow an existing combined authority to prepare and submit a proposal to the Secretary of State for changes to the combined authority. This is in line with the procedures that existing combined county authorities will undertake.

Effect

413 Subsection (2) removes sections 111 and 112 from the 2009 Act. These set out the process an existing combined authority currently undertakes when they wish to make a change to their arrangements via an order.

112A (Proposal for changes to existing combined arrangements)

a. Subsection (3) inserts new section 112A into the 2009 Act.

b. Subsection (1) provides that one or more authorities can prepare and submit a proposal to the Secretary of State.

c. Subsection (2) defines the authorities who can submit the proposal.

d. Subsection (3) sets out the process that the authority or authorities submitting the proposal must undertake before the proposal is submitted.

e. Subsections (4) (5), (6), (7) and (8) set out the consent arrangements in respect of the proposal.

f. Subsection (9) provides that the proposal must set out what will be achieved by the changes to the combined authority.

g. Subsection (10) allows the Secretary of State to make regulations setting out what information and materials must be included in or submitted with a proposal.

h. Subsection (11) allows regulations under this subsection to make incidental, supplementary, consequential, transitional or saving provision.

414 Subsections (4), (5) and (6) amend the statutory tests the Secretary of State must consider when assessing a proposal for a combined authority by amending section 113 of the 2009 Act.

415 Subsections (7), (8) and (9) make changes to section 113 of the 2009 Act that apply the new statutory tests to these sections.

416 Subsections (10) and (11) ensure that the new proposal process does not apply to or affect an area that had already commenced a governance review and scheme under sections 111 or 112 of the 2009 Act before the Act comes into force, and the making of an order in relation to such an area.

417 Subsection (12) ensures that any consultation carried out before the Bill is passed can satisfy the requirement to consult under section 113(2) of the Local Democracy, Economic Development and Construction Act 2009

Clause 64: Consequential amendments relating to sections 61 and 63

Background

418 This clause amends the 2009 Act to reflect the changes made to the Act by sections 61 and 63 in relation to the new processes for establishing or amending a combined authority. This is in line with the processes that combined county authorities will undertake.

Effect

419 Subsection (2) amends section 105B of the 2009 Act to change the procedure under which 105A orders are made. This is to reflect the new provisions in sections 109A and 112A as well as the new statutory requirements that the Secretary of State must consider are met before an order can be made.

420 Subsection (3) amends section 107B to provide for the amended procedure set out in sections 109A and 112A.

421 Subsection (4) disapplies the changes in section (61) in cases where a proposal under section 105B or 107B has already happened.

Clause 65: Regulations applying to combined authorities

Background

422 Section 117 of the 2009 Act makes provisions about orders made relating to combined authorities under Part 6 of the 2009 Act. This clause amends section 117 of the 2009 Act to provide that the Secretary of State may make regulations - as well as orders – in relation to combined authorities, in line with current parliamentary scrutiny practices.

Effect

423 Subsection (5) inserts a new subsection (3A) to provide that statutory instruments containing the first regulations under sections 104C(1), 104C(4) or 107K(1) are subject to the affirmative procedure for Parliamentary approval.

424 Subsection (3B) provides that regulations that contain subsequent regulations under 104C(1) or (4), or regulations under section 109A (8) or 112A(10) and is not by virtue of subsection (3A) subject to Parliamentary approval through negative resolution.

Clause 66: Combined authorities and combined county authorities: power to borrow

Background

425 Under section 23 of the Local Government Act 2003, combined authorities have 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.

Effect

426 This clause makes provision that such regulations and equivalent regulations for combined county authorities are not to be treated as a hybrid instrument. This enables borrowing powers for combined authorities to be put on the same basis as the conferral of all other powers by order on a combined authority and makes equivalent provision for the new combined county authority.

Clause 67: Payment of allowances to committee members

Background

427 Schedule 5A to 2009 Act makes provisions about overview and scrutiny committees and audit committees of a combined authority. It enables orders to make provisions about the payment of allowances to members. This clause makes amendments to these provisions and

similar amendments to provisions in Schedule 5C to the 2009 Act in relation to police and crime panel for a combined authority whose mayor has been conferred the role of a police and crime commissioner.

428 The orders establishing combined authorities provide for remuneration for members of combined authorities. At present combined authorities may make provision for:

a. Combined authorities to be able to pay members a travel and subsistence allowance.

b. Combined authorities to be able to pay mayors and deputy mayors allowances on the recommendation of an independent remuneration panel.

c. Combined authorities to be able to pay members representing councils travel and subsistence allowance only with the local authorities being able to provide separately a special responsibility allowance.

d. Combined authorities are required to establish at least one overview and scrutiny committee as well as an audit committee. Combined authorities cannot make provision for the payment of allowances to local authority members who are members of these panels.

Effect

429 This clause amends Schedules 5A and 5C to enable the Secretary of State to make provisions, by order, about the payment of allowances to members of overview and scrutiny, audit committees and, where the mayor exercises the police and crime commissioner functions, police and crime panels where the members of these committees are members of a combined authority's constituent authorities.

430 Subsection (1) amends Schedule 5A to the 2009 Act to give the Secretary of State power by order to make provision about the payment of allowances to members of a combined authority's constituent authorities who are members of overview and scrutiny committees and audit committees.

431 Subsection (2) amends Schedule 5C to the 2009 Act to give the Secretary of State power by order to make provision about the payment of allowances to members of a combined authority's constituent members who are members of police and crime panel where the mayor of the combined authority also holds police and crime commissioner powers.

Local authority governance

Clause 68: Timings for changes in governance arrangements

Background

432 The Government's devolution framework in the Levelling Up White Paper sets the powers available to institutions with different strengths of governance, which may be negotiated as part of a devolution deal. A local authority may wish to change its governance model in order to access deeper devolution (a local authority with a directly elected mayor could access a level 3 deal; a local authority with a leader and cabinet model can access level 2 deal). However, if the council has changed its governance arrangements, either by local authority resolution or following a referendum, a moratorium may apply that prevents a further change of governance model for a specified period of time as set out in sections 9KC and 9M of the Local Government Act 2000 (the '2000 Act'). This provision establishes a process for a local authority to apply to the Secretary of State to change its governance model before the expiry of a moratorium and access deeper devolution in shorter timescales than would otherwise be possible.

Effect

433 This clause amends the 2000 Act. Subsection (2) amends section 9KC of the 2000 Act (which applies a moratorium on changing local authority governance arrangements by resolution where a resolution has been implemented less than 5 years previously). It inserts new provisions in 9KC to establish a process for a local authority which has adopted its current governance model following a resolution to apply to the Secretary of State for consent to change its governance model (again by resolution) before the expiry of the moratorium period of 5 years.

434 New section 9KC (4A) – (4C) inserted by clause 68 (2)(b) provides for the circumstances under which the local authority can submit a proposal and the content of the proposal. New section 9KC(4D) provides that the Secretary of State may consent to proposal for a local authority to change its governance arrangements only if the Secretary of State considers that the proposed change in governance arrangements 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. New section 9KC(4F) includes a power for the Secretary of State to make regulations setting out the matters to be addressed by a proposal and how the proposal is to be considered.

435 Subsection (3) amends section 9MF of the 2000 Act (which applies a moratorium on holding a referendum on changing local authority governance arrangements where a referendum has been held less than 10 years previously). It inserts new provisions in 9MF to establish a similar process to subsection (2) for a local authority to apply to the Secretary of State for consent to hold a referendum before the expiry of the moratorium period of 10 years.

436 New section 9MF (3A)-(3F), inserted by subsection (3)(b) provides for circumstances under which the local authority can submit a proposal and the content of that proposal. New section 9MF (3D) provides that the Secretary of State may consent to a proposal for a local authority to hold a referendum on its governance arrangements before the expiry of a moratorium only if the Secretary of State considers that the proposed change in governance arrangements 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. New section 9MF (3F) includes a power for the Secretary of State to make regulations setting out the matters to be addressed by a proposal and how the proposal is to be considered.

Clause 69: Transfer of functions: changes in governance arrangements

Background

437 The Government's devolution framework in the Levelling Up White Paper sets out the powers available to institutions with different strengths of governance, which may be negotiated as part of a devolution deal. A local authority may wish to change its governance model in order to access deeper devolution (a local authority with a directly elected mayor can access a level 3 deal; a local authority with a leader and cabinet model can access a level 2 deal).

438 This provision places conditions around an authority's ability to change governance arrangements once a devolution deal has been implemented and powers have been conferred on the local authority by regulations under section 16 of the Cities and Local Government Devolution Act 2016 ('the 2016 Act').

Effect

439 This clause introduces new sections 9NC (Transfer of functions: changes in governance arrangements not subject to a referendum) and 9ND (Transfer of functions: changes in governance subject to a referendum) to the 2000 Act. These apply where the Secretary of State has made regulations under section 16 of the 2016 Act to confer onto the local authority some

functions of a public authority; for example following agreement of a devolution deal between the government and local authority. It also amends sections 9KC, 9MB and 9MF accordingly.

440 New section 9NC, inserted by subsection (5) provides that where Secretary of State has made regulations under section 16 of the 2016 Act to confer public authority functions on a local authority, and where the local authority's governance model was adopted following a resolution, that local authority has to comply with certain requirement if it subsequently wishes to make one of the changes to its governance arrangements specified in 9NC(8).

441 9NC(3) requires the local authority to notify the Secretary of State of the local authority's proposed changes to governance arrangements. (4) requires the Secretary of State, on receiving a notification, to consider whether, as a result of the proposed change, the section 16 regulations should be amended or revoked. (6) provides that if the Secretary of State considers that the section 16 regulations should be amended or revoked, the local authority may not proceed with a resolution on changing governance arrangements until the regulations have been so amended or revoked.

442 Subsection (5) also inserts new section 9ND to the 2000 Act. This provides that where Secretary of State has made Section 16 regulations to confer public authority functions on a local authority, and where the local authority's governance model was adopted following a referendum, that local authority has to comply with certain requirements if it subsequently wishes make one of the changes to its governance arrangements specified in 9NC(8). 9ND(4) requires the local authority to notify the Secretary of State its proposed changes to governance arrangements. Subsection (5) provides that if the Secretary of State receives a notification, they are required to consider whether, as a result of the proposed change, the section 16 regulations should be amended or revoked. Under subsection (7) if the Secretary of State considers that the section 16 regulations should be amended or revoked, the local authority may proceed with a referendum but if the referendum approved the proposal, the local authority may not proceed with a resolution on changing governance arrangements until the regulations have been so amended or revoked.

443 Subsections (2) – (4) make corresponding changes to sections 9KC, 9MB and 9MF of the 2000 Act.

444 Subsection (6) amends section 17 of the 2016 Act to amend the factors to which the Secretary of State has regard when considering whether to revoke or amend section 16 regulations following a notification under the new sections 9NC and 9ND of the 2000 Act of proposed changes to a local authority's governance arrangements.

Clause 70: Power to transfer etc public authority function to certain local authorities

Background

445 This clause amends section 17 of the Cities and Local Government Devolution Act 2016 (the 2016 Act) to amend one factor the Secretary of State must consider is met before conferring a public authority function on a local authority, by regulations.

Effect

446 This clause amends section 17 to change the statutory requirements that the Secretary of State must consider is met before regulations can be made. The Secretary of State may make regulations under section 16 if the Secretary of State considers that doing so is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the relevant local authority's area. This should be read in conjunction with clause 69 which makes further changes to section 17 of the 2016 Act

Clause 71: Participation of police and crime commissioners at certain local authority committees

Background

447 Section 102 of the Local Government Act 1972 (LGA 1972) sets out provisions about appointments to local authority committees, including the appointment of PCCs. Section 102 (9) provides that a Police and Crime Commissioner is only to be represented on a committee discharging fire and rescue functions in so far as the business relates to those fire and rescue functions.

448 There is a risk that this legislation may be interpreted more widely than intended, potential resulting in PCCs being excluded from local authority committee meetings where the business of that meeting does not relate to the functions of a fire and rescue authority.

Effect

449 This clause amends section 102(9) to clarify that the restriction in subsection (9) only applies to meetings of committees discharging fire and rescue functions rather than other local authority committees to which section 102 applies. This makes it clear that PCCs can participate in local authority meetings where the business does not relate to fire and rescue.

Alternative mayoral titles

Clause 72: Combined authorities: alternative mayoral titles

Effect

450 This clause inserts four new sections into the Local Democracy, Economic Development and Construction Act 2009.

451 New section 107H alternative mayoral titles: new mayoral combined authorities enables mayoral combined authorities, by resolution, to change the title by which the mayor of the combined authority is known. Section 107H provides as set out below.

107H (Alternative mayoral titles: new mayoral combined authorities)

a. Subsection (3) sets out the alternative titles by which the mayor for the area of the MCA could be known. (3)e gives MCAs the power to resolve to choose a title other than those listed in subsections (a) to (d), providing the MCA has had regard to the title of other public office holders in the area of the MCA.

b. Subsection (4) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known.

c. (a) provides that a resolution must be considered at a relevant meeting of the MCA. Subsection (3) defines this to be either the first meeting of the MCA after the regulation to provide for the election of a mayor comes into force or the first meeting of the authority that is held after a qualifying mayoral election.

d. (b) provides that the details of the resolution must be included in the published details of the meeting. These are subject to the usual requirements on authorities for publishing details and papers of meetings so members of the public and others can consider the items that will be discussed.

e. (c) provides that where the resolution includes a title chosen by the MCA under (1)(e), the resolution must specify why the MCA considers this more appropriate than the other alternative titles mentioned in subsection (1).

f. (d) sets out the voting requirements needed to pass the resolution.

g. Subsection (5) applies the power in subsections (6) and (7) when an MCA changes the title by which the mayor for the area of the MCA is to be known to an alternative title. If the MCA decides to retain the title of mayor, then these subsections will not apply.

h. Subsection (6) requires the MCA to send notice of the change of title to the Secretary of State who may decide to direct the MCA to publish the notice of title in such a manner; the MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

i. Subsection (7) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

j. Subsection (8) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

k. Subsection (9) confirms the definition of "member of a combined authority" for this section.

l. Subsection (10) defines the term 'enactment' but disapplies it from this section and new section 107I of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act).

452 Clause 72 also inserts new Section 107I Alternative mayoral titles: existing mayoral combined authorities which enables existing mayoral combined authorities by resolution, to change the title by which the mayor of the combined authority is known. Section 107I provides as set out below.

107I (Alternative mayoral titles: existing mayoral combined authorities)

a. Subsection (1) defines who this section applies to.

b. Subsection (2) sets out the alternative titles by which the mayor for the area of the MCA could be known. (2)e gives MCAs the power to resolve to choose a title other than those listed in subsections (a) to (d) providing the MCA has had regard to the title of other public office holders in the area of the MCA.

c. Subsection (3) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known.

d. (a) provides that a resolution must be considered at the first meeting of the MCA held after a qualifying mayoral election.

e. (b) provides that the details of the resolution must be included in the published details of the meeting. These are subject to the usual requirements on authorities for publishing details and papers of meetings so members of the public and others can consider the items that will be discussed.

f. (c) provides that where the resolution includes a title chosen by the MCA under (2)(e), the resolution must specify why the MCA considers this more appropriate than the other alternative titles mentioned in subsection (2).

g. (d) sets out the voting requirements needed to pass the resolution.

h. Subsection (4) applies the power in subsections (5) and (6) when an MCA changes the title by which the mayor for the area of the MCA is to be known to an alternative title. If the MCA decides to retain the title of mayor, then these subsections will not apply.

i. Subsection (5) requires the MCA to send notice of the change of title to the Secretary of State who may decide to direct the MCA to publish the notice of title in such a manner; the MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

j. Subsection (6) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

k. Subsection (7) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

l. Subsection (8) defines a member of a combined authority for this section.

m. Subsection (9) defines the meaning of 'enactment' and 'qualifying election.'

n. Subsection (10) makes the section subject to section 107J.

453 Clause 72 also inserts new section 107J Alternative mayoral titles: further changes which makes provision for further changes to alternative mayoral titles where MCAs are already established. Section 107J provides as set out below.

107J (Alternative mayoral titles: further changes)

a. Subsection (1) applies where a resolution has been passed to change the title by which the mayor for the area of an MCA is to be known or where a resolution has been passed that the mayor should no longer be known by the alternative title.

b. Subsection (2) provides that an MCA may by resolution adopt the title of mayor again or adopt a new alternative title mentioned in subsection (3).

c. Subsection (3) provides the list of titles which the mayor can be known by with (e) giving MCAs the power to resolve to choose a title other than those listed in paragraphs (a) to (d) providing they have regard to the title of other public office holders in the area of the MCA.

d. Subsection (4) sets out the requirements that must be met in relation to the resolution at subsection (2). These are that a resolution must be considered at a relevant meeting of the MCA; that the details of the resolution must be included in the published details of the meeting; that where the resolution includes a title chosen by the MCA under (3)(e), the resolution must specify why the MCA considers this more appropriate than the other alternative titles mentioned in subsection (3), and sets out the voting requirements needed to pass the resolution.

e. Subsection (5) defines the meaning of 'relevant meeting' in subsection (4)(a) and outlines when a further resolution can be held – this must be at the first meeting of the MCA held after a qualifying election for the return of mayor, provided that the election is at least the third qualifying election since the resolution mentioned in subsection (1) was passed.

f. Subsection (6) requires that where an MCA has passed a resolution that the mayor of the MCA is no longer to be known by the alternative title but by the title of mayor,

they must send notice of the change to the Secretary of State who may direct the MCA to publish a notice in such a manner. The MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

g. Subsection (7) applies to subsections (8) and (9) where the MCA has resolves to change the title by which the mayor of the MCA is to be known to an alternative title.

h. Subsection (8) requires the MCA to send notice of the change of title to the Secretary of State who may direct the MCA to publish the notice in such a manner. The MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

i. Subsection (9) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

j. Subsection (10) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

k. Subsection (13) defines the terms 'enactment' and 'qualifying election'. Qualifying election means an election that isn't a first mayoral election for the MCA or an election that has taken place due to the mayor being unable to act as mayor anymore.

454 Clause 72 inserts new Section 107K Power to amend list of alternative titles which gives the Secretary of State the power to amend by regulations section 107H(1) or 107I(3) by adding, modifying or removing a reference to an alternative title or a description of an alternative title.

Clause 73: Local authorities in England: alternative mayoral titles

Effect

455 This clause amends the Local Government Act 2000 (the '2000 Act') by inserting new sections 9HF and 9HG into that Act.

Section 9HF alternative mayoral titles

a. This new section introduces a new power to allow local authorities, by resolution, to change the title by which the elected mayor of the authority is to be known as outlined below;

b. Subsection (1) sets out the alternative titles by which the mayor for the authority could be known. Paragraph (1)e gives authorities the power to resolve to choose a title other than those listed in paragraphs (a) to (d) providing they have regard to the title of other public office holders in the area of the authority.

c. Subsection (2) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known.

d. Paragraph (a) provides that a resolution must be considered at a relevant meeting of the authority.

e. Paragraph (b) provides that the details of the resolution must be included in the published details of the meeting. . Paragraph (c) provides that where the resolution includes a title chosen by the local authority under (1)(e), the resolution must specify

why the local authority considers this more appropriate than the other alternative titles mentioned in subsection (1).

f. Paragraph (d) sets out the voting requirements needed to pass the resolution. Subsection (3)(a) defines the meaning of 'relevant meeting' in the case of a local authority within subsection (8)(a) as the first meeting of the local authority held after a qualifying mayoral election. A qualifying election means an election that isn't the first mayoral election for the local authority or an election that has taken place due to the mayor being unable to act as mayor anymore.

g. Paragraph (b) defines the meaning of relevant meeting in the case of a local authority within subsection (8)(b) as the meeting of the authority at which the resolution under section 9KC (resolution of local authority) is passed.

h. Paragraph(c) defines the meaning in the case of a local authority within subsection (8)(c), as the first meeting of the local authority held after the referendum mentioned in section 9N is held.

i. Subsection (4) applies the power in subsections (5) and (6) when a local authority changes the title by which the mayor for the local authority is to be known to an alternative title. If the local authority decides to retain the title of mayor, then these subsections will not apply.

j. Subsection (5) requires the local authority to send notice of the change of title to the Secretary of State who may then decide

k. for the local authority to publish the name change in a way of his choosing with which the local authority must comply. It also places a requirement on the local authority to publish the notice in the area of the local authority in a manner it considers appropriate. Subsection (6) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed then the new title is read in the legislation instead of mayor.

l. Subsection (7) which has the effect that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed if there has been a name change.

m. Subsection(8) defines which local authorities fall within this subsection.

n. Subsection (9) gives the Secretary of State the power to amend by regulations subsection (1) by adding, modifying or removing a reference to an alternative title or a description of an alternative title.

o. Subsection (10) defines the term 'enactment' but disapplies it from this section and section 9HG. And defines the term 'qualifying election'.

p. Subsection (11) makes this section subject to section 9HG.

Section 9HG (Alternative mayoral titles: further changes)

q. This section makes further changes in respect of alternative mayoral titles where a title change has already been made.

r. Subsection (1) states that this section applies where a resolution has been passed to change the title by which the mayor for the area of an local authority is to be known or where a resolution has been passed that the mayor should no longer be known by the alternative title.

s. Subsection (2)(a) provides that a local authority may by resolution adopt the title of mayor again or adopt a new alternative title mentioned in subsection (3).

t. Subsection (3) provides the list of titles which the mayor can be known by with (e) giving authorities the power to resolve to choose a title other than those listed in paragraphs (a) to (d) providing they have regard to the title of other public office holders in the area of the authority.

u. Subsection (4) sets out the requirements that must be met in relation to the resolution at subsection (2). These are that a resolution must be considered at a relevant meeting of the local authority; that the details of the resolution must be included in the published details of the meeting; that where the resolution includes a title chosen by the local authority under (3)(e), the resolution must specify why the local authority considers this more appropriate than the other alternative titles mentioned in subsection (3) and sets out the voting requirements needed to pass the resolution.

v. Subsection (5) defines the meaning of 'relevant meeting' in subsection (4)(a) and outlines when a further resolution can be held – this must be at the first meeting of the local authority held after a qualifying election for the return of mayor, provided that the election is at least the third qualifying election since the resolution mentioned in subsection (1) was passed.

w. Subsection (6) requires that where a local authority has passed a resolution that the mayor of the authority is no longer to be known by the alternative title but by the title of mayor, they must send notice of the change to the Secretary of State who may direct the authority to publish a notice in such a manner. The authority must comply with this direction. It also places a requirement on the authority to publish the notice in its area in a manner it considers appropriate.

x. Subsection (7) applies to subsections (8) and (9) where the authority has resolved to change the title by which the mayor of the authority is to be known to an alternative title.

y. Subsection (8) requires the authority to send notice of the change of title to the Secretary of State who may direct the authority to publish the notice in such a manner. The authority must comply with this direction. It also places a requirement on the authority to publish the notice in its area in a manner it considers appropriate.

z. Subsection (9) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

aa. Subsection (10) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

bb. Subsection (11) gives the Secretary of State the power to amend by regulations subsection (3) by adding, modifying or removing a reference to an alternative title or a description of an alternative title.

cc. Subsection (12) defines the term 'enactment' and 'qualifying election'.

Local government capital finance

Clause 74: Capital finance risk management

Background

456 These provisions amend the Local Government Act 2003 (the "LGA 2003"). Section 1 of LGA 2003 enables local authorities as defined in section 23 of the Act to raise finance for capital expenditure without Government consent where they can afford to service the debt without Government support. Section 12 of that act provides that a local authority may invest its money for reasons that align with its functions or to manage its financial affairs. Local authorities must determine whether their capital strategies at the local level are affordable, in line with the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, SI 2003/3146 and having regard to the code of practice entitled the Prudential Code for Capital Finance in Local Authorities (the "Prudential Code").

457 Borrowing limits can be set by the Government under section 4 of the LGA 2003. Under section 4(1) these general limits can be placed for "national economic reasons". Under section 4(2), limits can be set where the borrowing is unaffordable. Affordability cannot be demonstrated where local authorities have taken on debt to invest in assets that are currently providing the authority with an income which it can supplement its service delivery with, but which might be presents risk for future financial failure.

Effect

458 This clause gives the power to the Secretary of State to intervene to address excessive risk by providing options for remediation, mitigation or even investigation.

459 Subsections (1) and (2) amend the 2003 Act by inserting insert sections 12A, 12B, 12C and 12D into the LGA 2003.

12A Risk-mitigation directions

a. Subsection (1) permits the Secretary of State to address financial risk to an authority by giving risk mitigation directions where a trigger event occurs and where such a direction would be appropriate and proportionate.

b. Subsection (2) defines a trigger event for the purposes of issuing a risk mitigation direction. These are where a risk threshold (see section 12B) is exceeded, where a local authority reports that its resources are unlikely to meet its financial obligations or the Secretary of State takes action to prevent that report having to be made.

c. Subsections (3), (4) and (5) provide a definition for 'risk-mitigation directions' and provide for what those directions may do. This includes setting limits on borrowing, which may vary according to the type of borrowing, and requiring property to be sold but may extend to requiring any appropriate and proportionate action by the authority to address financial risk. A risk mitigation direction is required to specify the time by which it must be complied with or for which it is to have effect.

d. Subsection (6) requires the Secretary of State to have regard to the impact on local service provision and the Best Value Duty in deciding whether to issue a direction.

e. Subsection (7) provides discretion to the Secretary of State to factor the impact upon central government objectives which might arise from a risk management direction in deciding whether to exercise the power to give that direction.

f. Subsection (9) defines 'financial risk' as the potential that a local authority will not be able to meet its current and planned spending within its resources amount exceeding the amount borrowed to facilitate the spending.

g. Subsection (8) provides for the limitations upon the issuing of risk mitigation directions under section 12C to apply for the purposes of this section, being that Secretary of State must provide notice to a local authority and have considered the written representation from that authority before a risk mitigation direction can be issued.

12B Risk thresholds

a. Subsection (1) establishes a process for assessing whether an authority's risk is excessive, by requiring Secretary of State to have regard to metrics in determining whether it is appropriate to the use the statutory powers. These capital risk metrics are how risk thresholds will be identified.

b. Subsection (2) defines capital risk metric' in reference to debt, capital and provision for repayment. It also provides a power to the Secretary of State to set further such metrics.

c. Subsection (3) allows the Secretary of State to make regulations regarding the thresholds for capital risk metrics and how the metrics should be calculated.

d. Subsection (4) imposes a duty to consult local authorities when setting additional metrics.

e. Subsection (5) provides definitions for 'capital asset', 'minimum revenue provision' and 'specified' as set out in this section.

f. Subsection (6) stipulates that particular thresholds might be set out in guidance.

12C Restriction of power to give risk-mitigation directions

a. Subsection (1) imposes a duty on the Secretary of State to provide a cessation notice to a local authority if a year has passed, they have followed the directions given and there appears to be no immediate financial risk.

b. Subsection 2 states that where the cessation notice has been given, risk mitigation directions may no longer be given in relation to risk that it was aware of at the time the notice was given.

c. Subsection (3) provides for consistency of definitions between 12A and 12C.

12D Duty to cooperate with independent expert

a. Subsection (1) outlines the circumstances in which this section applies, notably, when a trigger event has occurred, no cessation noticed has been issued and the Secretary of State has commenced a review into the local authority's finances.

b. Subsection (2) places a duty on a local authority to comply with an independent expert appointed by the Secretary of State to conduct a review, where it is reasonable for the local authority to do so.

c. Subsection (3) defines 'independent expert' as someone with expertise, who is neither working for the local authority nor is the Secretary of State. It also further provides consistency for the definition of a trigger event with the definition in 12A.

d. Subsections (3) to (8) make consequential changes to the 2003 act as a result of sections 12A-D.

> Example
>
> Following the consideration of data on the total borrowing of a local authority, government decides to request further information from that authority. Government identifies that that authority not only has a borrowing that is 100 times its Core Spending Power but that it owns a number of investment assets. Government identifies that this could cause a significant risk to the local authority's ability to provide services in the future if there is an economic shock or consumer attitudes change, meaning demand for that commercial asset drastically reduces. Therefore, government engages with the local authority and seeks additional information to identify whether it has any further borrowing and its plans for its commercial assets. Government identifies that that local authority is due to substantially increase its supply of housing in its local area and that it is in an area with high demand and low supply of affordable housing. Government commissions an independent review and identifies that that local authority owns a range of commercial assets, including a cinema, three out-of-town shopping centres and a hotel. Government concludes that the borrowing cap would be inappropriate in this instance and, following advice from the independent reviewer, decides to request the local authority sell its cinema, out-of-town shopping centres and hotel within a time that allows it to meet its best value duty (as determined by the specialist advice on investment by the independent reviewer).

Council tax

Clause 75: Long-term empty dwelling': England

Background

460 Currently, section 11B of the Local Government Finance Act 1992 provides for local authorities to apply extra council tax charge on properties defined as a long term empty dwelling. Subsection (8) defines long term empty dwellings as properties which are empty and substantially unfurnished for more than two years.

461 Section 11B(1C) provides that, from 1 April 2021 the maximum additional charges which may be applied are 100 percent of the standard council tax bill for long term empty dwellings which have remained empty for less than five years, up to 200 percent after five years and up to 300 percent after 10 years. Local authorities have the discretion on whether to apply a premium and at what level to apply the charge below these maximums.

Effect

462 The clause changes the definition of "long- term empty dwelling" to reduce the minimum period for which a property must be empty in order to fall within the definition from two years to one.

463 Subsection (1)(a) provides that billing authorities must have regard to any guidance issued by the Secretary of State when applying the council tax charge on long term empty dwellings.

464 Subsection (1)(b) amends the duration in the definition of long-term empty dwelling in section 11B (8) from two years to one, allowing local authorities to charge the 100 percent premium a year earlier.

465 Subsection (2) provides that the amended definition of "long-term empty dwelling" has effect for financial years beginning on or after 1 April 2024. It also provides that it does not matter whether the amended period of 1 year mentioned in section 11B(8) of the 1992 Act begins before clause 75 comes into force.

Clause 76: Dwellings occupied periodically: England

Background

466 The clause inserts new sections 11C and 11D into the Local Government Finance Act 1992.

11C Higher amount for dwellings occupied periodically: England

a. Subsections (1) and (2) have the effect of providing billing authorities in England with the discretion to increase the council tax payable on a dwelling where there is no resident, and which is substantially furnished (often referred to as a "second home"). The new section enables billing authorities to charge up to 100 percent extra of the standard council tax bill that would be payable if the property were occupied by two adults and no discounts were applicable.

b. Subsection 2(3) requires that, on the first occasion that a billing authority decides to apply a charge, it must make its determination to apply the charge at least one year before the beginning of the financial year in which the charge will be applied.

c. Subsection 2(4) provides that billing authorities must have regard to any guidance issued by the Secretary of State when applying the council tax charge on second homes.

d. Subsection 2(5) disapplies the discount available under section 11A(3), (4) or (4A) of the Local Government Finance Act 1992 (a discount on the amount of council tax payable in respect of dwellings in which there are no residents) when a billing authority makes a determination under the new section 11C.

e. Subsection (6) provides that a determination can be varied or revoked, but only before the start of the financial year in which it will apply.

f. Subsections (7) and (8) stipulate that where a determination is made, the billing authority must publish a notice in at least one newspaper circulating in its area. The notice must be published within 21 days of the date of the determination.

11D Section 11C: regulations

a) Section 11D (1) and (2) gives the power to the Secretary of State to make regulations prescribing categories of dwelling in relation to which the billing authority will not be able to charge extra council tax on homes occupied periodically.

b) Section 11D (3) and (4) gives the power to the Secretary of State to make regulations to vary the maximum council tax charge which can be charged on second homes. No regulations can be made under these sections until draft regulations have been approved by the House of Commons.

Consequential Amendments

467 Subsection (3) makes provision for a number of consequential amendments to sections 11, 11A, 13, 66, 67, 113 and schedule 2 of the Local Government Finance Act 1992 to take account of new sections 11C and 11D.

Commencement

468 Subsection 4 enables billing authorities to make a determination under section 11C for a financial year beginning on or after 1 April 2024, provided a determination was made at least one year before the start of the financial year in which it will apply.

Street names

Clause 77: Alteration of street names: England

Background

469 At present, local authorities in Greater London, and many local authorities outside Greater London (through choice of procedure as explained below), can alter street names without the consent of those on the street.

470 In Greater London, section 6 of the 1939 Act allows a local authority to make a street name alteration if it thinks fit provided it has complied with certain notification requirements (one months' notice of the intended alteration being posted in the street or delivered to all buildings on that street) and it has had regard to any objections received in response to this notification.

471 Outside of Greater London, local authorities may adopt one of two alternative regimes for the alteration of street names (by virtue of the 1972 Act). These are set out in section 21 of the 1907 Act and section 18 of the 1925 Act.

472 Where section 21 of the 1907 Act is adopted by a local authority, it requires two-thirds in number of the ratepayers and those liable to pay council tax in any street to have voted in favour of the street name alteration before it can be made.

473 Where section 18 of the 1925 Act is adopted by a local authority, it can alter the street name by order subject to certain notification requirements (the proposed order must be posted in the street not less than one month before the alteration is made). The order can be appealed by applying to the Magistrates' Court.

474 A local authority has a choice of whether to adopt the 1925 or the 1907 Act procedure by complying with certain notice requirements (advertisement in a local newspaper and notification to any affected parish or community council). This means local authorities can easily adopt the procedure which does not require the consent of those on the street to a street name alteration.

Effect

475 Regulations under this section will be used to set minimum requirements that a proposal for a street name change must meet, in order for a local authority to be able to make that change. The government will set a procedure which specifies whose consent must be sought, how to go about doing so and how consent may be given or withheld.

476 Clause 77 requires local authorities in England to obtain necessary support before altering a street name. It provides power for the Secretary of State to set out in regulations how this necessary support can be established.

477 Subsection (1) defines the local authorities who are given replacement or modified powers in relation to street name alterations.

478 Subsections (2) and (5) introduce the requirement that a street name alteration can only be made by a local authority with necessary support. Subsection (2) does this by conferring a replacement power on local authorities outside of Greater London. Subsection (5) does this by

modifying the existing power conferred on local authorities in Greater London by the 1939 Act.

479 Subsections (3) and (4) replicate the offence (with associated provision in relation to painting / marking) in section 21 of the 1907 Act and apply it to local authorities outside of Greater London. Level 1 on the standard scale is £200 as set by section 122 of the Sentencing Act 2020. The equivalent offence in section 10 of the 1939 Act, which applies to local authorities in Greater London, will continue to apply.

480 Subsection (6) establishes the requirement of sufficient local support, as well as other support for alterations of a specified kind, before a street name alteration can be made by a local authority.

481 Subsection (7) confers a power on the Secretary of State to make regulations providing for the ways in which sufficient local support, and other support for alterations of a specified kind, can be established before a street name alteration can be made by a local authority.

482 Subsection (8) provides a non-exhaustive list of those matters which the regulations may provide for in establishing sufficient local support. A referendum is specifically provided for as this may be one of the principal methods by which sufficient local support is established, but there may be alternative ways. 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. The regulations are intended to deal with other procedural matters for establishing sufficient local support, like the timing and conduct of any referendum.

483 Subsection (9) requires local authorities to have regard to guidance published by the Secretary of State, which deals with the ways in which necessary support can be established and other associated functions of local authorities in relation to street name alterations.

484 Subsection (10) overrides any provision of a local Act which would conflict with section 74. An example of a local Act which is intended to be overridden is section 13 of the Oxfordshire Act 1985, which deals with street name alterations.

485 Subsection (11) defines 'street' by reference to the New Roads and Street Works Act 1991, so that a consistent definition applies to the powers of local authorities relating to street name alterations.

486 Subsection (12) and Schedule 1 make consequential amendments to existing legislation so that the new requirements in section [74] apply throughout England, and so that the provisions relation to street name alterations in the 1907 Act, 1925 Act and 1972 Act continue to apply to Wales. Currently, the legislation governing the changing of street names is spread out over four acts: Public Health Acts Amendment Act 1907 (the 1907 Act) and the Public Health Act 1925 (the 1925 Act), the Greater London by the London Building Acts Amendment Act (LBAAA) of 1939 and the Local Government Act 1972. The Government is legislating to provide a single legislative framework across England.

Part 3: Planning

Chapter 1: Planning Data

Clause 78: Power in relation to the processing of planning data

Background

487 This is a new provision.

488 This clause gives the Secretary of State the power to regulate the processing of planning data by planning authorities, to create binding "approved data standards" for that processing. It also provides planning authorities with the power to require planning data to be provided to them in accordance with the relevant approved data standards.

Effect

489 Subsection (1) allows the Secretary of State to make planning data regulations to specify which planning data can be made subject to approved data standards, and requiring planning authorities to comply with those standards once created.

490 Subsection (2) defines "planning data" as information which is sent to or used by planning authorities under relevant enactments or for the purposes of planning or development.

491 Subsection (3) defines "approved data standards" as written standards with requirements regarding planning data, that may be published by the Secretary of State.

Clause 79: Power in relation to the provision of planning data

Effect

492 Subsection (1) allows planning authorities, by published notice, to require a person to provide them with planning data that complies with an approved data standard, that is applicable to that data.

493 Subsection (2) sets out exceptions for when planning authorities may not impose requirements under subsection (1), which include on the Crown and courts.

494 Subsection (3) stipulates that a person must comply with any approved data standards which are applicable that have been established through planning data regulations, in situations where discrepancies between planning enactments arise.

495 Subsection (4) allows planning authorities to reject all or any part of planning data from a person if they fail to comply with requirements under subsection (1).

496 Subsection (5) requires that planning authorities must serve the person with a notice by writing to inform them of this decision (under subsection (4)) and specify which aspects of planning data have been rejected, and, if any, what information or documents that accompany that planning data have been rejected.

497 Subsection (6) provides that where information is rejected as a result of a failure to comply with data standards, it must be treated as not having been submitted for the purposes set out in the notice rejecting that information.

498 Subsection (7) provides that if data is resubmitted and complies with the data standard, then the planning authority may treat it as having been submitted.

499 Subsection (8) allows regulations to make provision in support of planning authorities receiving or processing data in accordance with data standards set by the Secretary of State.

> Example (1):
>
> A planning authority creating their local plan: Currently planning authorities do not follow set standards in how they store or publish local plan information. Through these powers, contributions to the preparation of a local plan and the contents of a local plan will be required to be in accordance with approved data standards. This will render local plan information directly comparable, enabling cross-boundary matters to be dealt with more efficiently as well as the process of updating a local plan as planning authorities will benefit from having easily accessible standardised data.

> Example (2):
>
> Central government trying to identify all conservation areas nationally: In the existing system, planning authorities name their conservation areas using different terms (e.g., con area, cons area) making it hard for users of this data, such as central government to identify which areas are not suitable for development and what restrictions are in place. By setting a data standard which will govern the way in which planning authorities must name their conservation areas, and planning authorities publishing this machine-readable data, a national map of conservation areas can be developed which can be used to better safeguard areas of special importance.

Clause 80: Power to require certain planning data to be made publicly available

Background

500 This is a new provision. This clause gives the Secretary of State the power to make provisions to ensure that the standardised data created by planning authorities under clause 78, will be made openly available.

Effect

501 Subsection (1) allows the Secretary of State to make regulations requiring a planning authority to publish specified data under an approved open licence.

502 Subsection (2) clarifies that a requirement to publish data under subsection (1) does not override any obligations of confidence or other relevant restrictions on making that data available.

503 Subsection (3) defines an "approved open licence" allowing the Secretary of State to determine the form and content of that licence. This subsection requires the licence to set out the terms and conditions for the use of planning data published under that licence, which must include use being free of charge to the public.

Example (1):

Planning authority publishing planning information online: Whilst the majority of planning authorities may publish their site allocations online, they do so in different ways. This includes publishing them on an online map, in their local plans or in a standalone document. These can be inaccessible to new digital services and are often not available to download by other users. The provisions of this power will mean that data will be made freely available in a standardised format.

Example (2):

Article 4 directions (which set out additional planning restrictions in particular locations) are not always published by planning authorities: There is currently no requirement for planning authorities to publish Article 4 directions that are issued in their local area. This has made it difficult for applicants to know what rules to follow when they submit a planning application. Through the new powers, the Secretary of State may require planning authorities to openly publish their Article 4 directions online, to a set data standard, enabling all interested parties to understand the rules for development in an area.

Clause 81: Power to require use of approved planning data software in England

Background

504 This is a new provision. This clause gives the Secretary of State the power to approve software, that is in accordance with data standards, to be used by planning authorities.

Effect

505 Subsection (1) gives the power to the Secretary of State to make regulations which may prohibit or limit the use of software by planning authorities where it has not been approved by the Secretary of State in writing.

506 Subsection (2) defines the term "planning data software" as software which can be used by a planning authority to process planning data.

Clause 82: Disclosure of planning data does not infringe copyright in certain cases

Background

507 This power is intended to support the use of planning data, made available under clause 80.

508 This clause clarifies that in making planning data available which include copyright material for prescribed purposes, a planning authority does not infringe that copyright. In addition, it ensures that in using that planning data for those purposes a person does not infringe copyright.

Effect

509 Subsections (1) and (2) provide circumstances in which a planning authority or a person is not infringing on copyright when using copyrighted material. This is limited to the development, upgrading, modifying, maintaining or technical support of planning data software. Planning authorities are protected from copyright infringement when making copyrighted material available to a third party for use in these specified circumstances.

Clause 83: Requirement to consult devolved administrations

Background

510 The provision provides that the Secretary of State must consult the relevant Devolved Ministers where regulations contain provision within devolved competence.

Effect

511 Subsection (1) requires the Secretary of State to consult with Scottish Ministers before making planning data regulations within Scottish devolved competence.

512 Subsection (2) defines Scottish devolved competence for the purposes of subsection (1), that is, where the regulations could have been within the competence of the Scottish Parliament, made by Scottish Ministers or confers or removes a function on Scottish Ministers or public authorities.

513 Subsection (3) requires the Secretary of State to consult with Welsh Ministers before making planning data regulations within Welsh devolved competence.

514 Subsection (4) defines Welsh devolved competence for the purposes of subsection (3), that is, where the regulations could have been within the competence of Senedd Cymru, made by Welsh Ministers or confers or removes a function on Welsh Ministers or public authorities.

515 Subsection (5) requires the Secretary of State to consult with a Northern Ireland department before making planning data regulations within Northern Ireland devolved competence.

516 Subsection (6) defines Northern Ireland devolved competence for the purposes of subsection (2), that is, where the regulations could have been within the competence of the Northern Ireland Assembly without requiring the Secretary of State's consent, made by a Northern Ireland department or confers or removes a function on a Northern Ireland department or public authorities.

517 Subsection (7) refers to the definition of "Minister of the Crown" to be used in this Part.

Clause 84: Interpretation of the Chapter

Effect

518 This clause provides definitions of key terms that are used throughout Chapter 1 of Part 3.

519 Definitions of some of the terms cross reference to clause 78 to clause 83 as follows: planning data regulations (clause 78) (1); planning data (clause 78) (2); approved data standards (clause 78) (3); and planning data software (clause 81) (2)

520 This clause also defines the terms "process", "provided", "public authority", "relevant planning authority" and "relevant planning enactment".

521 The definitions of "relevant planning authority" and "relevant planning enactment" set out the planning authorities which can be made subject to requirements under this chapter and the enactments which can give rise to a function for the purposes of the definition of planning data. The definition of relevant planning authorities provides a power for the Secretary of State to make regulations which specify additional relevant planning authorities, where those authorities either have functions relating to planning or development in England or relating to nationally significant infrastructure projects. The definition of relevant planning enactments provides a similar power to make regulations specifying further relevant planning enactments where they confer functions regarding planning or development in England.

Chapter 2: Development plans etc
Development plans and national policy

Clause 85: Development plans: content

Background

522 The measures in this clause are procedural in nature to create consistency. They are intended to update existing definitions and references to provisions in the Planning and Compulsory Purchase Act (2004), to reflect changes proposed within this Bill.

Effect

523 Subsection (1) gives effect to the amendments made by subsections (2) to (4) to section 38 of the Planning and Compulsory Purchase Act 2004.

524 Subsections (2) and (3) insert a new subsection (2A) into section 38 of the Planning and Compulsory Purchase Act 2004 which says what elements collectively constitute the development plan for any given area of land (whether that land is wholly within or cuts across local planning authority boundaries), replacing section 38(2) and (3). It defines the development plan in terms of the commonly-used terms for its constituent documents, such as 'local plan'.

525 Subsection (4) substitutes a new subsection (9A) which cross—refers to the new provisions where the definitions of those elements are to be found.

Clause 86: Role of development plan and national policy in England

Background

526 Where planning Acts require that regard be had to a development plan in making any determination, section 38 (6) of The Planning and Compulsory Purchase Act 2004 currently allows departures from the development plan where material considerations indicate that the departure is warranted.

527 Clause 83 replaces this formulation and provides that determinations must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.

Effect

528 Subsection (2) inserts subsections (5A)-(5C) into section 38 of the Planning and Compulsory Purchase Act. Inserted subsection (5A) provides that subsections (5B) and (5C) apply in England where the planning Acts require that regard be had to a development plan and any national development management policies. Inserted subsection (5B) requires that those planning decisions must be made in accordance with that development plan and national development management policies unless material considerations strongly indicate otherwise. Subsection (5B) is subject to the existing provision regarding internal conflict between components of the development plan (subsection (5)) and to new subsection (5C), which provides that in the event of conflict between the development plan and national development management policy, national development management policy has primacy.

529 Subsection (3) disapplies in England the current formulation of the weight to be given to the development plan (leaving subsection (6) applying only to Wales).

530 Subsection (4) provides for the interpretation of national development management policy.

Clause 87: National development management policies: meaning

Background

531 At present, the Planning and Compulsory Purchase Act does not give statutory weight to development management policies set out by the Secretary of State.

532 This clause inserts new section 38ZA to provide a statutory basis for those policies.

Effect

533 New section 38ZA(1) defines national development management policy. This provides that it is a policy of the Secretary of State which the Secretary of State, by direction, designates should be a national development management policy, and which concerns the development or use of land in England.

534 New section 38ZA(2) allows the Secretary of State to modify or revoke national development management policies.

535 New section 38ZA(3) requires the Secretary of State to consult the public or others as the Secretary of State thinks appropriate before making modifying or revoking a national development management policy.

Spatial development strategy for London

Clause 88: Contents of the spatial development strategy

Background

536 Existing legislation (Section 334 of the Greater London Authority Act 1999) provides for the matters that may be included in the Mayor's spatial development strategy. This section updates and amends that provision.

537 The powers within the GLA Act 1999 regarding SDSs have been and potentially will be conferred on some combined authorities, and as such will affect areas other than just London.

Effect

538 This section updates and amends Section 334 of the Greater London Authority Act 1999. It provides for greater clarity in the matters that can and cannot be covered by a spatial development strategy.

539 Subsection (1) sets out that this clause will have the effect of amending clause 334 of the GLA Act 1999

540 Subsection (2) inserts (2A-2C) to set out what an SDS either must or may include. Subsection (2D) provides that any matter can only be considered a strategic matter for London if it is of strategic importance to more than one London borough. Subsection (2)(2E) enables the Secretary of State to set out in regulations any further matters that the spatial development strategy may or must include.

541 Subsection (3) sets out a duty that the spatial development strategy must be designed to secure that the use and development of land contribute to the mitigation of, and adaption to, climate change; and provides that the strategy should not include matters that extend beyond those prescribed, be site specific or be inconsistent with or repeat national development management policies.

Clause 89: Adjustment of terminology

Background

542 This is a change from the previous position where the London Spatial Development Strategy, once prepared in its final form was "published".

Effect

543 Clause 89 sets out that the London Spatial Development Strategy, once prepared in its final form, is to be "Adopted" and that the Mayor must issue a statement of adoption. This change will also apply to any SDS prepared by a mayoral combined authority using the powers set out in the GLA Act 1999 and conferred to them via Regulations. This change mirrors the situation for the new Joint SDS provided for under Schedule 7 Clauses 15A- 15AI. This change means that there is consistent terminology between Local Plans and SDSs and avoids differing contexts to the use of the term "published"

544 Subsections (1-4) set out the various clauses in the Greater London Authority Act 1999 and the Town and Country Planning Act 1990 where the terminology will be changed from publish, publishes, published, publication etc to adopt, adopts, adopted, adoption etc.

Local planning

Clause 90: Plan making

Effect

545 This section introduces Schedule 7. Schedule 7 replaces Part 2 of the Planning and Compulsory Purchase Act 2004, 15 to 37.

Neighbourhood planning

Clause 91: Contents of a neighbourhood development plan

Background

546 The existing neighbourhood planning powers, which were introduced through the Localism Act 2011, allow a 'qualifying body' (i.e. a parish council or a neighbourhood forum in an unparished area) to prepare a neighbourhood development plan, through which they can set plan policies and, where they wish, allocate land for development, for their designated neighbourhood plan area.

Effect

547 Subsection (1) states that section 38B of PCPA 2004 (provisions that may be made by neighbourhood development plans) will be amended as detailed in subsections (2) to (4).

548 Subsection (2) provides that subsection (A1) will be inserted before subsection (1) and provides detail as to what can be included within a neighbourhood plan.

549 Subsection (A1) (a) sets out that a neighbourhood plan can allocate land for development in the neighbourhood area, setting out the amount, type and location, and timeframe for delivery of that development.

550 Subsection (A1) (b) sets out that a neighbourhood plan can include other land use or development related policies in relation to particular characteristics or circumstances of the neighbourhood area.

551 Subsection (A1) (c) sets out that a neighbourhood plan can detail any infrastructure and affordable housing requirements arising from development that complies with policies that relate to matters set out in paragraphs (a) – (b).

552 Subsection (A1) (d) sets out that a neighborhood plan can set specific design requirements that would need to be met (across the neighbourhood area or in particular locations) in order for planning permission for development to be granted.

553 Subsection (3) states that after subsection (2A) of section 38B, subsection (2B) and (2C) will be inserted. Subsection (2B) provides that so far as considered appropriate, the plan must be designed to secure that the development and use of land in the neighbourhood area contribute to the mitigation of, and adaption to, climate change. Subsection (2C) provides that a neighbourhood development plan must not include matters that are not permitted or required under subsections (A1) to (2A) or under regulations under subsection (4) and cannot be inconsistent with or repeat policy that already exists within national development management policy.

554 Subsection (4) states that in subsection (4)(b), after the 'requiring' the addition of 'or permitting' will be added.

Clause 92: Neighbourhood development plans and orders: basic conditions

Background

555 Neighbourhood development plans and neighbourhood development orders must meet a set of basic conditions set out in paragraph 8(2) of Schedule 4B of the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 before they can be put to referendum and ultimately 'made'.

Effect

556 Subsection 1 (a) removes the historic inclusion of paragraph (e) under paragraph 8(2) of Schedule 4B to TCPA 1990 (basic conditions for making neighbourhood development order or neighbourhood plan) and replaces it with paragraph (ea) which sets out that a neighbourhood development order must not prevent housing development from taking place which is proposed in the development plan for the local area.

557 Subsection 1(b) inserts paragraph (fa) into paragraph 8(2) of Schedule 4B to TCPA 1990 (basic conditions for making neighbourhood development orders or neighbourhood plans) to require that neighbourhood development orders and neighbourhood plans must comply with requirements resulting from the new environmental assessment framework.

558 Subsection 2 introduces a new basic condition for neighbourhood plans only which sets out that they must not result in the development plan for the area proposing less housing development than would have been the case if the plan were not to be made.

Effect

559 This section introduces Schedule 7. Schedule 7 replaces Part 2 of the Planning and Compulsory Purchase Act 2004, 15 to 37.

Requirement to assist with plan making

Clause 93: Requirement to assist with certain plan making

Background

560 The clause is intended to support more effective gathering of the information required for authorities producing:

- Local Plans, minerals and waste plans, supplementary plans and policies map
- Strategic plans

- Infrastructure Delivery strategies
- Marine plans

561 Schedule 7, which substitutes sections 15 to 37 of the PCPA 2004, abolishes the Duty to Co-operate, currently section 33A of the PCPA 2004. The Duty to Co-operate currently requires various bodies to co-operate on particular matters when performing certain activities, such as the production of a local plan.

562 Despite the abolition, there is a continued need for engagement between the plan-making authorities and prescribed public bodies when planning development to enable delivery of infrastructure at a local or strategic level.

563 Without such provision, there is a risk that those who need to be involved in the plan-making process will not be. This provision therefore ensures key stakeholders (the prescribed public bodies) who influence the delivery and planning of infrastructure are required to be involved in the plan-making process.

Effect

564 This clause amends the PCPA 2004, inserting a new section 39A.

565 The new section 39A as a whole places a requirement on specific bodies ('prescribed public' bodies) to assist in the plan-making process, if requested by a plan-making authority. The section requires 'prescribed public bodies' to do everything asked by the plan-making authorities (defined in subsection (4)), so long as it is within reason in relation to plan preparation and revision.

566 Subsection (3) contains a power enabling the Secretary of State to make regulations to further specify what a plan-making authority may or may not require 'prescribed public bodies' to do and to specify the form and content of any information requested.

567 Subsection (6) allows the Secretary of State to prescribe which persons or bodies are on the list of 'prescribed public bodies', for example a rail infrastructure operator. As per section 122 (3) of the PCPA 2004, the Secretary of State may specify different provision for different prescribed public bodies.

> Example
>
> A local authority is doing preliminary scenario testing for their new local plan and they are considering an urban extension that requires new access roads and a train station expansion. The Local Planning Authority contacts the relevant bodies to seek their views on the deliverability of these proposals.
>
> The relevant bodies are then required to engage once contacted by the authority. They then must do everything that the local authority 'reasonably requires' of it to engage in relation to the preparation of the local plan.
>
> The relevant bodies may need to provide the necessary evidence/information an authority requires to inform their strategic policy decision-making, or a relevant body may be consulted on the deliverability of a proposed scenario.

Minor and consequential amendments

Clause 94: Minor and consequential amendments in connection with Chapter 2

Effect

568 This clause introduces Schedule 8. Schedule 8 makes amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004. All these amendments are consequential upon the provisions of the Act.

Chapter 3: Heritage

Clause 95: Regard to certain heritage assets in exercise of planning functions

Background

569 Local planning authorities are under a statutory duty to have special regard to the preservation of Listed Buildings and Conservation Areas in the exercising of their planning functions. This clause extends this duty to Scheduled Monuments, Protected Wreck Sites, Registered Parks and Gardens, Registered Battlefields or World Heritage Sites.

Effect

570 Subsection (1) amends the TCPA to insert section 58B.

Clause 58B Duty of regard to certain heritage assets in granting planning permission or permission in principle.

a) Subsection (1) specifies that a local planning authority or (as the case may be) the Secretary of State must have special regard to the desirability of preserving or enhancing a heritage asset or its setting when considering whether to grant planning permission or permission in principle for the development of land in England.
b) Subsection (2) specifies that for the purpose of subsection (1), preserving or enhancing a relevant asset or its setting includes, in particular, preserving or enhancing any feature, quality or characteristics of the asset or setting that contributes to the significance of the asset.
c) Subsection (3) inserts a table setting out a list of relevant assets. The table also sets out their significance, in relation to the relevant asset.
d) Subsection (4) specifies that the reference in subsection (1) to local planning authorities also includes the Mayor of London in relation to the granting of planning permission by Mayoral development order.
e) Subsection (5) specifies that nothing in 58B applies in relation to neighbourhood development orders (except as provided in schedule 4B).

571 Subsection (2) specifies how the duty of regard should be applied to the process for making of neighbourhood development orders and its independent examination. (a)(i) allows for consideration of preservation or enhancement, over just preservation. (a)(ii) inserts a requirement to have special regard to the desirability of preserving or enhancing anything that is a relevant asset for the purposes of section 58B or its setting, in if it is appropriate to make the order. (b) inserts (4A) and (4B) which applies sub paragraph (2)(ca) in relation to something that is a relevant asset for the purposes of section 58B only in so far as the order grants planning permission for development that affects that asset or its setting; and subsections (2) and (3)(b) of section 58B apply for the purposes of sub-paragraphs (2)(ca) and (4A) as they apply for the purposes of that section.

572 Subsection (3) amends section 16 of the Listed Building Act to allow for consideration of preservation or enhancement, over just preservation, when considering whether to grant listed building consent.

573 Subsection (4) amends Sections 66 of the Listed Buildings Act to include the Mayor of London with subsection (a) and allow for consideration of preservation or enhancement, over just preservation, in subsection (2).

Clause 96: Temporary stop notices in relation to listed buildings

Background

574 This clause amends the Listed Buildings Act, enabling a local planning authority which suspects unauthorised works were being carried out on a listed building, to issue a temporary stop notice requiring the works to stop for up to 56 days, to allow the local authority to investigate the suspected breach and establish the facts of the case. This clause also creates an offence for contravention of such a notice.

Effect

575 Subsection (1) amends the Listed Buildings Act.

576 Subsection (2) inserts a new clause 44AA, 44AB and 44AC into the Act.

Clause 44AA: Temporary stop notices In England

a. Subsection (1) applies where it appears to a Local Planning Authority in England that works have been or are being executed to listed buildings and where works involve a contravention of section 9 (1) or (2).

b. Subsection (2) depicts that the authority may issue a temporary stop notice if, having regard to the effect of the works, they consider it is expedient that either part, or full works be stopped immediately.

c. Subsection (3) outlines that a temporary stop notice must be in writing and must specify; the works in question, prohibit execution of the works specified in the notice, set out the authorities' reasons for the notice and include a statement of the effect of section 44AB.

d. Subsection (4) states that a temporary stop notice may be served on a person who appears to the authority that they are executing the works or causing their execution, to have an interest in the building or be an occupier of the building in which the notice has been served.

e. Subsection (5) requires the authority to display a copy of the notice including the date it was first displayed on the building.

f. Subsection (6) specifies that a temporary stop notice takes effect when the copy of it is displayed in accordance with subsection (5).

g. Subsection (7) states that a temporary stop notice ceases to have effect at the end of a period of 56 days beginning in accordance with the date specified in subsection (5) or if the notice specifies a shorter period at the end of that period.

h. Subsection (8) specifies that if the authority withdraws the notice before the time specified in subsection (7), the notice ceases to have effect on its withdrawal.

i. Subsection (9) outlines that a local planning authority may not issue a subsequent temporary stop notice in relation to the same works unless the authority has taken other enforcement action in relation to the contravention referred to in subsection (1) (b) since issuing the previous notice.

j. Subsection (10) specifies that the reference to other enforcement action in subsection (9) includes a reference to obtaining an injunction under section 44A

k. Subsection (11) states that a temporary stop notice does not prohibit the execution of works of such description or in such circumstances as the Secretary of State may by regulations prescribe.

44AB Temporary stop notices in England: Offence

a) Subsection (1) outlines that a person is guilty of an offence if the person contravenes or permits a contravention of a temporary stop notice which has been served on the person under section 44AA(4) or a copy of which has been displayed in accordance with section 44AA(5).

b) Subsection (2) states that an offence under this section may be charged by reference to a day or to a longer period and accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.

c) Subsection (3) specifies that in proceedings against a person for an offence under this section, it is a defence for the person to show that the person did not know and could not reasonably have been expected to know of the existence of the temporary stop notice.

d) Subsection (4) outlines other defences for a person in proceedings for an offence under this section. This includes them being able to show that works to the building were urgently necessary and that it was not practical to secure safety or health in the preservation of the works, that the work carried out was to the limited to the minimum immediately necessary and that notice was given in writing to the local planning authority justifying in detail the works as soon as reasonably practical.

e) Subsection (5) states that a person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

f) Subsection (6) sets out the regard a court must have when imposing a fine on a person convicted under this section. The court must particularly have regard to any financial benefit which has accrued or appears likely to accrue to the person as a consequence of the offence.

44AC Temporary stop notices in England: Compensation

a) Subsection (1) states that a person who has an interest in the building, on the day when a temporary stop notice is first displayed and makes a claim to the local planning authority within the prescribed time and manner, entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.

b) Subsection (2) states that subsection (1) only applies if the works specified in the notice are not in contravention of section 9(1) or (2) or if the authority withdraws the notice (but only if the local planning authority withdraws the notice other than following the grant listed building consent after the date specified in the notice)

c) Subsection (3) states that loss or damages in respect of which compensation is payable

includes a sum payable in respect of a breach of contract caused by taking necessary action to comply with the notice.

d) Subsection (4) states that no compensation is payable in the case of loss or damaged suffered if (a) the claimant was required to provide information under a relevant provision and (b) the loss or damaged could have been avoided if the claimant had provided the information, or otherwise co-operated with the planning authority, when responding to the notice.

e) Subsection (5) defines the relevant provisions in subsection (4) (a).

f) Subsection (3) inserts 44AC into section 31 (general provisions as to the compensation for depreciation under this Part) of the Listed Buildings Act.

g) Subsection (4) applies section 44B (temporary stop notices) to Wales only.

h) Subsection (5) applies section 44C (temporary stop notices: offences) to Wales only.

i) Subsection (6) applies section 44D (compensation in relation to temporary stop notice) to Wales only.

j) Subsection (7) applies 44AA, 44AB and 44AC to section 45 (concurrent enforcement functions in London of the Historic Buildings and Monuments Commission).

k) Subsection (8) provides for the ability for the Secretary of State to issue a temporary stop notice under section 46 (concurrent enforcement functions of the Secretary of State) in respect of any land in England.

l) Subsection (9) creates an exception for the application of 44AB to Crown land.

m) Subsection (10) allows for rights of entry under section 88 to a person duly authorized in writing by the Secretary of State, a local planning authority in England or, where the authorization relates to a building situated in Greater London, the Commission, to secure the display of a temporary stop notices under section 44AA, ascertain whether a temporary stop notice is being complied with, or consider any claim for compensation under section 44AC.

n) Subsection (11) creates an exception for the application of section 88B subsection (1), requiring twenty four hours notice be given prior to entry, to those people intending to enter land for either the purposes of displaying a temporary stop notice or ascertaining whether a temporary stop notice is being complied with.

o) Subsection (12) sets out how a temporary stop notice would interact with a building preservation notices.

Clause 97: Urgent works to listed buildings: occupied buildings and recovery of costs

Background

577 Subsections 54(4A), (5A) and 55(5A)-(5G) in the Planning (Listed Buildings and Conservation Areas) Act 1990 (the '1990 Act') were inserted by the Welsh Government in 2016 into the Listed Buildings Act to extend the scope and options for the recovery of costs in relation to urgent works on listed buildings.

578 Urgent works are generally restricted to urgent repairs to keep a building weather-proof and safe from collapse, or action to prevent vandalism or theft.

579 The changes in Wales also enabled that where the whole or part of the building is in residential use, works may be carried out only where they would not interfere unreasonably with that use. This is subject to giving the occupier and owner seven days' notice.

580 This clause extends similar provisions to listed buildings in England.

581 The existing legislation allows for the recovery of costs for undertaking urgent works to a listed building through the serving of a notice on the owner. The owner may contest the recovery of expenses by making representations to the Secretary of State who will then determine the amount that is recoverable.

Effect

582 The effect of this clause, by omitting subsection (4) of section 54B, extends the scope of existing provisions so that urgent works can be carried out to buildings that are both occupied and in use in England. Section 54(5A) sets out the relevant notice period that must be given in writing of the intention to carry out the works.

583 55(5A)-(5G) sets out the procedure for the recovery of costs associated with the works, including for decisions made by the Secretary of State.

584 (3)(c) and (d) deviate from the existing Welsh measures, changing when a notice in England would become operative.

Clause 98: Removal of compensation for building preservation notice

Background

585 Local planning authorities may serve a Building Preservation Notice (BPN) on the owner and occupier of a building which is not listed, but which they consider is of special architectural or historic interest and is in danger of demolition or alteration in such a way as to affect its character as a building of such interest.

586 If a BPN is served, an application to list the building must be made at the same time to Historic England. A BPN takes effect when it is served on the owner and occupier and is in force for a maximum of six months until either the Secretary of State for Digital, Culture, Media and Sport lists the building or informs the authority that they do not intend to do so. If no decision (either to list or not to list) is taken in the six-month period, the BPN will lapse.

587 Whilst the BPN is in force, the building is subject to the same protection as a listed building and any works to the building will require listed building consent. If works are carried out without listed building consent the local planning authority can take enforcement action or institute criminal proceedings.

588 Presently, under the terms of section 29 of the Listed Buildings and Conservation 1990 Act ("the 1990 Act"), any person who at the time when a BPN was served has an interest in the building may make a claim to the local planning authority for compensation for any loss or damage directly attributable to the effect of the BPN. Clause 95 removes the right to compensation.

Effect

589 Subsection (1) amends section 29 of the Listed Building Act and omits subsections (1) and (1A) from section X of the Listed Buildings Act to remove the right to claim compensation in England. Subsection (2) states that the change does not apply to any BPN issued before subsection (1) comes into force.

Chapter 4: Grant and Implementation of Planning Permission

Clause 99: Street Votes

Background

590 This clause introduces a new planning consent regime that enables residents to propose development on their street and, subject to the proposal meeting certain requirements, to vote on whether that development should be given planning permission. This is intended to encourage residents to consider the potential for additional development on their streets, and support a gentle increase in densities, in particular, in areas where additional new homes are needed.

Effect

591 Clause 99 makes provision for street vote development orders. The orders will grant planning permission in relation to street areas in England. The provisions confer regulation-making powers relating to the preparation and making of an order, including provision for independent examination and a referendum.

592 Subsection (1) amends the TCPA 1990 in accordance with subsection (2) by inserting new sections 61QA to 61QM.

Section 61QA Street vote development orders

a. Subsection (1) specifies that a qualifying group or someone acting on the group's behalf can submit a proposal for a street vote development order.

b. Subsection (2) specifies that a street vote development order grants planning permission for development specified in that order.

Section 61QB Qualifying groups

a. Subsection (1) specifies that a group of individuals meets the criteria for a "qualifying group" if the members of the group meet the conditions specified in subsection (2) and the group is made of up of a minimum number or proportion of people prescribed in regulations.

b. Subsection (2) specifies that individuals must be registered to vote at an address in the street area and be on the register of local government electors of a relevant council on a prescribed date.

c. Subsection (3) defines a relevant council and subsection (4) provides definitions of other terms in the section.

Section 61QC Meaning of "street area"

a. Subsection (1) specifies that an area meets the criteria for a street area if it is in England, meets the definition prescribed in regulations and is not within an excluded area.

b. Subsection (2) specifies the list of excluded areas.

c. Subsection (3) specifies that the Secretary of State can add an area to the list of excluded areas or amend or remove an existing entry.

d. Subsection (4) defines a "world heritage property" which is on the list of excluded areas.

Section 61QD Process for making street vote development orders

a. Subsection (1) specifies that the Secretary of State must set out the process for preparing and making a street vote development order in regulations (known as SVDO regulations).

b. Subsection (2) specifies that the regulations made under subsection (1) must make provision for the appointment by the Secretary of State of a person or persons to handle and examine proposals and make street vote development orders on behalf of the Secretary of State and must set out the circumstances when an order may be made, which must include a requirement to hold a referendum.

c. Subsection (3) specifies other provision, in particular, that the Secretary of State can make in SVDO regulations in respect of the process for making street vote development orders, such as the functions of the qualifying group, the independent examiner and the local planning authority, submission requirements for proposals, the examination procedure, publicity and consultation requirements and the making and consideration of representations on proposals.

Section 61QE Referendums

a. Subsection (1) specifies that the Secretary of State can make SVDO regulations setting out the process and requirements for holding a referendum on a street vote development order, including in particular, provision for the functions of local councils and the conduct of a referendum, voter eligibility, publicity requirements, limits on expenditure and the threshold for approval.

b. Subsection (2) specifies that for the purpose of making provision for holding a referendum, regulations can apply or incorporate provision made by existing electoral enactments, but subsection (3) specifies that any provision applying offences cannot specify harsher penalties for committing those offences.

c. Subsection (4) requires the Secretary of State to consult the Electoral Commission before making regulations on referendums.

d. Subsection (5) specifies that reference to enactments mean enactments whenever they are passed or made.

Section 61QF Regulations: general provisions

a. This section specifies that SVDO regulations may (a) provide for exemptions including exemptions which are subject to conditions and (b) confer a function on a person including functions involving the exercise of discretion.

Section 61QG Provision that may be made by a street vote development order

a. Subsection (1) specifies that a street vote development order can relate to all the land, some of the land or a particular site specified in the order.

b. Subsection (2) specifies that street vote development orders can only grant planning permission for development of a prescribed type, which is not excluded development and meets other prescribed conditions.

c. Subsection (3) specifies that a street vote development order can make different provision for different purposes.

Section 61QH Meaning of "excluded development"

a. Subsection (1) specifies the list of excluded development.

b. Subsection (2) specifies that the Secretary of State can add a category of development to the list of excluded development or amend or remove an existing category.

Section 61QI Permission granted by street vote development orders

a. Subsection (1)(a) specifies that the Secretary of State can, by regulations impose conditions or limitations on planning permission granted by a street vote development order including, by virtue of subsection (7), conditions that confer a function on any person including a function involving the exercise of discretion.

b. Subsection (1)(b) sets out that planning permission is also subject to conditions or limitations specified in the order itself (but see subsections (4) and (6)).

c. Subsection (2) specifies that conditions specified in the order can have the effect that:

   i. development (or part of the development) may not be commenced; or

   ii. anything created in the course of the development may not be occupied or used,

   iii. unless a relevant obligation (i.e. a section 106 obligation or section 278 agreement – see subsection (10)) has been entered into. Subsection (3) specifies that such obligations can involve the payment of money or rights over land.

d. 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).

e. Subsection (5) specifies that the Secretary of State can add a requirement to the list of requirements under subsection (4)(a)-(c) or amend or remove an existing requirement.

f. Subsection (6) enables the Secretary of State to prescribe planning conditions and limitations that cannot be imposed, or can only be imposed in prescribed circumstances, or prescribe circumstances where no conditions or limitations at all can be imposed.

g. Subsection (8) specifies that if a grant of planning permission through a street vote development order is withdrawn by revocation the development can be completed if it is already underway, but subsection (9) allows for the revoking order to disapply subsection (8).

h. Subsection (10) defines a relevant obligation.

Section 61QJ Revocation or modification of street vote development orders

a. Subsection (1) specifies that the Secretary of State can revoke or modify planning permission granted by a street vote development order and subsection (2) specifies that a local planning authority can revoke an order but only with the consent of the Secretary of State.

b. Subsection (3) specifies that if a street vote development order is revoked, the Secretary of State or local planning authority must provide reasons for the decision.

c. Subsection (4) specifies that a person appointed by the Secretary of State can modify a street vote development order to correct errors.

d. Subsection (5) specifies that when a street vote development order is modified it must be done by an order replacing the original order.

e. Subsection (6) specifies that the Secretary of State can set out the process for modifying or revoking a street vote development order in regulations and Subsection (7) sets out what provision regulations may, in particular, include.

Section 61QK Financial assistance in relation to street votes

a. Subsection (1) specifies that the Secretary of State may do anything considered appropriate for the purpose of promoting street vote development orders and provide advice and assistance in relation to street vote development orders.

b. Subsection (2) specifies that assistance provided by the Secretary of State can include financial assistance or the provision of support through a contractor.

c. Subsection (3) clarifies that the advice and support can include training or education and that financial assistance can take any form including a loan.

Section 61QL Street votes: connected modifications

a. Subsection (1) gives power for the Secretary of State to make regulations modifying or excluding the application of Schedule 7A of the TCPA (biodiversity net gain) in respect of street vote development orders.

Section 61QM Interpretation

a. Subsection (1) defines terms used in sections 61A to 61QL.

b. Subsection (3) amends section 58 of the TCPA to specify that planning permission can be granted by a street vote development order.

c. Subsection (4) amends section 69 of the TCPA so that local planning authorities can be required by regulations to include information about street vote development order proposals and orders on the Planning Register which they are required to maintain under that section.

d. Subsection (5) amends section 78 of the TCPA to provide a right of appeal to the Secretary of State in respect of a decision by a local planning authority to refuse an application for approval required under a condition or to grant it conditionally or a failure to make a decision.

e. Subsection (6) amends section 108 of the TCPA so that the compensation provisions in s107 of the Act apply when permission granted by street vote development orders is withdrawn by revocation or modification of the order. These compensation arrangements mirror those in place for other planning consent routes.

f. Subsection (7) amends section 333 of the TCPA by inserting (3ZAA) and (3ZB). The effect of (3ZB) is that regulations made under sections 61QC(3), 61QH(2) and 61QI(5) are subject to the affirmative procedure. Regulations made under provisions under sections 61QB to 61QJ or section 61QL are made under the negative procedure. The effect of 93ZAA0 is that negative procedure regulations may be combined with affirmative procedure regulations and made subject to the affirmative procedure.

g. Subsections (8) to (12) amend regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats regulations) to impose a condition on planning permission granted under street vote development order so that development for which permission is granted by street vote development order which is likely to have a significant effect on a European protected site cannot

commence without the written approval of the local planning authority and makes provision to require the local planning authority to carry out an appropriate assessment in relation to such projects that are likely to have a significant effect on a European site. Subsection (10) makes provision for consultation with the appropriate nature conservation body (Natural England or Natural Resources Wales, as the case may be). This approach is similar to how the Habitats regulations apply to permitted development rights.

h. Subsection (13) amends regulation 85B of the Habitats regulations which applies an assumption when considering impacts on protected sites, that upgrades to wastewater treatment works in nutrient neutrality catchments will be in place by 2030. The effect of these clauses is set out in more detail in relation to 1268-1270 of schedule 12. This amendment clarifies the heading of regulation 77 to make clear that the assumption applies to street vote development orders.

Clause 100: Street votes: community infrastructure levy

Background

593 This clause amends the community infrastructure levy (CIL) provisions in the Planning Act 2008 to facilitate the levying of CIL on development consented through street vote development orders ("street vote development") by:

a. allowing CIL regulations to provide for the procedure – which may be an expedited procedure – applicable where a CIL charging authority proposes to introduce or revise CIL rates applicable (only) to street vote development, subject to a power for the Secretary of State to direct a review if they consider that the rates set via that procedure significantly impair, or risk significantly impairing, the viability of street vote development; and

b. expressly providing that CIL regulations may allow CIL received in respect of street vote development to be spent on affordable housing.

Effect

594 The introduction or revision of a CIL charging schedule by a CIL charging authority is ordinarily governed by ss. 212-213 and 214(1) and (2) of the Planning Act 2008, together with provisions of CIL regulations made under those sections. Subsection (3) provides for an exception to that, where a CIL charging authority is:

a. proposing to introduce CIL rates in its area only to charge CIL on street vote development; or

b. proposing to revise the CIL rates chargeable in its area, but only those rates applicable to street vote development.

595 Specifically, subsection (3) amends s.211 of the Planning Act 2008 so as to disapply ss. 212-213 and 214(1) and (2) in those cases, and instead provides a power for CIL regulations to include provision for the procedure in those cases. This could be used to allow for an expedited procedure for setting CIL rates for street vote development that can be used in cases where charging authorities have no immediate plans to make wider updates to their charging schedules, or where they do not have a CIL schedule in place.

596 Subsections (2)(a), (4), (5), (6) and (7) make amendments to Part 11 of the Planning Act 2008 consequential on the amendment made by subsection (3). Subsection (2)(b) makes a correcting and clarifying amendment to s.211(10) of the Planning Act 2008 which is not directly related to street vote development, but it is expedient to make that amendment here.

597 Subsection (8) inserts a new s.214A into the Planning Act 2008, which provides the Secretary of State with new intervention powers to direct a charging authority to review its CIL charging schedule in cases where the CIL rates applicable to street vote development set by the authority via provision made under new s.211(11) (inserted by subsection (3)) substantially impair, or risk substantially impairing, the viability of street vote development. Under new s.214A(3), where the Secretary of State chooses to use this power, the charging authority must consider revising its CIL rates and notify the Secretary of State of its decision with reasons; if the decision is to revise its CIL rates, it must do so within a reasonable time. If the charging authority does not comply with the Secretary of State's direction (i.e. it fails to reach a decision in a reasonable time to a standard which the Secretary of State considers adequate), new s.214A(5) allows the Secretary of State to appoint another person to review the charging schedule instead. If that person decides that the CIL rates should be revised, subsection (6) requires the charging authority to revise its rates within a reasonable time. In any case where the charging authority is required to revise its CIL rates following a review under new s.214A, but the charging authority fails to do so, the Secretary of State may appoint a person to revise the CIL rates on behalf of the charging authority. New s.214A(8) provides powers to set out the procedure and other requirements in this regard in CIL regulations.

598 Existing s.216(1) of the Planning Act 2008 provides that, with limited exceptions, CIL regulations must require a CIL charging authority to apply CIL receipts to 'infrastructure'. Existing s.216(2) sets out a non-exhaustive list of what 'infrastructure' includes. This list does not currently include 'affordable housing'.

599 Subsection (9) amends s.216(2) of the Planning Act 2008 to provide that, where CIL is received in respect of street vote development, the infrastructure that CIL regulations may require it to be spent on includes 'affordable housing'. For these purposes, affordable housing is defined 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 (see new s.216(7) to be inserted by subsection (10)).

Clause 101: Crown development

Background

600 This clause 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; 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 (293B to 293C), and where development is of national importance but not considered to be urgent (293D to 293J). The provisions allow the appropriate authority (as defined in section 293 of the Act, such as Government Departments and others with a Crown or Duchy Interest) to apply to the Secretary of State for planning permission in these two circumstances instead of the Local Planning Authority.

601 These apply to England only and replace the existing Crown Land provisions in 293A, which remain in place for Wales only.

293B Urgent Crown development: applications to the Secretary of State

Effect

a. Section 293B (1) and (2) enables appropriate authorities to apply directly to the Secretary of State for planning permission for crown development where the appropriate authority considers the development is of national importance and necessary that the development is carried out urgently.

b. Subsection (3) has the effect of defining the types of applications which are within scope of this provision "relevant applications". Applications under section 73 (applications to develop land without compliance with conditions previously attached) are excluded. The Secretary of State also has a power to make regulations to further exclude other types of application from the scope of these provisions. This also allows for decisions for reserved matters applications.

c. Subsection (4) requires that applications under this route must contain such information which may be set out in a development order, and a statement setting out the grounds for the application.

d. Subsection (5) requires that Secretary of State must give notice, as soon as possible, to the appropriate authority as to his decision to agree or refuse to determine the application on the basis that the proposed development meets the criteria of being of national importance and required urgently ('initial assessment'). Subsection (6) requires that the Secretary of State may only determine the application if the Secretary of State considers it meets these criteria. Subsection (7) requires that the Secretary of State must send a copy of a notice given under (5) to the local planning authority to whom the application could otherwise have been made.

e. Subsection (8) allows Secretary of State to require further information from the appropriate authority in order to assist in making the initial assessment, or determining the application.

f. Subsection (9) provides that further provisions may be made through a development order regarding certain aspects of the application, such as the form and manner of the application, notices and their form and content and publicity and a development order may make different provision for different cases or different classes of development (12). Subsection (10) allows a development order to make provision restricting the public disclosure of information where it is deemed 'sensitive', as defined in subsection (11).

g. Subsection (13) allows the Secretary of State to give directions requiring a local planning authority to do things in relation to an application made under sections 293B. Subsection (14) sets out that directions under (13) 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.

293C Urgent Crown development: determination of applications by the Secretary of State

Effect

a. Subsections 293C (1) and (4) have the effect of enabling the Secretary of State to grant planning permission either conditionally or unconditionally or refuse planning permission where an application has been submitted to the Secretary of State under section 293B and where they have given notice that the Secretary of State considers the proposed development is of national importance and is required urgently.

b. Subsection (2) has the effect of requiring the Secretary of State to consult the local planning authority, to which an application could have otherwise been made, and any other persons the Secretary of State considered appropriate before determining the application under section 293B. Subsection (3) has the effect of allowing the Secretary of State to make a further provision about consultation in a development order, including specifying other persons to be consulted, the manner in which they may be consulted, and may apply different provision for different cases or classes of development.

c. Subsection (5) has the effect of requiring the Secretary of State to notify the local planning authority, whom an application could have otherwise been made, when a decision is made on applications submitted under section 293B.

d. Subsection (6) sets out that decisions of the Secretary of State on applications under section 293B are final, meaning there is no right to appeal other than to question the validity of the decision under section 288.

e. Subsection (7) enables the Secretary of State to determine applications where development has already carried out: without planning permission, where planning permission has been granted for a limited period, or without complying with some condition subject to which permission was granted. It also enables Secretary of State to grant planning permission to have effect from the date on which the development was carried out, or if it was carried out in accordance with planning permission granted for a limited period - the end of that period.

f. Subsection (8) has the effect of exempting the Secretary of State from certain duties when considering whether to grant planning permission for development submitted under section 293B. These are: the new duty of regard to certain heritage assets in granting permissions, set out in section 58B; and duties under 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

293D Crown development: applications to the Secretary of State

Effect

a. Section 293D (1) to (2) enables appropriate authorities to apply directly to the Secretary of State for planning permission for crown development where the appropriate authority considers the development is of national importance. Subsection (3) has the effect of defining the types of applications which are within scope of this provision "relevant applications". Applications under section 73 (applications to develop land without compliance with conditions previously attached) are excluded. The Secretary of State also has a power to make regulations to further exclude other types of application from the scope of these provisions.

b. Subsection (4) requires that Secretary of State must give notice to the appropriate authority as to whether the Secretary of State considers that the proposed development is of national importance. Subsection (5) requires the Secretary of State to determine the application if the Secretary of State considers that the proposed development meets this criterion. Subsections (6) to (9) provides that if the Secretary of State does not consider the proposed development meets this criterion they may refer the application either: to the local planning authority whom it would have been otherwise made for them to determine (subsection (7)); or direct that the application to be determined by the Secretary of State, subject to agreement with the applicant, under section 62A of the Act where the application could otherwise have been made under that section (subsections (8) and (9)).

293E Crown development: connected applications to the Secretary of State

Effect

a. Section 293E enables appropriate authorities to also submit 'connected applications' directly to the Secretary of State where they have made a relevant application under section 293D, and Secretary of State considers the proposed development is of national importance. These include applications for Listed Building Consent, Hazardous Substance consent, or where they meet a prescribed description set out in a development order – this is so the various connected consents can be considered by the same decision-maker. If the Secretary of State does not consider these applications are 'connected' to the relevant application the Secretary of State may refer the application to the authority to whom it would have been otherwise been made for them to determine.

293F Applications under section 293D or 293E: supplementary matters

Effect

a. Section 293F (1) sets out that decisions made by the Secretary of State under sections 293D and 293E are final, so there is no right of appeal, other than to question the validity of the decision under section 288. Subsections (2) and (3) 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 sections 293D or 293E. Directions 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.

293G Notifying parish councils of applications under section 293D(2)

Effect

a. Section 293G requires that if a parish council would be entitled to be notified of applications (under paragraph 8 of Schedule 1 of the Act) if the application were made to the local planning authority, the Secretary of State must notify the council of the application and any alterations accepted to the proposed development by the Secretary of State if it is to be determined under section 293D(2). This has the effect of ensuring that parish councils are notified of applications when determined by the Secretary of State in the same way under the crown development route as if it was submitted to the local planning authority.

293 H Provisions applying to applications made under section 293D or 293E

Effect

a. Section 293H has the effect that applications made under 293D and 293E are to be subject to the same procedures and to be determined in accordance with the same criteria, with appropriate modifications, that apply to such applications made to the local planning authority or hazardous substances authority, as applicable. Subsection (6) allows a development order which makes provision under this section (applying development orders which apply to applications made to the local planning authority, to applications under sections 293D and 293B with or without modifications) to prevent the public disclosure of sensitive information (as defined in subsection (7)).

293I Deciding applications made under section 293D and 293E

Effect

a. Section 293I, subject to section 293J, has the effect of enabling the Secretary of State to appoint a person to determine applications under sections 293D and 293E, instead of the Secretary of State, and they in effect have the same powers and subject to the same duties that the Secretary of State has under section 293H. This appointment can be revoked at any time before the person has determined the application and another person can be appointed in their place.

293J Applications under section 293D or 293E: determination by the Secretary of State

Effect

a. Section 293J has the effect of enabling the Secretary of State to direct that an application under section 293D or 293E can be determined by the Secretary of State, instead of a person appointed to determine the application on their behalf, before a decision is made. The Secretary of State may also make a further direction to revoke such directions at any time before a decision is issued. In these instances, the Secretary of State is required to serve a copy of the direction (or further direction) to the person appointed (or previously appointed) under S293I, the applicant, and the local planning authority where such a direction is issued.

Clause 102: Minor variations in planning permission

Background

602 Sections 73 and 96A of the TCPA 1990 provide powers to vary or remove planning conditions attached to grants of planning permission and make non-material amendments to a planning permission, respectively.

603 However, the existing framework for varying planning permissions is often seen as confusing, burdensome, and overly restrictive by applicants and local planning authorities. Recent case law has compounded these issues.

604 This clause introduces a new route to vary an existing planning permission to allow greater flexibility for making non-substantial changes to planning permissions (including to the descriptor of development and imposed conditions) and will help address the complexities described above at paragraph 2. Planning permission under the new power will only be permitted where the local planning authority is satisfied that its effect will not be substantially different from that of the existing permission.

605 This will enable sensible and practical changes to be made to planning permissions which are not possible under the existing framework without the submission of multiple applications under different routes. For example, if an applicant wanted to make a material variation to a planning condition and consequently needed to amend the descriptor of development to accommodate, this would necessitate applications under both sections 73 (to vary the condition) and 96A (to amend the descriptor).

Effect

606 This clause amends the TCPA 1990 (subsection (1)) to insert a new section 73B (Applications for permission substantially the same as existing permission) into Part 3 of the 1990 Act (subsection (2)). The effect of this new section is set out from paragraph 9 below.

73B Planning permission substantially the same as existing permission

a. Subsection (1) of the new section 73B sets out that an application for planning permission should be determined in accordance with this section if the applicant requests that it be determined under the new route, proposes the conditions (if any) subject to which permission should be granted, and identifies an existing permission that the applicant seeks to amend.

b. Subsection (2) sets out that the existing permission (under subsection (1)(c)) must not have been granted under section 73, section 73A or this section of the TCPA 1990, or other than on application.

c. Subsection (3) sets out that the applicant may also identify for the purposes of an application to be determined in accordance with this section a planning permission (a) that was granted under section 73 or this section by reference to the existing permission, or (b) that forms part of a sequence of planning permissions granted under section 73 or this section, the first of which was granted by reference to the existing permission.

d. Subsection (4) provides a development order must set out how an applicant is to do as mentioned in subsections (1) and (3). Subsection (5) requires that planning permission may be granted only if the local planning authority is satisfied that the effect of permission applied for will not be substantially different from that of the existing permission.

e. Subsection (6) provides that planning permission may not be granted in a way such that the time by which development must be begun or the time by which an application for approval of reserved matters is to be made differs from the existing permission.

f. Subsection (7) requires that when determining an application made under the new route, a local planning authority must limit its considerations to those respects in which the permission being applied for (if granted in the terms of any proposal under subsection 1(b)) would differ in effect from (a) the existing permission, and (b) each planning permission (if any) identified in accordance with subsection (3). Section 70(2) of the TCPA 1990 is subject to the constraints in this subsection.

g. Subsection (8) states if that the local planning authority decides not to grant planning permission under this section, it must refuse the application (i.e. the application cannot instead be considered under another route to planning permission. Rather, the application must be refused (or withdrawn by the applicant), and a new application made under the relevant route must be submitted to the local planning authority for consideration).

h. Subsection (9) requires that for the purposes of this section, the effect of a planning permission is to be assessed with respect to both the development authorised and any conditions to which it is subject.

i. Subsection (10) provides that when determining the effect of an existing planning permission under subsection (5), any changes made under section 96A should be disregarded (although any such changes do fall for consideration when the local planning authority determines an application under subsection (7)).

j. Subsection (11) relates to the interactions of the new route to planning permission with the mandatory biodiversity net gain condition under paragraph 13 of Schedule 7A (biodiversity gain condition) of the TCPA 1990. Subsection (11)(a) sets out the new route to planning permission cannot be used to disapply that mandatory biodiversity net gain condition, while subsection (11)(b) requires that the mandatory condition is disregarded for the purposes of subsection (1)(b), (5) and (7). Subsection (11)(c) sets out a biodiversity gain plan is to be regarded as approved where it attaches to a permission granted under the new route where: (i) the existing permission is subject to the mandatory condition; (ii) the biodiversity gain plan was approved for the purposes of the existing permission; (iii) planning permission is granted under this new route; and (iv) the development permitted under the new route is consistent with the post-development biodiversity value of the on-site habitat as detailed in the biodiversity gain plan approved for the purposes of the existing permission.

k. Section 11A ensures that new section 73B cannot be used to disapply the condition relating to development progress reports (new section 90B TCPA 1990)

l. Subsection (12) requires that for the purposes of applications for planning permission made to or to be determined by the Secretary of State, any references to local planning authority in this clause is to be read as a reference to the Secretary of State.

m. Subsection (13)(a) states each reference to planning permission for the purposes of applications for permission in principle should also be read as a reference to permission in principle. For the purposes of applications made under the new route in relation to applications for permission in principle, subsection (13)(b) sets out that the provisions of this section relating to conditions should be omitted.

n. Subsection (14) sets out that any permission in principle, granted in accordance with the new route, for the purposes of section 70(2ZZC), is to be taken as having come into force when the existing permission in principle identified under subsection (1)(c) came into force.

607 Subsection (3) amends section 62A(2) of the TCPA 1990 to provide that, where a local planning authority is designated by the Secretary of State under section 62B of the Act, applications for planning permission made under the new route do not constitute a "relevant application" for the purposes of section 62A(1).

608 Subsection (4) amends subsection (8) and inserts new subsections (10) and (11) into section 70A (Power to decline to determine subsequent application) of the TCPA 1990. This provides that an application made under the new route is not to be considered similar to an earlier application determined under a different route to planning permission, and that an application made under the new route should be considered similar to an earlier application under the new route only if the local planning authority think that the difference of effect under subsection 73B(7) is the same or substantially the same in the case of both applications.

609 Subsection (5) amends subsection (5) and inserts new subsections (5A) and (5B) into section 70B (Power to decline to determine overlapping application) of the TCPA 1990. The effect is the same as under subsection (4) however with respect to section 70B of the TCPA 1990.

Clause 103: Development commencement notices

Background

610 This clause inserts new section 93G (Commencement Notices) into the TCPA 1990.

611 New section 93G imposes a duty on the person intending to carry out a development to serve a commencement notice (CN) before any development has begun on a site. It requires the date on which a person expects a development to begin, and other relevant information set out in the example below.

612 In the event of failure to comply, the local planning authority (LPA) has a power to require the information requested in the CN by serving notice under section 93G (5).

613 Section 69(1) of the TCPA 1990 has been amended and requires that CNs are put on a LPA's public register in order to allow public scrutiny of them. New section 69(2)(c) sets out the information the public register must contain.

Effect

93G Commencement notices

a. Subsection (1) establishes that CNs apply where a planning permission has been granted for the development of any land in England and where the development is of a prescribed description as set out in regulations.

b. Before a development has begun, the person proposing to carry out the development must give a notice in the form of a CN to the LPA specifying the expected start of development (subsection 2).

c. Subsection (3) provides that, once a person has submitted a CN, they may submit a further one if a new start date is proposed and must do so if the development is not commenced on the date given in the initial CN.

d. Subsection (4) requires a CN to include information in a form and manner that may be prescribed in regulations.

e. Subsection (5) provides that, where a person has failed to give notice of a development's commencement, an LPA may serve a notice on any relevant person as described in subsection (6) and require that they give information about the time of commencement and any other information specified in the notice.

f. Subsection (6) defines a relevant person as including the person proposing to carry out the development, or the person responsible for informing the LPA if the development is not commencing on the date previously given. It also applies to any person who is the owner or occupier of the land to which the planning permission relates, or who has any other interest in that land.

g. Subsection (7) sets out that any person who fails to provide the information required by the notice served on them under subsection (5) within 21 days beginning with the date of service, is guilty of an offence.

h. Subsection (8) states that it is a defence for a person who is charged with an offence, having failed to provide the information required by the subsection (5) notice, to prove that they had a reasonable excuse for failing to do so.

i. Under subsection (9) a person guilty of the offence under subsection (7) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (£1,000).

j. Subsection (10) states, when granting planning permission for the development of any land, a LPA must by notice inform the applicant of the need to provide a CN before development starts, and a further CN if the development is not commenced on the date initially given, as well as the consequences of non-compliance with those requirements.

614 Guidance will be issued to support local planning authorities in exercising these powers and in order to comply with their obligation under subsection 10.

615 Clause 4 amends section 69 of the TCPA to include commencement notices on the public register of applications etc.

Example 1: Serving a CN before development has commenced.

A developer is about to start work on a site that has a residential planning permission on 4th January 2023. On 1st January 2023, in advance of carrying out the work, they serve the required CN outlining:

- The details of the planning permission which authorises the development which is about to be commenced.
- That the permission is not an alternative or variation to a previously granted permission.
- The 4th January 2023 intended commencement date of the development.
- The proposed delivery rate of the scheme (i.e., the numbers of dwellings per financial year that will be built out over xx years and any phases of development).
- The date on which development is expected to be substantially completed.
- The name and contact details of the person sending the notice.
- The name and contact details of the person carrying out the development.
- The name and contact details of the owner(s) of the land.
- A signed declaration confirming the contents of the notice and liability for any work or non-work taking place on the site.

On receipt of the CN, the LPA ensures the correct information has been included. On accepting the CN, it places the notice on the statutory register, as required in Section 69 (1) of the TCPA 1990. The document is now publicly accessible.

Clause 104: Completion notices

Background

616 Sections 94 to 96 of the TCPA 1990 relate to completion notices. Local planning authorities can serve completion notices on unfinished developments where they are of the opinion that the development will not be completed in a reasonable period specifying that planning permission for any incomplete parts of the development will cease unless it is completed within the period specified in the notice.

617 Under existing law, a served completion notice can only take effect once it has been confirmed by the Secretary of State – in effect, requiring the local planning authority to seek approval of the Secretary of State. A completion notice can also only be served after the deadline for commencement for a planning permission (typically introduced under section 91 and 92 TCPA 1990) has passed.

618 This clause removes the requirement in relation to completion notices issued on land in England for Secretary of State confirmation before a completion notice can take effect. A procedure for appeals against the issuing of a completion notice is also introduced. This clause also allows for a completion notice to be served before the deadline for commencement of a planning permission has passed, providing development has begun.

Effect

619 Subsection (2) of this clause inserts the new sections 93H, 93I and 93J into the TCPA 1990.

620 Subsection (3) sets out that Schedule 10 contains consequential amendments.

621 Subsection (4) provides that the provisions in new sections 93H, 93I and 93J apply retrospectively to planning permission granted before the measures come into force.

622 Subsection (5) provides that any completion notices already served before these measures come into force (including those before the Secretary of State for confirmation) remain subject to the current procedures as under sections 94 and 95 of the TCPA 1990.

93H Completion notices

a. As set out in subsection (1), new section 93H gives a power to local planning authorities to serve a completion notice on grants of planning permission for development which have commenced, but which in their opinion will not be completed in a reasonable period as set out in subsection (2). A completion notice will set out a time limit ("completion notice deadline") after which planning permission will cease to have effect for any unfinished parts of the development.

b. Subsection (3) provides that the completion notice deadline must be at least 12 months after the notice was served and, where planning permission was granted subject to a condition requiring development to have begun by a particular period, at least 12 months after the end of that period.

c. Subsection (4) sets out what must be included in a completion notice, while subsection (5) sets out who must be served a completion notice by a local planning authority where the authority chooses to serve a notice.

d. Subsections (6) and (7) establish that a completion notice can be withdrawn by a local planning authority and that, when doing so, the authority must immediately notify all those who were served the notice.

e. Under subsection (8), the Secretary of State may serve a completion notice where it appears expedient to do so, after having consulted the relevant local planning authority.

93I Appeals against completion notices

a. New section 93I introduces a process for appeals against the serving of a completion notice. Subsection (1) specifies that an appeal may be made to the Secretary of State by any of the following whether or not the notice was served on them, (a) the owner of the land, (b) a person not within paragraph (a) with an interest in the land and (c) a person who occupies the land by virtue of a licence). Subsections (2) and (5) set out

the grounds for appeal and how the Secretary of State may decide any appeals before them, respectively.

b. The precise details of the appeals procedure are to be set out in regulations under subsection (3), and, as in subsection (4), these regulations may include, among other matters, the period within which an appeal must be brought and how an appeal is made.

c. Subsection (6) allows the Secretary of State to correct any defect, error or misdescription in the completion notice if that correction will not cause injustice to the appellant or the local planning authority.

d. Subsection (7) sets out that the completion notice need not be quashed if the Secretary of State determines that while it was not served on a person on whom it should have been served, neither the person nor the appellant was substantially prejudiced by that fact.

e. Subsection (8) allows for costs orders to be made with respect to completion notice appeals.

93J Effect of completion notices

a. Subsection (1) of new section 93J sets out that the planning permission to which a completion notice relates will cease to have effect at the completion notice deadline. Subsection (3) also provides that any development which was completed before the commencement notice deadline would still benefit from the grant of planning permission.

b. Subsection (2) sets out that in the event that an appeal is brought under section 93I, the notice is of no effect pending the final determination or withdrawal of the appeal.

Clause 105: Power to decline to determine applications in cases of earlier non-implementation etc

Background

623 Sections 70A, 70B and 70C of the Town and Country Planning Act 1990 ("TCPA 1990") grant powers to local planning authorities to decline to determine planning applications in certain circumstances. For example, section 70A enables a local planning authority to decline to determine applications if they have previously refused permission for two or more substantially similar applications on the same site, or if a substantially similar application has been refused by the Secretary of State on appeal or following call-in, within the past two years.

624 This clause will introduce new section 70D which grants local planning authorities a new discretionary power to decline to determine planning applications where the carrying out of development authorised by an earlier planning permission on the same land has not taken place at a satisfactory pace. This includes where development authorised by an earlier planning permission was not begun or has been carried out at an unreasonably slow rate.

625 The power can only be used to decline to determine an application where the applicant is a person who applied for or is connected to the earlier planning permission.

Effect

626 Subclause (2) of clause 105 inserts new section 70D into the TCPA 1990.

627 Subclauses (3) to (6) make consequential amendments to other parts of the TCPA 1990.

70D Power to decline to determine applications in cases of earlier non-implementation etc.

628 Subsection (1) provides that a local planning authority in England may decline to determine a planning application where the application is made by a person who applied for or is connected to an earlier planning permission on that land where development was not begun (subsection (2)) or where development has begun but, in the opinion of the local planning authority, the carrying out of that development has been unreasonably slow (subsection (3)). The development subject to the new application and the earlier planning permission must be of a prescribed description, to be set out in regulations.

629 To help the local planning authority establish whether development authorised by an earlier planning permission has been carried out at an unreasonably slow rate, subsection (4) requires that the local planning authority must have regard to information provided in a development commencement notice (such as the expected start date and timescales for development), whether a completion notice has been served against the development resulting in the earlier planning permission being invalidated, or any other prescribed circumstances.

630 Subsection (5) provides a power for local planning authorities where it is necessary to request certain information from a person applying for a new planning permission to determine whether that person applied for or is connected to an earlier planning permission on that land.

631 Subsections (6) to (8) set out matters relating to instances of non-compliance with the notice under subsection (5). Where requested, if the person who applied for planning permission does not comply within 21 days the local planning authority may decline to determine the application (subsection (6)). Where a request is made under subsection (5) and that person knowingly or recklessly provides false or misleading information to the local planning authority that person is guilty of an offence (subsection (7)) and would be liable on conviction to an unlimited fine (subsection (8)).

632 Subsection (9) prohibits a local planning authority from declining to determine an application under new section 70D where the application is made under section 73 (applications to vary or remove planning conditions), 73A (applications for retrospective planning permission) or 73B (applications to make minor variations to planning permission) of the TCPA 1990.

Clause 106: Condition relating to development progress reports

Background

633 New section 90B of the TCPA 1990 seeks to introduce a new requirement for developers to provide local planning authorities with information about the actual and projected delivery of new homes for each reporting period, on sites with residential planning permission.

634 New section 90B of the TCPA 1990, headed "Condition relating to development progress reports in England", provides that certain planning permissions for residential development are subject to a condition which requires development progress reports to be provided to the local planning authority in whose area the development is to be carried out.

Effect

635 The introduction of the development progress report will make it more transparent to all how a scheme is being built out and; clearer when unacceptable delays to a scheme's build out programme occur; as well as providing the evidence that will inform any potential local planning authority sanctions.

636 Subsection (1) of clause 106 sets out that the TCPA 1990 will be amended as follows.

637 Subsection (2) of clause 106 makes an amendment to section 56(3) (time when development begun) of the TCPA 1990, and is required to ensure that new section 90B is included in the list of provisions to which the definition of when development has "begun" applies.

638 Subsection (3) of clause 106 sets out that before section 91 of the TCPA 1990, section 90B is added.

New Section 90B of the Town and Country Planning Act 1990 (TCPA 1990): Condition relating to development progress reports in England.

a. Subsection (1) sets out that new section 90B applies where relevant planning permission is granted for relevant residential development in England.

b. Subsection (2) sets out that, where a relevant planning permission is granted, it will be 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.

c. Subsections (3) to (6) set out the reporting periods for a development progress report. The start of the first reporting period will be specified in regulations. The length of the first and subsequent reporting periods is 12 months, and the last reporting period ends on the day on which the development is completed.

d. Subsection (7) defines that a "development progress report" sets out: the progress that has been made, and that remains to be made, towards completing the dwellings at the end of the reporting period; the progress which is predicted to be made towards completing the dwellings over each subsequent reporting period up to and including the last reporting period; and any other information that may be prescribed in regulations.

e. Subsection (8) states that if relevant planning permission is granted without the condition required by subsection (2), it will be treated as having been granted subject to that condition.

f. Subsection (9) outlines what the Secretary of State may, by regulations, make provision for in respect of development progress reports, such as the form and content of development progress reports; when and how development progress reports are to be provided to local planning authorities; and who should provide development progress reports to local planning authorities.

g. Subsection (10) sets out the definitions of "relevant planning permission" and "relevant residential development."

639 Subsection (4) of clause 106 is an amendment to section 69 of the TCPA 1990, subsection (1) (register of applications etc), that adds development progress reports to the list of information a local planning authority must keep on their planning register, and adds that prescribed information in respect of development progress reports will be contained in the register. Both elements are required to ensure the information contained in development progress reports is publicly accessible.

640 Subsection (5) of clause 106 is an amendment to section 70(1)(a) of the TCPA 1990 (determination of applications: general considerations) and ensures that, where an application is made to a local planning authority for planning permission, if the authority decides to grant planning permission it may do so either unconditionally or conditionally, but this is subject to the condition under section 90B of the TCPA 1990 applying where relevant.

641 Subsection (6) is an amendment to section 73 of the TCPA 1990 (determination of applications to develop land without compliance with conditions previously attached) and ensures that the condition under section 90B cannot be disapplied if planning permission is granted under section 73.

642 Subsection (7) amends section 96A of the TCPA 1990 (power to make non-material changes to planning permission) and ensures that the power to remove or alter existing conditions cannot be used to remove or alter the condition under section 90B.

643 Subsection (8) amends section 97 of the TCPA 1990 (revocation or modification of planning permission) and ensures that the power to revoke or modify a permission cannot be used to disapply the condition under section 90B.

644 Subsection (9) amends section 100ZA(13)(c) (restrictions on power to impose planning conditions in England) of the TCPA 1990, as amended by paragraph 3(12) of Schedule 14 to the Environment Act 2021, and ensures that the imposition of the condition under section 90B cannot be restricted by this section of the TCPA 1990.

645 Subsection (10) outlines that, until paragraph 3(12) of Schedule 14 to the Environment Act 2021 comes into force, section 100ZA(13)(c) of the TCPA 1990 has effect so that the imposition of the condition under section 90B cannot be limited by this section of the TCPA 1990.

Example: What happens when a developer does not provide a development progress report once a development has commenced?

Where new section 90B of the TCPA 1990 applies to a developer's residential planning permission, a local planning authority can expect from a developer a development progress report if its sits within a local planning authority's area.

Should the condition not be adhered to at any time during the build out of the development, a local planning authority can use the existing enforcement regime for a breach of a planning condition to enforce the matter.

Specifically, if a condition is not complied with (i.e., a development progress report is not provided), a breach of condition notice can be served on the responsible party which sets out the time that the developer must comply with the breach of condition notice by submitting a development progress report (minimum of 28 days). If they fail to comply with such a notice, then they are guilty of an offence.

Currently, the maximum penalty on summary conviction is a fine not exceeding "level 4" on the standard scale (currently £2,500).

Taken as a whole, the measure is creating a new national planning condition that the existing enforcement regime will apply to. This has criminal sanctions applied.

Once the development progress report is received by the local planning authority it is placed on their statutory planning register to ensure that the information it contains is accessible to the public and interested parties.

Chapter 5: Enforcement of planning controls

Clause 107: Time limits for enforcement

Background

646 Section 171B(1) of the Town and Country Planning Act 1990 imposes a four-year time limit on local planning authorities taking enforcement action against unauthorised development consisting of building, engineering, mining or other operations.

647 Section 171B(2) of the Town and Country Planning Act 1990 imposes a four year time limit on local planning authorities taking enforcement action against unauthorised development consisting of a change of use of any building to use as a single dwelling house.

648 This clause amends section 171B (1) and (2) to extend the time period in which local planning authorities can take enforcement action against unauthorised developments in England from four years to ten years. This brings the period for bringing enforcement action for the breaches specified in section 171B(1) and (2) in line with section 171B(3), which specifies that enforcement action in respect of other breaches of planning control have a ten year time limit in which to begin taking enforcement action.

649 The clause maintains the current time limits for Wales.

Effect

650 Subsection (1) inserts new subsection (1)(a) into section 171B to substitute the four year time limit with ten years, in England. It also inserts subsection (1)(b) to retain the four year time limit in Wales. This will allow local planning authorities in England to take enforcement action against unauthorised development consisting of building, engineering, mining or other operations in, on, over or under land up to ten years after the date on which the operations were substantially completed.

651 Subsection (2) inserts new subsection (2)(a) into section 171B of the TCPA to substitute the four-year time limit with ten years, in England. It also inserts subsection (2)(b) to retain the four year time limit in Wales. This will allow local planning authorities in England to take enforcement action against unauthorised development consisting of a change of use of any building to use as a single dwellinghouse up to ten years after the date the breach.

Clause 108: Duration of temporary stop notices

Background

652 Section 171E of the Town and Country Planning Act 1990 concerns temporary stop notices. These are used by local planning authorities if a planning breach is suspected in order to pause development whilst the facts of the case are established and to allow them to decide what, if any, further action to take. Under this section, temporary stop notices cease to have effect a maximum of 28 days after the notice was first displayed.

653 This clause allows local planning authorities in England to issue a temporary stop notice that has effect for up to 56 days, providing more time for a local authority to investigate a suspected breach of planning control. The clause maintains the current time periods in Wales.

Effect

654 Subsections (1) and (2) amend section 171E (7)(a) to replace "period of 28 days" with "relevant period".

655 Subsection (3) also inserts new subsections (8)(a) and (b) in section 171E, defining the "relevant period". Paragraph (a) defines the "relevant period" (the maximum period for which a temporary stop notice can have effect) as 56 days in England, while paragraph (b) defines the "relevant period" as 28 days in Wales.

Clause 109: Enforcement warning notices

Background

656 This clause creates a new power for a local planning authority in England to issue an enforcement warning notice. It inserts a new section (172ZA) into the Town and Country Planning Act 1990, with amendments to existing sections 188 and 171A facilitating its inclusion within the wider enforcement process. This provides a new power for local planning authorities in England to use where they become aware of a unauthorised development that has a reasonable prospect of being acceptable in planning terms. The new power will enable them to issue an enforcement warning notice asking the person concerned to submit a retrospective planning application within a specified period. The notice will state that if the application is not received within the specified period the local planning authority can take further enforcement action.

Effect

657 Subsections (1) and (2) amend section 171A of the Town and Country Planning Act 1990 as a consequence of inserting the new section 172ZA. Subsection (3) inserts the following new clause before section 172:

Section 172ZA: Enforcement Warning Notice: England

a. Subsection (1) provides that a local planning authority can issue an enforcement warning notice on any land in England where it appears to the local planning authority that there has been a breach of planning control and that there is a reasonable prospect that if an application for planning permission were made for that development, planning permission would be granted.

b. Subsection (2) specifies the content of the notice. The notice must state the matters that appear to the local planning authority to constitute the breach of planning control and that unless an application for planning permission is made within the period specified in the notice by the local planning authority, further enforcement action may be taken and subsection (3) states that the notice must be served on the owner of the land and any other person having interest in the land that would be materially affected by the taking of any further enforcement action. The notice must state that it appears to the local authority that a breach of planning has occurred and that if it is not rectified by an application for planning permission within a set time period (to be set by the local planning authority), further enforcement action may be taken.

c. Subsection (4) states that an enforcement warning notice has no bearing on the ability of a local planning authority to take another form of enforcement action.

Clause 110: Restriction on appeals against enforcement notices

Background

658 Section 174 of the Town and Country Planning Act 1990 deals with appeals against enforcement notices.

659 Subsection (2) of section 174 sets out the grounds on which an appeal can be made. This includes ground a) - that planning permission ought to be granted or that the condition or limitation imposed on the grant of permission ought to be discharged. Ground a) is therefore, a way of obtaining planning permission retrospectively.

660 Subsection (2A) of section 174 removes the ability for a person to lodge a ground a) appeal against an enforcement notice issued in England in certain circumstances. These circumstances are that an enforcement notice was issued after a related application for planning permission had been made but before the statutory time for making a decision on the application has expired.

661 Subsection (2B) provides that an application for planning permission is related to the enforcement notice if it would involve granting permission for matters included in the enforcement notice.

662 This clause amends section 174 to extend the circumstances in which the ability to lodge a ground a) appeal against an enforcement notice issued in England is removed so that there is only one opportunity to obtain planning permission retrospectively after unauthorised development has taken place.

Effect

663 This clause reduces the ability to lodge an appeal against an enforcement notice issued in England on ground a).

664 This clause substitutes new subsections (2A), (2AA), (2AB), (2AC) and (2B) for existing subsections (2A) and (2B) of section 174 of the Town and Country Planning Act 1990.

665 New subsection (2A) provides that an enforcement notice appeal may not be brought on ground a) if the land to which the enforcement notice relates is in England and the notice was issued after a 'related application for planning permission' was submitted.

666 New subsection (2AA) sets out that a 'related application for planning permission' is one that covers the same development as is the subject of the enforcement notice. It includes both applications where local planning authorities or the Secretary of State are the decision maker. It does not include applications where the local planning authority or the Secretary of State have exercised their powers to decline to determine the application, for example, because it is similar to or overlaps with another application for planning permission.

667 New subsection (2AB) provides that the restriction on ground a) appeals only applies to enforcement notices which are issued within two years of the date the related application ceased to be under consideration.

668 New subsection (2AC) explains the different circumstances in which a related application ceases to be under consideration. New subsection (2B) clarifies the day on which the application ceases to be under consideration for the purposes of calculating the two year period in which an enforcement notice must be issued if a ground a) appeal is to be prohibited. This is summarised in the following table:

An application has ceased to be under consideration if:	**Day on which consideration ceased**
Related application was refused or granted subject to conditions and there was no appeal against that decision (where an appeal route is available)	Day on which the right to appeal arose (ie the day on which the decision on the related application was made)
Related application was not determined and there was no appeal against that non-determination	Day after the end of the statutory determination period for the related application
An appeal against the decision on the related application was made	Day on which the appeal was dismissed
An appeal against non-determination of the related application was made	Day on which the appeal was dismissed
An application was on appeal granted subject to conditions, or subject to different conditions	Day on which the appeal was determined
The Secretary of State declined to determine an appeal using his powers in section 79(6) of the TCPA in respect of a	Day on which the right to appeal arose (ie the day on which the decision on the related application was made)

related application which was refused or granted subject to conditions	
The Secretary of State declined to determine an appeal using his powers in section 79(6) of the TCPA in respect of a related application which had not been determined	Day after the end of the statutory determination period for the related application

Clause 111: Undue delays in appeals

Background

669 This clause gives the Secretary of State a new power which will allow them to dismiss an appeal in relation to an enforcement notice or an application for a lawful development certificate in England, should it appear to them that the appellant is causing undue delay to the appeals process. In such circumstances, the Secretary of State may issue a notice explaining that the appeal may be dismissed if the appellant does not take the steps specified in the notice to expedite the appeal within the specified time.

Effect

670 Subsection (2) amends section 176 of the Town and Country Planning Act 1990 to insert a new subsection (6). This grants a power, in relation an enforcement notice appeal, for the Secretary of State to give notice to the appellant in such an appeal that the appeal may be dismissed unless the appellant takes the action specified in the notice within the specified period. Subsection (3) amends section 195 of the Town and Country Planning Act 1990 to provide an equivalent power in relation to an appeal relating to an application for a lawful development certificate. Subsection (4) makes consequential changes to Schedule 6 of the Town and Country Planning Act 1990 to reflect the new power.

Clause 112: Penalties for non-compliance

Background

671 Sections 187A and 216 of the Town and Country Planning Act 1990 deal with the enforcement of planning conditions and penalties for failing to comply to with a section 215 notice (maintenance of land), respectively. Failing to comply with a breach of condition notice issued in England attracts a fine of no more than level 4 on the standard scale, currently £2,500. Failing to comply with a section 215 notice issued in either England or Wales attracts a fine of no more than level 3 on the standard scale, currently £1,000. Section 216 (6) provides for a further daily fine which is payable for each day during which any of the requirements of the section 215 notice remain unfulfilled following conviction. The maximum daily fine payable is up to one-tenth of a level 3 fine on the standard scale (currently £1,000).

672 This clause amends those sections in relation to England to increase the maximum level of fines. The clause maintains the current fine levels for Wales.

Effect

673 Subsection (1) amends section 187A to insert a new subsection 12(a), which increases the maximum fine for failure to comply with a breach of condition notice to level 5 on the standard scale, (an unlimited fine), in England.

674 Subsection (2) amends section 216 to increase the maximum fine for non-compliance with a section 215 notice to a level 5 fine on the standard scale, (an unlimited, fine) in England. It also increases the maximum daily fine in England to the greater of either one tenth of a level 4 fine (currently £2,500) or £5,000.

Clause 113: Power to provide relief from enforcement of planning conditions

Background

675 Part 7 of the TCPA 1990 sets out the enforcement measures which can be used by local planning authorities and the Secretary of State when breaches of planning control occur. Whether to take enforcement action in response to breaches of planning control is at the discretion of the local planning authority.

676 Since March 2020, local planning authorities have been encouraged to be flexible in terms of enforcement action of non-compliance with conditions imposed on grants of planning permission which govern construction working hours and delivery hours in response to the COVID-19 pandemic and then later to address the acute shortage of Heavy Goods Vehicles. Measures to support this were introduced through section 16 of the Business and Planning Act 2020 (modification of conditions relating to construction working hours) and then through a series of Written Ministerial Statements.

677 This clause inserts a new section into the TCPA 1990 which grants a new power for the Secretary of State to provide, by regulations, that a local planning authorities in England, may not take, or is subject to specific restrictions in how it may take, relevant enforcement measures against a developer or individual for non-compliance with specified planning conditions or limitations for a specified period of relief.

Effect

678 This clause inserts a new section 196E into Part 7 of the TCPA 1990.

196E Power to provide relief from enforcement of planning conditions

a. Subsection (1) gives the Secretary of State a power to provide by secondary legislation 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 non-compliance with specified planning conditions or limitations.

b. Subsection (2) requires that the power may only be exercised with respect to an actual or apparent failure to comply with specified planning conditions or limitations which occur during a period specified in regulations (the "relief period"), or which are apprehended during the relief period to so occur. However, note the potential interactions of subclause (2) with subclause (7).

c. Subsection (3) defines a "relevant enforcement measure" as anything a local planning authority can do for the purposes of investigating, preventing, remedying, or penalising an actual or apparent failure to comply with a relevant planning condition.

d. Subsection (4) provides for a non-exhaustive list of measures that would constitute "a relevant enforcement measure", including powers available to local planning authorities under sections 171BB, 187B, 196A, and 196B of the TCPA 1990 and the

issuing of notices under sections 171C, 171E, 172 and 172ZA, 183 and 187A of the TCPA 1990.

e. Subsection (5) defines a "relevant planning condition" as a condition or limitation subject to which planning permission for development of land in England is granted. Subsection (5) sets out that the power under subsection (1) cannot be exercised in relation to certain existing statutory planning conditions or limitations including the condition limiting duration of planning permission (section 91 TCPA 1990), conditions for outline permission (section 92 TCPA 1990), the condition relating to development progress reports (new section 90B TCPA 1990) and the condition relating to biodiversity gain (section 90A and Schedule 7A TCPA 1990).

f. Subsection (6) provides that regulations can be made to set out how non-compliance with a relevant planning condition will be treated where the failure to comply (a) starts before, but continues after, the start of a relief period; or (b) starts during, but continues after, a relief period.

g. Subsection (7) provides that regulations can be made to set out how non-compliance with a relevant planning condition is not to be treated as occurring during a relief period if the failure to comply: (a) wholly occurs during the relief period; and (b) is not remedied by a specified time after the relief period ceases.

h. Subsection (8) allows for regulations to be made to set out that where anything relating to the taking of a relevant enforcement measure is to be or may be done by a time during a relief period, it is to be or may be instead done by a specified time after that period. For example, this could include deadlines for local planning authorities to pursue enforcement where the statutory limit would otherwise expire during the relief period.

i. Subsection (9) allows for regulations made under subsection (1) to: (a) apply in relation to all or only specified local planning authorities in England; (b) apply in relation to all or only specified relevant planning conditions; (c) apply in relation to all or only specified relevant enforcement measures; or (d) prevent the taking of relevant enforcement measures indefinitely or only for a specified period of time.

j. Subsection (10) sets out for the purposes of this clause that "specified" means specified of described in regulations under subsection (1).

Example

There is an acute shortage of Heavy Goods Vehicle (HGV) drivers. This is causing a disruption to the supply chains in the retail industry and retailers are unable to secure deliveries during their usual hours. However, many retail stores are subject to planning conditions (which remain in perpetuity) which limit night-time deliveries. Consequently, despite no alternatives, retailers are forced to accept deliveries outside of the conditioned hours and risk enforcement action by local planning authorities for breaches of planning control.

The proposed new power would allow the Secretary of State to bring in regulations which would restrict local planning authorities from taking specified enforcement action against non-compliance of planning conditions relating to delivery times for a specified period of relief. The regulations will specify which enforcement measures are to be restricted and this would mean that HGV drivers for a period of relief could deliver at any time, ensuring that such planning conditions are not acting as unreasonable barriers to industry in response to wider logistical failures.

The exercising of the power would give confidence and certainty to both businesses and local planning authorities during a period of unanticipated disruption.

Chapter 6: Other Provision

Clause 114: Consultation before applying for planning permission

Background

679 This clause, amends section 122 of the Localism Act 2011 to make permanent the powers to make provision for pre-application consultation in sections 61W to 61Y of the TCPA. These expire seven years after coming into force unless extended by order. The provisions were extended by S.I. 2020/1051 until 15 December 2025. These powers have been used to require pre-application consultation on proposals for on-shore wind turbines.

Effect

680 This clause will make permanent the powers to enable pre-application consultation, set out in sections 61W to 61Y of the TCPA. This will allow regulations to come forward requiring applicants (on certain applications) to consult with local communities, and specified persons prior to submitting a planning application. It may also require them to have regard to comments made as part of this pre-application consultation.

Clause 115: Duty to grant sufficient planning permission for self-build and custom housebuilding

Background

681 This clause concerns a technical amendment to the 'duty to grant planning permission etc' contained in the Self-Build and Custom Housebuilding Act 2015. The current legislation places a statutory duty on relevant local authorities to grant planning permission for enough plots of land to satisfy the demand for self-build and custom housebuilding in their area. At present, legislation states that a relevant authority must give 'suitable development permission', and that a 'development permission is "suitable" if it is permission in respect of development that could include self-build and custom housebuilding.'

682 The wording of the current legislation has created some ambiguity regarding what planning permission can be counted by a relevant authority towards meeting demand. Planning permissions that are not actually to be utilised for self-build and custom housebuilding can be encompassed within the wide definition of "suitable" as currently worded. This has had the effect that planning permissions that are not necessarily for self and custom build housing being counted towards meeting local authority targets. The legislative aim of this amendment is to make the legal position clear and explicit regarding what planning permissions should be counted to satisfy the demand for self–build and custom housebuilding by a relevant authority.

Effect

683 This clause amends subsection (2) and removes subsection (6)(c) of Section 2A of the Self-Build and Custom Housebuilding Act 2015. The effect of these amendments is to ensure that only land permissioned explicitly for self-build and custom housebuilding will qualify towards a relevant authority's statutory duty to meet demand for self-build and custom housebuilding in the authority's area.

684 Subsection (1) of the clause amends subsection 2 of Section 2A of the Self-build and Custom Housebuilding Act 2015 to specify that only planning permission that is specifically for self-build and custom housebuilding will count towards meeting a relevant authority's statutory duty.

685 Subsection (2) of the clause removes subsection (6)(c) of Section 2A of the Self-build and Custom Housebuilding Act 2015, which defines a 'suitable' development permission, because as the word "suitable" is no longer included in subsection 2 of Section 2A and, therefore, subsection (6)(c) is no longer required.

Clause 116: Powers as to form and content of planning applications

Background

686 The TCPA contains powers as to the content and form of planning applications. This clause inserts new section 327ZA to provide greater control over the form and manner of planning applications and their associated documents.

687 The provision enables the Secretary of State to make provision to require or allow planning applications be made and associated documents be provided by electronic means (e.g using an online form) or in accordance with particular technical standards in respect of those electronic means.

688 This also includes a power to make provision requiring the application or associated document, be prepared or endorsed by a person with particular qualifications or experience. The power applies to any existing relevant power to make provision by secondary legislation about the form and manner in which applications are to be made and an associated document be provided.

689 Subsections (2) to (7) inserts various amendments into the Act, the Listed Building Act, and the Hazardous Substances Act to bring certain provisions within the scope of the new section 327ZA.

Effect

690 Subsection (1) introduces section 327ZA into the TCPA.

327ZA Section 327ZA

a. The effect of subsections (1) to (2) of new section 327ZA is to enable provision requiring or permitting applicants applying for planning permission (or permission in principle) to submit planning applications and supporting documents by particular electronic means or in accordance with any prescribed data standard in respect of those electronic means. The power applies to any existing relevant power to make provision by secondary legislation about the form and manner in which applications are to be made and an associated document be provided (subsection (1)).

b. Subsection (3) enables the Secretary of State to make provision in secondary legislation setting out the circumstances when a planning authority may or must accept an application which does not comply with the electronic submission requirements, including applicable data standards.

c. Subsections (4) and (5) make provision for secondary legislation that requires a planning application or any associated documents (or any part of those documents) to be prepared or endorsed by a person who has a particular qualification or experience (for example, ecological information may have to be prepared by a fully qualified ecologist).

d. Subsections (6) to (8) have the effect of allowing the Secretary of State to make provision to impose submission requirements by reference to material published on a government website, which may change from time to time. This may include provision requiring planning applications (and associated documents) to be made using a specified form which accords with prescribed specifications (such as data standards).

e. Subsections (9) to (10) provide that the new power applies to existing relevant powers in respect of manner and form regardless of the terms in which the existing power is conferred.

f. Subsection (11) provides definitions of key terms to be used in this section including "associated document" and "planning application".

691 Subsections (2) to (7) enable the Secretary of State to make provision under section 327ZA for: approval of biodiversity gain plans within paragraph 14 of Schedule 7A to the Act; applications for listed building consent under the Listed Building Act; hazardous substance consent under the Planning Hazardous Substances Act; and applications made pursuant to conditions attached to such consent.

Clause 117: Additional powers in relation to planning obligations

Background

692 This clause inserts a new subsection into Section 106A of the Town and Country Planning Act 1990 ("TCPA 1990").

693 Section 106A TCPA 1990 provides for how a planning obligation under section 106 TCPA 1990 may be modified or discharged. A section 106 planning 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 relevant local planning authority (and there is a right of appeal against the authority's decision to the Secretary of State).

Effect

694 This clause enables regulations to provide for requirements which must be met in order for a section 106 planning obligation to be modified or discharged, and for circumstances in which section 106 planning obligations may not be modified or discharged.

Clause 118: Fees for certain services in relation to nationally significant infrastructure projects

Background

695 As part of the process for applying for a development consent order for Nationally Significant Infrastructure Projects ("NSIPs") under the Planning Act 2008, applicants must engage with statutory consultees. Statutory consultees play a crucial role in providing advice throughout the process but are currently unable to recover their costs for the full range of statutory activities required under the regime.

Effect

696 Clause 118 introduces a new power for the Secretary of State to make provision in regulations for public authorities, limited to certain statutory consultees to charge for their services in connection with NSIPs.

697 Clause 118 inserts a new section 54A (Power to provide for fees for certain services in relation to nationally significant infrastructure projects) after section 54 (rights of entry: Crown Land) of the Planning Act 2008.

54A Power to provide for fees for certain services in relation to nationally significant infrastructure projects

a. Section 54A subsection (1) provides the Secretary of State with the power to make regulations for and in connection with fees charged by particular public authorities (to be listed in regulations) when providing services associated with NSIPs.

b. Subsection (2) defines a relevant service to include any advice, information or other assistance (such as responding to consultation) in connection with applications for, or post-consent changes to, Development Consent Orders. This also includes any other prescribed matters relating to NSIPs.

c. Subsection (3) specifies what the regulations under subsection (1) may in particular make provision about and includes: when a fee may or may not be charged, the amount which may be charged, what may and may not be taken into account when calculating a charge, who is liable to pay, the recovery of any fees charged, details of waiver, reduction or repayment of fees, the effect of failing to pay such fees, the supply of information for any purpose of the regulations, and conferring a function, including a function involving the exercise of a discretion, on any person.

d. Subsection (4) specifies that the regulations may not permit a public authority to charge fees to an "excluded person", unless the relevant service is provided in connection with an application or proposed application by that person, for an application for, or post consent changes to, a Development Consent Order.

e. Subsection (5) provides that a public authority must have regard to any guidance published by the Secretary of State which relates to any requirements set out in regulations made under this power.

f. Subsection (6) sets out the definitions of the following terms:

i. an "excluded person" means the Secretary of State, the Mayor of London, a local planning authority, a mayoral combined authority, a qualifying neighbourhood body, or any other person as may be prescribed by regulations.

ii. A "public authority" means any person certain of whose functions are of a public nature.

iii. a "qualifying neighbourhood body" is given the meanings set out in the relevant provisions of the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

Clause 119: Power to shorten deadline for examination of development consent order applications

Background

698 Section 98 of the Planning Act 2008 relates to the timetable for examining and reporting on Development Consent Order applications for Nationally Significant Infrastructure Projects (NSIP). 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. It also provides the Secretary of State with the power to extend the six month deadline.

699 This clause gives the Secretary of State a corresponding power to set a shorter deadline for completion of an Examination, where the Secretary of State considers it is appropriate to do so. As set out in the Government's Policy Paper on Improving performance of the NSIP planning process and supporting local authorities, the intention for this power is to support the process for fast-track consenting for NSIPs.

Effect

700 Subsection (2) inserts a new Subsection (4A) to section 98 of the Planning Act 2008 which gives the Secretary of State the power to set a shorter timescale (than the six months set out in section 98(1)).

701 Subsection (3) adds a reference to subsection (4A) into section 98(6) of the 2008 Act, so that the notification and publicity requirements set out in sections 98(7) and (8) apply when the power under subsection (4A) is exercised

Clause 120: Additional Powers in relation to non-material changes to development consent orders

Background

702 Schedule 6 of the Planning Act 2008 makes provision for applications for non-material changes to Development Consent Orders.

703 This clause amends Schedule 6 to allow the Secretary of State to make regulations regarding the decision-making process in respect of non-material change applications (for example, to set time limits for making decisions on such applications).

Effect

704 This clause inserts new sub-paragraphs (1A) and (1B) after sub-paragraph (1) of Schedule 6 paragraph 2 of the Planning Act 2008.

705 Sub-paragraph (1A) enables the Secretary of State to make provision through regulations about:

a. the decision-making process for non-material change applications

b. the making of a decision on a non-material change application

c. the effect of that non-material change decision.

706 Sub-paragraph (1B) replicates paragraphs 2(8A) and 4(5A) of Schedule 6 to the Planning Act 2008, 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.

Clause 121: Hazardous substances consent: connected applications to the Secretary of State

Background

707 This clause amends existing section 62A of the Town and Country Planning Act 1990 ("the Act") which relates to applications made to the Secretary of State for planning permission and permission in principle, or an application for approval of a matter that, as defined by section 92, is a reserved matter in the case of an outline planning permission for the development of land in England ('relevant application').

708 This clause inserts a new subparagraph (ai) between (3) (a) (i) and (ii) to include applications for hazardous substance consent under the Planning (Hazardous Substances) Act 1990.

Effect

709 Subparagraph (ai) has the effect of enabling applicants to submit applications for hazardous substance consent under the Planning (Hazardous Substances) Act 1990 directly to the Secretary of State under section 62A, where it is considered by the applicant to be connected with a relevant application submitted under section 62A.

Clause 122: Regulations and orders under the Planning Acts

Background

710 This clause concerns technical legal amendments to the general powers to make statutory instruments contained in The Town and Country Planning Act, The Planning (Listed Buildings and Conservation Areas) Act and The Planning (Hazardous Substances) Act 1990 ("the relevant Acts"). It is concerned with providing express powers to make ancillary provision when exercising powers to make statutory instruments under the relevant Acts.

711 The current general powers to make statutory instruments (as Regulations or Orders) under the relevant Acts do not expressly refer to making ancillary provision. These amendments would correct that omission. It is usual/standard practice to expressly provide for ancillary provision to be made when exercising powers to make statutory instruments. This avoids the need to rely on implied powers. The legislative aim of this amendment is to make the legal position clear and express. The amendments do not affect the Parliamentary process which applies whenever the statutory instrument powers are exercised.

Effect

712 This clause makes amendments to the general powers to make statutory instruments under The Town and Country Planning Act, The Planning (Listed Buildings and Conservation Areas) Act and The Planning (Hazardous Substances) Act 1990 ("the relevant Acts"). The effect of these amendments is to provide express powers to make ancillary provision – namely, consequential, supplementary, incidental, transitional, transitory or saving provision.

713 These amendments are required to avoid having to rely on implied powers to make necessary ancillary provision when making a statutory instrument and so make the legal position clear and coherent. Express power to make ancillary provision is necessary so that the statutory instrument can make effective provision to achieve its purpose and so that the power to make secondary legislation is capable of being exercised in a satisfactory way. For example, when varying or revoking a statutory instrument it is necessary to, at least, make the required transitional provision.

714 Subsection (1) of this clause makes amendments to the general powers to make statutory instruments (as Regulations or Orders) contained in section 333 of The Town and Country Planning Act 1990 ("the 1990 Act"). The amendments insert new subsections (2B) and (8) in that section of that Act which provide express powers to make ancillary provision (i.e. consequential, supplementary, incidental, transitional, transitory or saving provision). Subsections (2) and (3) of this clause make consequential amendments. Subsection (3) repeals certain provisions in the 1990 Act which are no longer required given the amendments made in subsection (1); and subsection (2) makes an amendment to section 238(5)(c) of the 1990 Act to provide for the application of new section 333(2B) of that Act, whilst retaining the specific reference to the "closing of registers".

715 Subsection (4) makes amendments to section 93 of The Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") to provide express powers for ancillary provision. Subsection (5) repeals certain provisions in the Listed Buildings Act which are no longer required given the amendments made in subsection (4).

716 Subsection (6) makes amendments to section 40 of The Planning (Hazardous Substances) Act 1990 ("the Hazardous Substances Act") by insertion of subsection (5) to provide express powers for ancillary provision (and amends the heading of the section to include orders in addition to regulations). Subsection (7) makes consequential amendment to section 5 of the Hazardous Substances Act to provide at subsection (3) that powers to make transitional provision are powers under section 40(5) of that Act. Subsection (8) repeals certain provisions which are consequential to the insertion of subsection (5) into section 40 of the Hazardous Substances Act.

Clause 123: Pre-consolidation amendment of planning, development and compulsory purchase legislation

Background

717 Clause 123 enables the Secretary of State to make changes to the law relating to planning, development and compulsory purchase in connection with the consolidation of some, or all, of that law.

Effect

718 Subsections (1) and (4) provide the Secretary of State with the power to amend and modify relevant enactments by regulations in support of their future consolidation, including the ability to repeal and revoke enactments.

719 Subsection (2) defines 'relevant enactments' for the purposes of subsection (1). Paragraph (a) provides for relevant enactments to include the enactments listed in subsection (3). Paragraph (b) widens this definition to include any other enactment which relates to planning, development or compulsory purchase (including compensation for such purchases). Paragraph (b) only brings into scope enactments to the extent that they contain provisions which relate to planning, development or compulsory purchase and does not allow for wider consolidation of those enactments.

720 Subsections (5) and (6) provide that amendments and modifications made by regulations under subsection (1) only come into effect immediately before a related consolidation act comes into force.

721 Subsection (7) provides that regulations under this clause cannot make changes which would be within Scottish, Welsh or Northern Ireland devolved legislative competence, as defined in subsection (8). Subsection (7) includes an exception for changes which would be within devolved legislative competence where these arise from changes outside that devolved legislative competence. This power only allows technical changes to preserve legislative coherence and does not extend to substantive changes to legislation within devolved competence.

722 Subsection (9) defines 'Minister of the Crown' in line with the Ministers of the Crown Act 1975 for the purposes of this clause.

Part 4: Infrastructure Levy

Clause 124: Infrastructure levy: England

Background

723 This clause states that Schedule 11 of this Bill makes provision for the imposition, in England, of a new charge to be known as the Infrastructure Levy ("IL"). Schedule 11 contains powers for the Secretary of State to create regulations for the Infrastructure Levy ("IL regulations"). Schedule 11 inserts a new Part 10A (compromising new sections 204A to 204Z1) into the Planning Act 2008.

724 It is related to clause 126, which provides for the restriction of the Community Infrastructure Levy (CIL) to Greater London (Mayoral CIL only) and Wales. Clause 124 can be commenced in relation to specific areas, at the point IL is introduced in those areas. Savings provisions can be used to ensure that development permitted under the pre-existing system of developer contributions will continue to be subject to that system rather than the new IL. The introduction of IL does not impact the operation of the CIL in Wales or of Mayoral CIL in London.

725 IL charging authorities – who are generally local planning authorities – will be required to charge IL on development in their area, whereas charging CIL is at the discretion of charging authorities. The purpose of IL is: to ensure that the costs incurred in supporting the development of an area (including by the provision of affordable housing), and achieving any additional purpose specified in IL regulations, are funded at least in part by owners or developers of land, but in a way that does not make development in the area economically unviable (see new section 204A(2));

726 IL must be spent to support the development of an area by funding the provision, improvement, replacement, operation or maintenance of infrastructure (see new section 204N(1), or for any other purpose specified in regulations (see new section 204N(5)).

727 The exact method of charging IL will be set in regulations. It is currently intended that IL will be charged based on the final gross development value of development, whereas CIL is charged based on the floorspace of development when planning permission is granted.

Effect

728 The effect of this clause is to enable IL to replace CIL in England, with the exception of Mayoral CIL in London. It is intended that IL will be introduced over time, to allow a 'test and learn' approach to IL regulations. The new Part 10A of the Planning Act 2008 (to be inserted by inserted by Schedule) gives a power to the Secretary of State to set a deadline date for the introduction of IL in a particular charging authority's area (see new section 204M).

729 It is intended that the IL regime, when fully introduced, will to some extent replace the need for planning obligations under section 106 of the Town and Country Planning Act 1990 Clause 124 and the provisions in Schedule 11 (see new section 204Z1) therefore also allow the Secretary of State to make regulations about how IL will relate to section 106 planning obligations, which are currently used for (among other purposes) securing funding from developers to deliver mitigations to the impact of development in the area where such development occurs.

730 The new Part 10A of the Planning Act 2008 replicates many of the existing provisions set out in Part 11 of the same Act, which provides the legislative framework for CIL. The powers required to operate IL are substantially similar to those that exist for CIL, but there are some differences.

731 Some provisions in the new Part 10A as they apply to IL, such as new sections 204J and 204K, are direct replications of provisions under Part 11 as they apply to CIL. Some provisions, such as sections new 204A and 204B, replicate elements of provisions under Part 11, but also with amendments or new elements to enable the delivery of IL. Some provisions, such as new section 204Q, are entirely new.

732 Changes from Part 11 in the new Part 10A are sign-posted throughout the explanatory notes.

Clause 125: Power to designate Homes and Communities Agency as a charging a charging authority

Background

733 Under sections 13-14 of the Homes and Regeneration Act 2008, the Homes and Communities Agency (which operates under the trading name of Homes England) can be designated as a local planning authority.

Effect

734 Clause 125 amends section 14 of the Housing and Regeneration Act 2008 to provide that, if a designation order is made under section 13 of that Act designating the HCA as a local planning authority for all or part of a designated area, then the designation order may also make provision for the HCA to be the IL charging authority for all or part of the designated area. The order may specify that the HCA is to be the charging authority for all or specified purposes, and in relation to all or specified types of development. The order may also designate the HCA as the charging authority in place of the body that would otherwise be the charging authority, so that there are not multiple authorities charging IL on the same developments.

Clause 126: Restriction of Community Infrastructure Levy to Greater London and Wales

Background

735 This clause amends Part 11 of the Planning Act 2008 so as to restrict CIL to Greater London (Mayoral CIL only) and Wales. It relates to Clause 124, which provides for the imposition of a new charge, IL, in England, with the exception of Greater London, where the Mayor of London will not be charging authority for IL. The Mayor of London will continue to levy Mayoral CIL to fund Crossrail, and regulations set out that the Mayor is able to borrow against CIL receipts up to 2043.

736 It is related to Clause 124, which provides for the imposition of a new charge, IL, in England, to replace CIL charged under Part 11 of the Planning Act 2008.

737 CIL under Part 11 may be charged by 'charging authorities', which are generally local planning authorities (see section 206 Planning Act 2008). In Greater London, the Mayor of London is an additional CIL charging authority, such that developments in Greater London may be subject to two CIL liabilities: one charged by the borough council or other charging authority; and one charged by the Mayor of London ("Mayoral CIL"). Mayoral CIL is used to fund Crossrail (see regulation 59(2) of the Community Infrastructure Levy Regulations 2010).

738 For IL, the Mayor of London is not a charging authority (see new section 204B). It is intended that the Mayor of London will continue to be able to charge Mayoral CIL to fund Crossrail.

Effect

739 The effects of this clause and consequent amendments of Part 11 of the Planning Act 2008 are to restrict the use of CIL to Greater London (by the Mayor of London) and Wales.

740 To that end, clause 126 amends the provisions in Part 11 so as to apply only in "Greater London and Wales" (and makes other amendments in consequence of that change), in order to disapply CIL (other than Mayoral CIL in Greater London) in England to the extent that IL applies.

> Example (1): 'Test and learn' approach to IL
>
> New Section 204M in Schedule 11 provides the Secretary of State a power to set a date in IL regulations by when a charging authority must issue its charging schedule. Different dates are intended to be set for different charging authorities, allowing a staggered roll out of IL, so that IL regulations can be informed by how IL works in practice. It is intended that developments granted planning permission prior to the adoption of an IL charging schedule will continue to be liable for CIL, if a CIL charging schedule was in place at the time of the grant. Therefore, the ability for charging authorities in England to collect CIL will remain until such a date where it is no longer required. This clause 126 will not be commenced until that date, or alternatively it will be commenced subject to suitable saving and transitional provisions.

Part 5: Community Land Auction Pilots

Clause 127: Community land auction arrangements and their purpose

Background

741 Clause 127 is a new power which provides for the introduction of Community Land Auction ("CLA") arrangements. This will make temporary provision enabling CLA pilots to be run. The local planning authority (LPA) will invite landowners to grant options over land in the area of a participating LPA, with a view to the land being allocated for development in the next local plan for the authority's area.

742 The LPA will be able to exercise or sell the option, capturing some of the increased value that would result from allocation of the land for development, which can then be used to support development of the area. CLA arrangements seek to improve land value capture for the benefit of local communities and potentially increase land supply when LPAs prepare their new local plan.

743 This clause confers certain regulation making powers and also contains key definitions of "CLA regulations", "community land auction arrangement", and "CLA option".

Effect

744 Subsection (1) sets out the overall purpose of CLA arrangements.

745 Subsection (2) sets out the meaning of "CLA regulations".

746 Subsection (3) sets out that a "community land auction arrangement" means an arrangement provided for in CLA regulations under which:

- An LPA is to invite landowners 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. This option will give the LPA the right to purchase the land at the price offered by the landowner.
- Any CLA option granted under the arrangement ceases to have effect if the land subject to the option is not allocated in the local plan when it is adopted or approved, and
- The LPA may either sell the option to a developer , exercise the option and sell the land, or exercise the option and develop the land themselves.

747 Subsection (4) defines a "CLA option" as an option that is granted under a CLA arrangement, to acquire a freehold or leasehold interest in the land which can be exercised by the LPA in whose area the land is situated, or disposed of by the LPA on terms set by the authority. It must also meet any requirement imposed by CLA regulations.

748 Subsection (5) provides examples of what CLA regulations, made under subsection (4)(c), may make provision for.

Clause 128: Power to permit community land auction arrangements

Background

749 Clause 128 provides for the power to permit community land auction (CLA) arrangements in areas where the Secretary of State has directed that an LPA may do so and the Local Planning Authority (LPA) have agreed.

750 This clause sets out that the LPA's local plan may only allocate land for development if it is subject to a CLA option (or a CLA option has already been exercised in relation to it), or in other circumstances prescribed in regulations. It also provides the power to take into account financial benefits arising from CLA options in making decisions about the local plan. This clause will help meet the overall purpose of CLA arrangements as set out in clause 127(1), by allowing LPAs to take into account financial benefits arising from CLA options and ensuring that CLAs can optimise land value capture and deliver benefits for the local community.

Effect

751 Subsection (1) sets out the circumstances in which this clause applies.

752 Subsection (2) sets out conditions regarding the allocation of land for development in the local plan of an LPA running a CLA arrangement. One of these conditions must pertain in order for land to be permitted to be allocated for development in the plan.

753 Subsection (3) provides the power to take into account financial benefits arising from CLA options.

754 Subsection (4) provides a regulation making power to prescribe how, or to what extent any financial benefit may be taken into account. This includes provision about how any financial benefit is to be weighed against other relevant considerations, in determining allocation of land in the local plan or whether the plan is sound.

755 Subsection (5) sets out that references to a local plan in this clause do not include references to a joint local plan but highlights clause 133 in relation to this.

Clause 129: Application of CLA receipts

Background

756 Clause 129 makes provision for how Community Land Auction receipts can be spent by Local Planning Authorities (LPAs). It largely replicates provisions made by sections 204N for the Infrastructure Levy ('IL') (see Schedule 11 to the Bill) and section 216 of the Planning Act 2008 for Community Infrastructure Levy ('CIL').

Effect

757 Subsection (1) provides that regulations must require the LPA to apply financial benefits derived from CLA options ("CLA receipts") to support the development of an area by funding infrastructure or the operation of CLA arrangements in relation to the LPA's area.

758 Subsection (2) sets out what subsection (1) is subject to.

759 Subsection (3) enables regulations to make provision about the extent to which LPAs may or must apply amounts of CLA receipts to specific types of infrastructure

760 Subsection (4) provides a non-exhaustive list of what is considered to be 'infrastructure'.

761 Subsection (5) sets out the definition of "affordable housing" for the purposes of subsection (4)(g) and provides a power for CLA regulations to specify further descriptions of housing which fall within this definition.

762 Subsection (6) provides powers for CLA regulations to amend the definition of "infrastructure" in subsection (4), as well as to amend this clause in order to list matters excluded from the meaning of "infrastructure", and therefore contains powers to guide at a national level what CLA receipts may be spent on.

763 Subsection (7) provides for regulations to set out the circumstances where LPAs would be enabled to spend a specified amount of CLA receipts on matters that fall outside the requirements of subsection (1).

764 Subsection (8) provides that regulations may specify further details of what may or may not be funded by CLA receipts, what can be treated as funding and criteria for determining areas that may benefit from funding by CLA receipts.

765 Subsection (9) provides powers to require LPAs to prepare and publish lists of projects which they propose will be funded, either wholly or partly, by CLA receipts, and, by exemption from that list, infrastructure that developers should expect to fund and provide outside of CLA receipts. Subsection (9) also provides powers for the procedure to be followed in preparing such a list, and requires the list to be prepared and published as part of the CLA infrastructure delivery strategy.

766 Subsection (10) is a list of types of provision which may be made by CLA regulations when making provision about funding. It includes powers to permit CLA receipts to be used for the reimbursement of expenditure already incurred and for the giving of loans, guarantees, and indemnities.

767 Subsection (11) sets out the types of provision which may be made by CLA regulations to require LPAs to monitor what CLA receipts are spent on and to report on their collection and application, or to permit LPAs or other bodies to do certain other things with CLA receipts.

768 Subsection (12) sets out the circumstances, for the purposes of subsection (1), where a "financial benefit" will have derived from a CLA option.

Clause 130: Duty to pass CLA receipts to other persons

Background

769 Clause 130 allows Community Land Auctions (CLA) regulations to establish a duty for Local Planning Authorities (LPAs) to pass on CLA receipts to other persons. It broadly replicates provision made in section 204O for Infrastructure Levy (IL) (see Schedule 11 to the Bill) and section 216A of the Planning Act 2008 for Community Infrastructure Levy (CIL). It includes an additional power to allow for CLA receipts to be passed to other persons to fund the operation of CLA arrangements in relation to land in the LPA's area.

770 This clause also replicates powers granted in clause 129. It allows CLA regulations to set out circumstances in which CLA receipts may be used for purposes not specified in subsection (2).

Effect

771 Subsection (1) allows CLA regulations to establish a duty – applicable to CLA receipts received in respect of development in an area – to pass such receipts (whether in part or whole) to another person.

772 Subsection (2) sets out that CLA regulations which establish such a duty under subsection (1) must contain provision securing that CLA receipts passed to another person are used to fund the matters set out in this subsection.

773 Subsection (3) allows CLA regulations to set out circumstances in which CLA receipts passed in this way may be used for purposes not specified in subsection (2).

774 Subsections (4), (5), (6), (7) and (8) set out the framework for this process, providing for regulations to set out the details including: the area in which it will apply; the bodies it will apply to; the amount and timings of payments; things that may or may not be funded,

monitoring, accounting, and reporting responsibilities of LPAs, and when funding is to be returned to the LPA.

775 Subsection (9) makes clear that this clause does not limit clause 129(11)(f) which provides that regulations may permit an LPA to pass money to another body.

> Example (1): Duty to pass CLA receipts to other persons
>
> Subsection (1) can be used to make regulations to require local planning authorities to pass on a proportion of CLA receipts to other persons (for example a parish council). Where subsection (1) applies, subsection (2) requires that CLA regulations must require receipts are used to support the development of the area to which the duty relates by funding infrastructure or anything else concerned with addressing the demands that development places on an area or fund the operation of CLA arrangements in the LPA's area.
>
> This broadly replicates the powers that exist in section 216A and 204O of the Planning Act 2008 to enable the neighbourhood share for both the Community Infrastructure Levy and Infrastructure Levy. This is currently used to require authorities to pass on a portion of CIL/IL receipts to the parish or town council in parished areas.
>
> Regulations made under subsection (2)(b) will enable CLA receipts passed to other persons to be used to fund the operation of community land auction arrangements. Consequently, the persons to whom the duty in subsection (1) relates (e.g. a parish council) will be able to use CLA receipts to, for example, purchase CLA options over

Clause 131: Use of CLA receipts in an area to which section 130 (1) duty does not relate

Background

776 Clause 131 deals with the use of Community Land Auction (CLA) receipts in an area to which the duty to pass on receipts, set out in clause 130(1), does not relate. It largely replicates powers for Infrastructure Levy (IL) granted under section 204P of the Planning Act 2008 (see Schedule 11 to the Bill). Clause 131 includes an additional power to allow for CLA receipts to fund the operation of CLA arrangements in relation to land in the LPA's area.

777 This clause also replicates the powers granted in clauses 129(7) and 130(3) allowing CLA regulations to set out circumstances in which CLA receipts may be spent on specified items that are not related to the provision, improvement, replacement, operation, or maintenance of infrastructure, or the funding of CLA arrangements.

Effect

778 Subsection (1) sets out where subsection (2) applies.

779 This clause applies where CLA regulations provide for a duty under clause 130(1) in respect of one or more areas, and there are also one or more areas to which that new duty does not apply.

780 Subsection (2) sets out the matters which CLA regulations may allow the LPA to use CLA receipts it has received in respect of development in the uncovered area to fund. The uncovered area could include areas where parish or town councils do not exist, for example.

781 Subsection (3) allows CLA regulations to set out circumstances in which CLA receipts may be used for purposes not specified in subsection (2).

782 Subsection (4) sets out that provision under subsection (2)(a) or (b) may relate to the whole, or part only, of the uncovered area.

783 Subsection (5) sets out what provision made under subsection (2) may relate to.

> Example (2): Use of CLA receipts in an area to which clause 130 does not relate
>
> This section should be considered alongside clause 130, which allows CLA regulations to establish a duty for LPAs to pass on a proportion of its CLA receipts to other persons to fund infrastructure, address the demands that development places on an area, or fund the operation of CLA arrangements in relation to the LPA's area. This clause refers to an area to which clause 130 does not relate, for instance because there is no relevant person to pass funds onto.
>
> This clause broadly replicates the powers that exist in section 216B and 204P of the Planning Act 2008 where they are used to enable, in unparished areas, a proportion of CIL/IL equivalent to the neighbourhood share be applied by the authority to anything that

Clause 132: CLA infrastructure delivery strategy

Background

784 Clause 132 sets out that Local Planning Authorities (LPAs) may be required, by CLA regulations, to prepare and publish a CLA infrastructure delivery strategy. This clause largely replicates powers granted in relation to Infrastructure Levy under section 204Q of the Planning Act 2008 (see Schedule 11 to the Bill). However, this clause states that regulations may make a requirement to this effect (not must do as in section 204Q). This is to ensure that LPAs piloting this novel process of Community Land Auction (CLA) arrangements can do so effectively, allowing the Secretary of State, should they decide it is appropriate, to set out in CLA regulations that LPAs are required to produce and publish a CLA infrastructure delivery strategy.

Effect

785 Subsection (1) provides regulation making powers to require an LPA to prepare and publish a CLA infrastructure delivery strategy.

786 Subsection (2) sets out what a CLA infrastructure delivery strategy is and provides a power to prescribe other information that CLA infrastructure delivery strategies are to contain

787 Subsection (3) elaborates on the kind of information that can be included in a CLA infrastructure delivery strategy. It also contains a power for CLA regulations to require a CLA infrastructure delivery strategy to include the information set out in this subsection.

788 Subsection (4) enables LPAs to revise or replace their CLA infrastructure delivery strategy at any time.

789 Subsection (5) sets out that CLA regulations may make provision for the independent examination of CLA infrastructure delivery strategies and revisions to, or replacements of, such strategies.

790 Subsection (6) sets out other types of examination which regulations may allow the examination of an CLA infrastructure delivery strategy to be combined with.

791 Subsection (7) provides a non-exhaustive list of examples of the kind of provision that may be set out in regulations regarding the examination of a CLA infrastructure delivery strategy, including details about the examiner, the process of examination, and any circumstances in which an examination would not be required.

792 Subsection (8) confers a power on the Secretary of State to publish guidance in relation to CLA infrastructure delivery strategies and provides a duty for LPAs which are required to prepare and publish a CLA infrastructure delivery strategy to have regard to such guidance.

793 Subsection (9) gives examples of the type of provision relating to CLA infrastructure delivery strategies that CLA regulations may make provision about.

Clause 133: Power to provide for authorities making joint local plans

Background

794 The provisions in Part 5 do not automatically apply to joint local plans, and clause 128 (5) [power to permit community land auction arrangements] makes clear that references in that clause to a local plan do not include references to a joint local plan.

795 Clause 133 confers a power on the Secretary of State to apply, by way of CLA regulations, all or some of Part 5 in relation to LPAs who are to prepare a joint local plan, and that in doing so, the provisions can be modified if necessary to ensure that they work in the intended way.

796 This clause also sets out that where this power is exercised, the CLA regulations must also include provision about how CLA receipts deriving from a joint CLA arrangement are to be shared between the authorities.

Effect

797 Subsection (1) enables CLA regulations to make provision applying any provision made by or under this Part in relation to LPAs piloting CLA arrangements and whose next local plan is to be a joint local plan, with or without modifications.

798 Subsection (2) sets out that where CLA regulations make provision under subsection (1), CLA regulations must include provision about how CLA receipts deriving from the arrangement are to be shared between the authorities.

Clause 134: Parliamentary scrutiny of pilot

Background

799 Clause 134 provides for Parliament to scrutinise the piloting of CLA arrangements carried out under this Part, placing a requirement on the Secretary of State to prepare and lay before Parliament a report on the effectiveness of the CLA arrangements no later than two years after the expiry of this Part or two years after the final CLA arrangement is completed, whichever is later. Parliamentary scrutiny of CLA arrangements will be important as this is previously untested policy and will allow for the effectiveness of this piloted measure to be assessed.

Effect

800 Subsection (1) puts a requirement on the Secretary of State to prepare a report on the effectiveness of CLA arrangements in delivering their overall purpose (and any other information the Secretary of State considers appropriate).

801 Subsection (2) sets out when the Secretary of State is required to lay the report before each House of Parliament.

802 Subsection (3) makes clear that the "final" CLA arrangement (as referenced in subsection (2)) means the last CLA arrangement to come to an end.

803 Subsection (4) requires the Secretary of State to publish the report after it has been laid and sets out when this must be done.

804 In calculating the period of 24 months within which the Secretary of State is required to lay the report, subsection (5) excludes from the period of 24 months any days when Parliament is dissolved or prorogued, and any periods of more than 4 days when Parliament is adjourned.

Clause 135: CLA regulations: further provision and guidance

Background

805 This clause confers a number of powers on the Secretary of State to make regulations, or guidance, in connection with Part 5.

Effect

806 Subsection (1) gives a power to the Secretary of State to make provision about the design of various elements of CLA arrangements in regulations. This subsection also permits CLA regulations to make provision about how section 106 of the TCPA 1990 is to be used, or not to be used, in areas where CLA arrangements are piloted, about the exercise of any other power relating to planning or development and about anything else relating to planning or development.

807 Subsection (2) sets out that the Secretary of State may publish guidance about, or in connection with, CLA arrangements and that local planning authorities must have regard to the guidance.

808 Subsection 3 sets out constraints on the exercise of the powers in subsections (1)(h)-(j) and (2).

809 Subsection (4) allows CLA regulations to confer functions on persons (for example, LPAs) in relation to how CLA arrangements work. It also allows CLA regulations to 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).

Clause 136: Expiry of Part 5

Background

810 In line with Community Land Auctions (CLA) arrangements being a piloting scheme, this clause provides for the Part to expire ten years after CLA regulations are first made under this Part. It also ensures that the expiry of the Part does not affect certain elements of the CLA process. This is so that any CLA arrangement which has commenced but remains ongoing after the Part expires is still subject to the provisions in Part 5, otherwise there would be no regulation of such arrangements. It also confers a power on the Secretary of State to make transitional, transitory, or saving provision in connection with expiry of the Part.

Effect

811 Subsection (1) provides that Part 5 expires ten years after the date on which the first CLA regulations are made.

812 Subsection (2) sets out the elements of the CLA process which subsection (1) does not affect, and which will therefore be saved once Part 5 expires.

813 Subsection (3) provides a power for CLA regulations to make further transitional, transitory, or saving provision which subsections (1) and (2) are to be subject to in connection with the expiry of this Part.

Clause 137: Interpretation of Part 5

Background

814 This clause sets out the definitions for key terms under this Part.

Effect

815 This clause establishes the meaning of terminology pertaining to CLAs as set out in this Part, including the meaning of "CLA option", "CLA receipts", CLA regulations", "community land auction arrangement", "joint local plan", "local plan", and "local planning authority".

Part 6: Environmental outcomes reports

Setting environmental outcomes

Clause 138: Power to specify environmental outcomes

Background

816 This provision allows the Secretary of State to make regulations to set 'specified environmental outcomes' , against which relevant consents and relevant plans will be assessed. The regulations that set outcomes will be subject to public consultation and the affirmative parliamentary procedure and must uphold the non-regression provisions in this Part. In setting outcomes, the Secretary of State must have regard to the government's environmental improvement plan (currently the 25 Year Environment Plan), including the legally binding long-term targets and interim targets that are set under it.

Effect

817 Subsection (1) allows the Secretary of State to make regulations specifying outcomes relating to environmental protection. It will be against these specified environmental outcomes that relevant plans and relevant projects will be assessed through an Environmental Outcomes Report.

818 Subsections (2),(3) & (4) provide a range of definitions to support the interpretation of this Part, including; 'environmental protection', 'natural environment' and 'cultural heritage'.

819 Subsection (5) ensures that in developing outcomes, the Secretary of State must have regard to the current environmental improvement plan. Environment improvement plans are the Government's plans for significantly improving the natural environment and inform legally binding long-term targets for areas such as water quality, air and biodiversity, as well as additional short-term interim targets. The Environment Act 2021 requires the Government to always have an environmental improvement plan in place spanning a period of at least 15 years. This provision will ensure outcomes reflect the current environmental improvement plan. While the Secretary of State must have regard to the environmental improvement plan, they can, of course, draw on other relevant material when developing outcomes.

Power to require environmental outcomes reports

Clause 139: Environmental outcomes reports for relevant consents and relevant plans

Background

820 This is a new provision which allows the Secretary of State to make regulations requiring the preparation of an Environmental Outcomes Report for relevant plans and relevant consents. This provision establishes an outcomes-based approach to assessment where anticipated environmental effects are measured against specified environmental outcomes. As well as assessing against outcomes, an Environmental Outcomes Report must set out and assess the impact of any proposed mitigation or compensation as well as considering reasonable alternatives to the consent or plan, or any element of them. Where an Environmental Outcomes Report is required, this must be taken into account when considering whether to grant consent or bring a plan into effect.

Effect

821 Subsection (1) allows the Secretary of State to make regulations requiring that an Environmental Outcomes Report is prepared as a requirement to proceed with relevant plans or grant consent to relevant projects.

822 Subsection (2) sets the dual requirements that where an Environmental Outcomes Report is required, consent cannot be granted unless the Environmental Outcomes Report has been prepared subsection (2) (a) and that the Environmental Outcomes Report needs to be considered when determining whether a relevant consent is to be granted and the terms on which it is given (2(b))

> Example: Failure to prepare an Environmental Outcomes Report
>
> If, where a consent has been identified as a relevant consent in regulations, an Environmental Outcomes Report is not produced then consent could not be granted. Furthermore, if an Environmental Outcomes Report is required then the report needs to be considered before making a decision as to whether to the grant the consent or plan.

823 Subsection (3) mirrors the dual preparation and consideration requirements of an Environmental Outcomes Report as outlined in subsection 2, but in respect of relevant plans.

824 Subsection (4) sets the core requirements of what an Environmental Outcomes Report should contain. These build on the mandatory information required in the reporting stages of the Environmental Impact Assessment Directive (85/337/EEC) (Article 5 and Annex 4) and the Strategic Environmental Assessment Directive (2001/42/EC) (Article 5 and Annex 1). Subsection (4) (a) captures the need of an Environmental Outcomes Report to demonstrate how the plan or consent would affect the delivery of specified environmental outcomes as defined in regulations. Subsection (4)(b) reflects that, in addition to providing an assessment of the extent to which the delivery of specified environmental outcomes is affected, an Environmental Outcomes Report must assess any steps proposed to avoid, mitigate, remedy or compensate (the mitigation hierarchy) effects relating to the delivery of a specified environmental outcome. This provision extends the focus of assessment to include assessment of measures taken to improve the delivery of specified environmental outcomes. Subsection (4)(c) provides that an Environmental Outcomes Report should include an assessment of how matters raised through assessment are monitored or secured.

825 Subsection (5) (a) captures the need to consider reasonable alternatives in reference to the steps outlined under subsection (4) (b) which relate to the relevant consent, the project that is the subject of the consent, or to any element of either. Subsection (5) (b) relates to reasonable alternatives in respect of a relevant plan or any element of it.

826 Subsection (6) disapplies subsection (2) where consent is granted under section 125(4). This is to avoid the circular situation where the report would need to be taken into account in deciding whether to grant the consent, when it is the report itself that gives the consent.

827 Subsection (7) lists the circumstances in which the Secretary of State can make regulations in respect of Environmental Outcomes Reports.

828 Subsection (7) (a) provides a power to set out the form in which the relevant consent is to be given to constitute the issue of consent.

829 Subsections (7) (b) and (c) allow the Secretary of State to make regulations to set what plans and consents require an Environmental Outcomes Report.

> Example: The requirement to produce an Environmental Outcomes Report
>
> The use of this power is linked to the definition of "relevant plans" and "relevant consents" in Section (125). The combined effect of these provisions will allow the Secretary of State to specify what consents and plans require an Environmental Outcomes Report. The use of this power is constrained by the commitment to non-regression and a duty to consult relevant public authorities but will allow the Secretary of State to set out which consents must produce an Environmental Outcomes Report ("category one consents") and which consents must produce an Environmental Outcomes Report if certain conditions are met ("category two consents"). Similarly, the Secretary of State will be able to set which plans require an Environmental Outcomes Report.

830 Subsection (7) (d) allows the Secretary of State to make regulations to guard against duplication where the assessment of the impact on the delivery of a specified environmental outcome has already been adequately assessed in a different Environmental Outcomes Report.

831 Subsection (7)(e) enables the Secretary of State to specify the proposals that a report needs to deal with as set out in subsection 4 (b) and (c).

832 Subsection (7)(f) provides powers to enable Secretary of State to set out how assessments under subsection 4 should be carried out.

833 Subsection (7)(g) enables the Secretary of State to set what information is to be included in an Environmental Outcomes Report. This also allows the Secretary of State to determine the content and form of an Environmental Outcomes Report. This subsection also allows the Secretary of State to make provision for additional matters to be provided in the Environmental Outcomes Report over and above those detailed in subsection (4).

> Example: Form and content of information in an Environmental Outcomes Report
>
> This power could be used to prescribe that certain information produced for the purpose of an Environmental Outcomes Report is produced in a consistent manner. For example, regulations could be used to set how a specific type of environmental data is presented for the purpose of the Environmental Outcomes Report.

834 Subsection(7)(h) allows Secretary of State to set the extent to which Environmental Outcomes Reports are to be taken into account when making decisions in relation to relevant consents and plans.

> Example: The weight given to Environmental Outcomes Reports
>
> While Environmental Outcomes Reports must always be taken into account when prepared, the Secretary of State would have the power to make regulations that increased the weight afforded to an Environmental Outcomes Report. This would, for example, allow the Secretary of State to make regulations specifying that a decision-maker should, in certain circumstances, give increased weight to the findings of an Environmental Outcomes Report when considering whether to grant a consent.

835 Subsection (7)(i) allows the Secretary of State to make provision regarding how proposals should be carried out for the purposes of improving compliance with specified environmental outcomes as per subsection (4) (b) and (c) (following the mitigation hierarchy), as well as the monitoring of those proposals.

Defining the consents and plans to which this Part applies

Clause 140: Power to define 'relevant consent' and 'relevant plan' etc.

Background

836 These provisions allow the Secretary of State to set in regulations which consents and plans are covered by this Part and the requirements to produce an Environmental Outcomes Report. It also provides for a scenario where consent must be granted by the Environmental Outcomes Report itself.

Effect

837 Subsection (1) allows the Secretary of State to make regulations setting out those consents that are to be considered as relevant consents for the purposes of Environmental Outcomes Report. These "category 1" consents will always require an Environmental Outcomes Report.

838 Subsection (2) allows the Secretary of State to make regulations setting out those consents that should be considered "category 2" consents - a "category 2" consent will only be required to produce an Environmental Outcomes Report where it meets criteria set through regulations made under this provision.

839 Subsection (3) allows for regulations to be made that set the criteria where a consent listed as a "category 2" consent will be a relevant consent and therefore require an Environmental Outcomes Report.

840 Subsection (4) allows the Secretary of State to make regulations imposing a requirement for a consent in relation to a project. This will be used, as in the current Environmental Impact Assessment Agriculture regime, where no other consenting mechanism exists.

841 Subsection (5) allows the Secretary of State to make regulations setting out how a consent required by Subsection (3) is to be given, including that it may be given, or refused, by an Environmental Outcomes Report.

842 Subsection (6) provides that a relevant plan for the purposes of this Part will be defined through regulations. This clause requires that, in order for a plan to be capable of being specified as a relevant plan, it must or may relate to a project or environmental protection in the United Kingdom.

843 Subsection (7) extends the definitions to include modifications of consents and plans.

844 Subsection (8) explains the meaning of the term 'consent' for the purposes of this Part given the breadth of terminology associated with existing environmental assessment legislation.

845 Subsection 9 explains the meaning of the term 'project' for the purposes of this Part given the range of activities to which the term could apply.

Assessment and monitoring

Clause 141: Assessing and monitoring impact on outcomes etc.

Background

846 These provisions allow the Secretary of State to make regulations setting out how relevant consents and relevant plans should be assessed and monitored once in place, so that information on delivery against specified environmental outcomes can be captured. This will then also allow remedial action and/or mitigations to be carried out where necessary.

Effect

847 Subsection (1) provides powers to enable Secretary of State to make regulations setting out how the delivery of specified environmental outcomes should be assessed or monitored.

848 Subsection (2) makes provision for the Secretary of State to make regulations setting how any proposals assessed in the Environmental Outcomes Report should be assessed and monitored.

> Example: Monitoring and dynamic mitigation
>
> The Secretary of State will be able to make regulations that require action to be taken where monitoring shows that the expected delivery of a specified environmental outcome is not being met. For example, these regulations could mandate that certain mitigations are put in place where ongoing monitoring shows that a specified environmental outcome is not being met.

849 Subsection (3) deems it appropriate to take action to i) increase the extent to which an environmental outcome is delivered, ii) mitigate or remedy the effects of an environmental outcome not being met to any extent or iii) compensate for an environmental outcome not being met to any extent.

Safeguards, devolution and exemptions

Clause 142: Safeguards: non-regression, international obligations and public engagement

Background

850 This is a new provision enshrining the government's commitment to non-regression of environmental protection, public engagement and international obligations. In introducing a new framework of environmental assessment, the Government is committed to maintaining overall existing levels of environmental protection as required by the relevant provisions of the EU-UK Trade and Cooperation Agreement. This provision also ensures that the process of environmental assessment provides suitable opportunity for public engagement.

Effect

851 Subsection (1) constrains the use of the regulation making powers to require that the Secretary of State must be satisfied that any regulations do not reduce the overall level of environmental protection provided by existing environmental law at the time the Act is passed.

852 Subsection (2) is an additional constraint that ensures regulations cannot contain provisions that are inconsistent with the implementation of the UK's international obligations relating to the assessment of the environmental impact of relevant plans and relevant consents.

853 Subsection (3) sets a commitment to ensuring adequate public engagement in the process of preparing an Environmental Outcomes Report. This will ensure the public are informed of any relevant consents / plans and have the opportunity to engage in the process, in line with the requirements of the Aarhus Convention on Matters of Public Participation in Decision Making.

854 Subsection (4) provides definitions of "adequate public engagement" and "environmental law" to support the understanding of these constraints.

Clause 143: Requirements to consult devolved administrations

Background

855 The provision provides that the Secretary of State must consult the relevant Devolved Ministers where regulations contain provision within devolved competence.

Effect

856 Subsection (1) requires the Secretary of State to consult with Scottish Ministers before making EOR regulations within Scottish devolved competence.

857 Subsection (2) defines Scottish devolved competence for the purposes of subsection (1), that is, where the regulations could have been within the competence of the Scottish Parliament, made by Scottish Ministers or confers or removes a function on Scottish Ministers or public authorities.

858 Subsection (3) requires the Secretary of State to consult with Welsh Ministers before making EOR regulations within Welsh devolved competence.

859 Subsection (4) defines Welsh devolved competence for the purposes of subsection (3), that is, where the regulations could have been within the competence of Senedd Cymru, made by Welsh Ministers or confers or removes a function on Welsh Ministers or public authorities.

860 Subsection (5) requires the Secretary of State to consult with a Northern Ireland department before making EOR regulations within Northern Ireland devolved competence.

861 Subsection (6) defines Northern Ireland devolved competence for the purposes of subsection (5), that is, where the regulations could have been within the competence of the Northern Ireland Assembly without requiring the Secretary of State's consent, made by a Northern Ireland department or person carrying out a function of a public nature that could be conferred by the Northern Ireland Assembly without the need for the consent of the Secretary of State.

862 Subsection (7) refers to the definition of "Minister of the Crown" to be used in this Part.

Clause 144: Exemptions for national defence and civil emergency etc.

Background

863 This provision replicates the position under the current environmental assessment regulations and provides the necessary powers to allow the Secretary of State to direct when an Environmental Outcomes Report is not required.

Effect

864 Subsection (1) enables the Secretary of State to direct that an Environmental Outcomes Report is not required where a proposed relevant consent relates solely to national defence or preventing or responding to civil emergency.

865 Subsection (2) provides a power for the Secretary of State to set out in regulations other instances when the Secretary of State is able to direct that an Environmental Outcomes Report is not required.

866 Subsection (3) provides that, where a direction for an exemption has been made, that direction may require that certain provisions of the regulations apply even where a full Environmental Outcomes Report is not required.

867 Subsection (4) enables the Secretary of State to revoke a direction under this section. This provides a mechanism to deal with emergency situations but would then allow for revocation of the direction when it is no longer required.

Enforcement

Clause 145: Enforcement

Background

868 This is a new provision which sets out the enforcement provisions that can be made in respect of Environmental Outcomes Reports. The Secretary of State is under a duty to consult relevant public authorities when making regulations in respect of enforcement.

Effect

869 Subsection (1) provides the power to allow for the creation of enforcement provisions in respect of Environmental Outcomes Reports.

870 Subsection (2) specifies the specific type of provisions that can be made in respect of enforcement – subsection (2)(a) – (g) details the range of criminal and civil provisions that are available.

871 Subsection (3) confirms that civil sanctions imposed under the powers contained in this section may be imposed in circumstances when the conduct does not constitute a criminal offence.

872 Subsection (4) defines 'civil sanction' in the context of this legislation.

Reporting

Clause 146: Reporting

Background

873 This is a new provision which sets out the framework of regulation-making powers available to Government in respect of Environmental Outcomes Reports. This will allow the Secretary of State to require public authorities to report back on the delivery of specified environmental outcomes which will allow the Government to build a picture of the delivery of environmental outcomes across the country.

Effect

874 Subsection (1) is an enabling power to allow the Secretary of State to require a public authority to provide information in relation to the delivery of environmental outcomes.

875 Subsection (2) frames the potential contents of any Environmental Outcomes Report regulations in respect of reporting requirements. Subsection 2(a) – (f) provide allow regulations to set the details of what is required by public authorities in relation to reporting. This includes: the form and content of information ((a) and (b)); when and how information is to be published ((c) and (d)); to whom the report is to be provided ((e)) and allowing reports to be combined with other documents ((f)).

> Example: Reporting on environmental outcomes
>
> The Secretary of State could, for example, use this power to make regulations requiring local planning authorities to provide consolidated information on how their local plans are delivering on specified environmental outcomes.

General

Clause 147: Public consultation etc

Background

876 This is a new provision which sets out the consultation requirements when making regulations under this Part. This introduces two routes of consultation for different provisions. Public consultation is enshrined for the core elements of the new system, with consultation with relevant public authorities proposed for more technical and procedural matters.

Effect

877 Subsection (1) requires that the Secretary of State consult the public before making, amending or repealing existing legislation in respect of environmental assessment. The Secretary of State is also placed under a duty to consult the public when making regulations that set environmental outcomes.

878 Subsection (2) requires the Secretary of State to consult public authorities (or other such persons considered appropriate) before making certain guidance or regulations under this Part – namely regulations in respect of consents and plans subject to this Part, exemptions, enforcement, interaction with existing environmental assessment legislation and the Habitats Regulations subsection (2) (a) (i-iv).

879 Subsection (3) allows for Environmental Outcomes Report regulations to direct how public authorities must respond to consultation requirements.

880 Subsection (4) allows for circumstances in which consultation requirements have already been met before Subsections (1) or (2) come into force.

Clause 148: Guidance

Background

881 This is a new provision that requires public authorities to have regard to guidance issued by the Secretary of State when exercising their functions in respect of environmental assessment. In setting outcomes, the Government will prepare guidance detailing out how relevant plans and consents demonstrate they are supporting the delivery of specified environmental outcomes. This guidance will support public authorities to ensure consistency of assessment and allow the Government to reflect up-to-date science and methodologies.

Effect

882 Subsection (1) requires public authorities to have regard to guidance issued by the Secretary of State.

883 Subsection (2) allows for regulations that may introduce a requirement that where any person carrying out a function in respect of Environmental Outcomes Report regulations fails to have regard to guidance, then that function will not be valid.

> Example: Guidance to support Environmental Outcomes Reports
>
> The need to ensure regard is given to guidance will ensure that, for example, where guidance is issued that demonstrates how relevant plans and consents can demonstrate they are in line with a specified environmental outcome, this guidance is given proper consideration by the decision-maker when taking account of the Environmental Outcomes Report.

Clause 149: Interaction with existing environmental assessment legislation and the Habitats Regulations

Background

884 This provision ensures that legislation made under this part is able to interact with existing environmental assessment legislation, as well as the Habitats Regulations, subject to non-regression provisions. This is necessary to ensure that where an Environmental Outcomes Report is prepared, where appropriate, this is capable of meeting the requirements of existing environmental assessment so as to avoid duplication.

Effect

885 Subsection (1) provides the power to make regulations in respect of interaction with existing environmental assessment legislation or Habitats Regulations.

886 Subsection (2) provides that regulations can be made that set out how the preparation of an Environmental Outcomes Report can meet the requirements of existing environmental assessment legislation or Habitats Regulations and vice versa (subsection (2)(a) and (b)). Subsection (2)(c) allows for the coordination of Environmental Outcomes Report and existing environmental assessment legislation or Habitats Regulations. Subsection (2) (d) and (e) allow for regulations to be made that disapply existing environmental assessment legislation and Environmental Outcomes Reports when there would be duplication between the two systems.

887 Subsection (3) provides a supporting power to allow for the amendment, repeal or revocation of existing environmental assessment legislation.

888 Subsection (4) defines the meaning of Habitats Regulations for the purpose of this Part.

Clause 150: Consequential repeal of power to make provision for environmental assessment

Effect

889 Subsections (1) to (3) repeal references in the Town and Country Planning Act 1990 relating to the power of the Secretary of State to make provision about the consideration, before planning permission, of the likely environmental effects of a development (including for Urgent Crown Development applications).

Clause 151: EOR regulations: further provision

Background

890 This provides additional regulation-making powers that build on the core regulation making powers.

Effect

891 Subsection (1) provides the Secretary of State with the power to make regulations in relation to procedural matters subsection (1)(a), who can prepare an Environmental Outcomes Report subsection (1)(b), requiring a public authority to assist with assessment or monitoring subsection (1)(c), requirements in relation to publication, consultation and public engagement in connection with Environmental Outcomes Reports and other relevant documents subsection (1)(d), information requirements subsection (1)(e), the persons to whom an Environmental Outcomes Report is to be given and how it is given subsection (1)(f), how information should be collected or provided subsection (1)(g), the ability to decline documents that fail to meet requirements subsection (1(h), how public authorities are to consider any failure to comply with any requirements under this Part when reaching a decision on the relevant consent or plan subsection (1)(i), and appeals and reviews of decisions made by public authorities subsection (1)(j.).

892 Subsection (2) allows regulations to provide for the charging of fees subsection (2)(a) confer a function on any person subsection (2)(b) and make consequential amendments subsection (2)(c).

893 Subsection (3) defines the meaning of legislation for the purposes of making consequential amendments, capturing the necessary legislative provisions in respect of the UK Parliament and Devolved Legislatures.

Clause 152: Interpretation of Part 6

Background

894 This is a new provision to clarify the interpretation of key terms relating to this Part.

Effect

895 Subsection (1) sets out the existing environmental assessment legislation that transposes or incorporates the SEA and EIA Directive.

896 Subsection (2) provides and references a range of definitions to support the interpretation of this Part. These include definitions in respect of, amongst other things, 'cultural heritage' 'project', and 'public authority'.

Part 7: Nutrient Pollution Standards

Clause 153: Nutrient pollution standards to apply to certain sewage disposal works

Background

897 This Clause inserts new provisions (sections 96B to 96K) into the Water Industry Act 1991 and makes consequential amendments to section 213 of that Act.

898 This Clause allows the Secretary of State to designate catchment areas for certain habitats sites polluted by nitrogen and/or phosphorus. It also requires sewerage undertakers to ensure that treated effluent from sewage disposal works in England that discharge into the designated catchments will, unless exempted, meet specified standards for the removal of nitrogen and/or phosphorus from wastewater by the applicable upgrade date. Exemptions will be primarily for smaller works.

Effect

899 Subsection (1) inserts new sections 96B to 96K into the Water Industry Act 1991:

96B Nutrient pollution standards to apply to certain sewage disposal works

a. Subsection (1) requires sewerage undertakers wholly or mainly in England to ensure that any sewage disposal works classed as nitrogen or phosphorus significant plants meet the relevant nutrient pollution standard on and after the upgrade date (see section 96E).

b. Subsections (2) and (3) define the terms "nitrogen significant plant" and "phosphorus significant plant" respectively.

96C Sensitive catchment areas

a. Subsection (1) allows the Secretary of State to designate a "nitrogen sensitive catchment area" in relation to a habitats site in England that is in an unfavourable condition due to nitrogen pollution.

b. Subsection (2) allows the Secretary of State to designate a "phosphorus sensitive catchment area" in relation to a habitats site in England that is in an unfavourable condition due to phosphorus pollution.

c. Subsection (3) specifies that when determining (a) whether a habitats site is in an unfavourable condition due to nutrient pollution, or (b) the catchment area for a habitats site, the Secretary of State may take into account advice or guidance from, in particular, Natural England, the Environment Agency or the Joint Nature Conservation Committee.

d. Subsection (4) sets out the process for making designations of nutrient sensitive catchment areas. Where a designation is made after the initial period, the upgrade date must be specified (see section 96E).

e. Subsection (5) further requires that where a nutrient sensitive catchment area is designated after the initial period, the upgrade date must be at least 7 years after the designation date.

f. Subsection (6) specifies that designation of a nutrient sensitive catchment area cannot be revoked. The designation will remain regardless of whether or not the associated habitats site continues to be in an unfavourable condition due to nutrient pollution.

g. Subsection (7) defines the term "catchment area".

96D Exempt sewage disposal works

a. Subsection (1) sets out when a plant is exempt in relation to a nutrient pollution standard: that is, if it is designated as exempt; if it is exempt under regulations; or if it has a capacity of less than a 2000 population equivalent at the time when the associated catchment area is designated.

b. Subsection (2) allows the Secretary of State to designate a plant as not being exempt. in relation to a nutrient pollution standard. If a plant has a capacity of less than a population equivalent of 250, the Secretary of State must exercise the power to designate it as not exempt before, or at the same time as, the associated catchment area is designated.

c. Subsection (3) sets out the process for designating plants as exempt and not exempt.

d. Subsection (4) requires that, where a plant is designated as not being exempt after the associated catchment area has been designated, the upgrade date must be specified (see section 96E). The upgrade date must be at least 7 years after the designation under subsection (2) takes effect.

e. Subsection (5) allows the Secretary of State to make regulations to specify plants or descriptions of plant that are to be exempt in relation to a nutrient pollution standard.

f. Subsection (6) explains that subsection (7) applies where a plant that is exempt under regulations under subsection (5) can, by virtue of the regulations, cease to be exempt.

g. Subsection (7) requires the regulations to specify or provide for determining the upgrade date in relation to any plant that ceases to be an exempt plant in relation to a standard after the designation of the associated catchment area takes effect. The upgrade date must be at least 7 years after the plant ceases to be exempt in relation to the standard.

h. Subsection (8) makes a designation of a plant as not exempt under subsection (2) to be of no effect if the plant ceases, by virtue of regulations under subsection (5), to be exempt in relation to the standard before, or at the same time as, the designation would otherwise take effect.

i. Subsection (9) defines the term "population equivalent".

96E Upgrade date

a. The upgrade date is the date by and after which a nutrient significant plant must meet the relevant nutrient pollution standard (see section 96B).

b. Subsection (1) specifies that unless subsection (2) applies, the upgrade date is 1 April 2030 provided the associated catchment area is designated during the initial period, or the date specified under section 96C(4)(d), if the designation is made after the initial period.

c. Subsection (2) specifies the upgrade date that applies where a plant becomes a nutrient significant plant by way of being designated as not exempt, or ceasing to be exempt under regulations, after the designation of the associated catchment area takes effect.

d. Subsection (3) defines "the initial period".

96F Nutrient pollution standards

a. Subsections (1) and (2) specify the nitrogen and phosphorus nutrient pollution standards respectively.

b. Subsections (3) and (4) define various terms relating to the operation of sewerage disposal works.

c. Subsection (5) allows the Secretary of State to make regulations specifying how the concentration of nitrogen or phosphorus is to be determined.

d. Subsection (6) sets out provisions that may be included in regulations made under subsection (5), such as provision for sampling.

96G Information about sensitive catchment areas and nutrient significant plants

a. Subsection (1) requires the Secretary of State to maintain and publish a map online showing all the nutrient sensitive catchment areas.

b. Subsection (2) requires the Secretary of State to update the map as soon as practicable after designating a nutrient sensitive catchment area.

c. Subsection (3)(a) requires the Secretary of State to maintain and publish online a list of all sewage disposal works that are or have been nutrient significant plants. Paragraph (b) specifies further information that must be published in relation to each listed plant.

d. Subsection (4) requires the Secretary of State to publish a revised document as soon as practicable after there has been a change in the information listed.

96H Section 96B: enforcement and interaction with other provisions

a. Subsection (1) specifies that the duty of a sewerage undertaker under section 96B is enforceable under section 18 of the Water Industry Act 1991, by the Secretary of State, or with the consent of, or authorisation given by, the Secretary of State or the Water Services Regulation Authority (Ofwat).

b. Subsection (2) requires the Environment Agency to exercise its statutory functions so as to enforce the duty imposed by section 96B and secure compliance by sewerage undertakers. This may include the use of environmental permits issued to sewerage undertakers.

c. Subsection (3) further specifies that the Environment Agency must exercise its functions under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 to ensure sewerage undertakers fulfil duties to prevent and remediate damage to protected sites arising from any failure to comply with the duty imposed by section 96B.

d. Subsection (4) clarifies that nothing in section 96B or this section affects any other obligation of a sewerage undertaker relating to nutrient levels in treated effluent, or any power to impose an obligation relating to nutrient levels. In particular, these sections do not prevent the exercising of a power to require a lower nitrogen or phosphorus concentration in treated effluent than section 96B requires.

96I Powers to amend sections 96D and 96F

a. Subsection (1) allows the Secretary of State to make regulations to amend any plant capacity specified in section 96D(1)(a) or (2)(a).

b. However, subsection (2) prevents regulations made under subsection (1) from applying to an area already designated as a sensitive catchment area.

c. Subsection (3) specifies that regulations made under subsection (1) may amend section 96D to specify different plant capacities in relation to nitrogen and phosphorus pollution standards. Where different plant capacities apply for different

purposes or areas as a result of subsection (1) regulations, section 96D may be amended accordingly.

d. Subsection (4) allows the Secretary of State to make regulations to amend section 96F(1) and/or (2) to set a lower concentration of nitrogen and/or phosphorus as the relevant nutrient pollution standard.

e. However, subsection (5) specifies that the new nutrient pollution standard would not apply to any area that is already a sensitive catchment area.

f. Subsection (6) specifies that where regulations result in different concentrations applying in different circumstances, section 96F(1) and (2) may be amended accordingly.

g. Subsection (7) specifies that the affirmative resolution procedure applies to a statutory instrument containing regulations made under subsection (1) or (4).

h. Subsection (8) contains a dehybridising provision in relation to regulations made under subsection (1) or (4).

96J Sections 96B to 96I and 96K: interpretation

a. Subsection (1) is self-explanatory.

b. Subsection (2) defines various terms relevant to these sections.

c. Subsection (3) clarifies the meaning of "a plant discharging into a sensitive catchment area".

d. Subsection (4) clarifies the meaning of "the sewerage system of a sewerage undertaker".

96K New and altered plants: modifications

a. Subsection (1) allows the Secretary of State to make regulations so that sections 96B to 96J apply with prescribed modifications in relation to any plant that operates for the first time or is altered after the Levelling-up and Regeneration Act 2022 is passed.

b. Subsection (2) allows for regulations under this section to extend the period for new and altered plants to meet the nutrient pollution standard, that is, to provide for sections 96C(5) and 96D(4) and (7) to apply as if they specified periods other than 7 years.

c. Subsection (3) specifies that regulations under this section may not modify section 96F(1) or (2) to apply a higher concentration of total nitrogen phosphorus than would otherwise apply.

d. Subsection (2) amends section 213 (Powers to make regulations) of the Water Industry Act 1991 to insert a reference to section 96I.

Clause 154: Planning: assessments of effects on certain sites

Effect

900 This clause introduces Schedule 12. Schedule 12 inserts new regulations (85A to 85D and 110A to 110C) into Part 6 of the Conservation of Habitats and Species Regulations 2017 ("the 2017 Regulations") and amends the planning related regulations to signpost the assumptions in new regulations 85A, 85B and 110A.

Clause 155: Remediation

Background

901 This Clause inserts new regulation 9A and new Schedule 2ZA into the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ("the 2015 Regulations").

902 The 2015 Regulations apply to serious environmental damage to land, to water and to species and habitats and impose duties on operators to take steps to prevent or remediate damage. This Clause treats any damage to a related habitats site attributable to the failure of a plant to meet the duty introduced by Clause 153 as environmental damage so that provisions of the 2015 Regulations apply, subject to the modifications made to the 2015 Regulations by Schedule 2ZA.

Effect

903 Subsection (1) is self-explanatory.

904 Subsection (2) inserts new regulation 9A into the 2015 Regulations.

9A Nutrient significant sewage disposal works: environmental damage

a. New regulation 9A(1) sets out the circumstances when this regulation applies, that is where a sewerage undertaker fails to secure the plant is able to meet the nutrient pollution standard as set out in the duty in Clause 153 (Nutrient pollution standards to apply to certain sewage disposal works).

b. Subsection (2) determines that any damage to a related habitats site attributable to the failure of a plant to meet the relevant nutrient pollution standard on and after the upgrade date is to be deemed environmental damage to the site caused by an activity of the sewerage undertaker that requires a permit and falls within Schedule 2 of the 2015 Regulations.

c. Subsection (3) sets out that it is for the Environment Agency to determine the damage to the site that is attributable to the failure of the sewerage undertaker to meet the nutrient pollution standard.

d. Subsection (4) clarifies what damage to a habitats site from a failure of a plant to meet the relevant nutrient pollution standard includes and includes any improvement in the integrity of the site that would have resulted from the plant meeting that standard on and after the upgrade date.

e. Subsection (5) directs to Schedule 2ZA for modifications of the 2015 Regulations that apply where new regulation 9A applies.

f. Subsections (6) and (7) define terms used in this regulation with reference to the Water Industry Act 1991.

905 Subsection (3) inserts new Schedule 2ZA into the 2015 Regulations.

Schedule 2ZA: Modifications where regulation 9A applies

906 The new Schedule 2ZA has the effect of making consequential modifications to the 2015 Regulations in relation to anything that is deemed environmental damage by regulation 9A. It includes modifications relating to liability to remediate and appeals against liability to remediate specifically in relation to regulation 9A.

Part 8: Development Corporations

Local authority proposals and oversight

Clause 156: Locally-led urban development corporations

Background

907 Sections 134 and 135 of the Local Government, Planning and Land Act 1980 makes provision for the Secretary of State to designate, by order, one or more parcels of land as an urban development area if it is expedient in the national interest to do so and to establish an Urban Development Corporation to oversee an urban development area.

908 Responses to the Development corporation reform: technical consultation suggested that there is a gap in the existing models of development corporation, particularly outside of mayoral areas where there is no model available for local authorities with a regeneration remit.

909 Therefore, this new provision allows the Secretary of State, upon request from a local authority or authorities, to designate an urban development area and create an Urban Development Corporation for which a local authority rather than central government is responsible.

910 It allows the Secretary of State to appoint one or more local authorities to oversee the regeneration of an urban development area. It also gives the Secretary of State the power to modify the Local Government, Planning and Land Act 1980 through secondary legislation, so that some of the functions for overseeing the development corporation which sit with central government can be transferred to the relevant local authority or local authorities, and makes further changes necessary to enable the local authority led model to work effectively.

Effect

911 This clause amends Sections 134 and 135 of the Local Government, Planning and Land Act 1980. Subsections (1) and (2) insert new subsection (1B) after Section 134(1A). It allows the Secretary of State to designate an urban development area where a proposal has been made by a local authority or authorities and whether it is expedient in the local interest to designate the urban development area and establish a development corporation in relation to the proposal. Subsection (3) inserts subsection (4D) and (4E) after Section 134(4C) which sets out that these powers are to be made by order via the negative parliamentary procedure.

912 Subsection (4) inserts new subsection (134A) after section 134 of the Local Government, Planning and Land Act 1980.

134A Local authority proposal for designation of locally-led urban development area in England

a. New section 134A(1) makes provision for one or more local authorities acting jointly to make a proposal to the Secretary of State to designate an urban development area. New section 134A(2) and (3) provides that a proposal must contain the name, which local authority or local authorities should be designated as the oversight authority, a map of the area to be designated and may also specify other matters that may be specified in the order. This could include what planning functions should be conferred on the Locally-led Urban Development Corporation. New section 134A(4) provides that a proposal can be for separate parcels of land and therefore do not have to be contiguous. New section 134A(5) provides that a local authority may only make a proposal where the proposal area falls within its whole area or where a proposal is made by two or more local authorities, they may make a proposal if the proposal area

falls partly or wholly within each area and wholly within their combined area. New section 134A(6) provides that a proposing authority must consult before making a proposal to the Secretary of State with individuals and bodies specified in new section 134A(7). The proposing authority or authorities must have regard to the responses and publish a consultation statement setting out reasons for non-acceptance from comments made by a local authority or Greater London Authority.

b. New section 134A(8) sets out who can be an oversight authority. A local authority can only be an oversight authority if the proposal area is partly or wholly within the area of the local authority. New section 134A(9) provides that where there are two or more local authorities being proposed as the oversight authority they may propose who carries out a particular function. New section 134A(10) sets out the definitions for 'local authority', 'locally-led proposal', 'proposing authority' and 'constituent council' for this section.

913 Subsections (5) to (10) amend section 135 (urban development corporations). Subsection (6) has the effect of separating the consultation provisions for Urban Development Corporations from locally-led Urban Development Corporations that are designated under new section 134A(1).

914 Subsection (7) inserts new subsection (4A) to (4C). It provides that the order designating the locally-led Urban Development Corporation must give effect to the proposal including, by giving it the name, designating the oversight authority, setting out the number of board members, and establishing which authorities are to perform which functions where there are two or more local authorities that make up the oversight authority. The order must also contain other functions that the proposal sets out.

915 Subsections (8) and (9) maintains the existing position for the designation of an Urban Development Corporation under existing section 134(1). Urban Development Corporations will continue to be designated via the affirmative parliamentary procedure.

916 Subsection (10) inserts new subsection (3AA) which allows that an order establishing a Locally-led Urban Development Corporation will be via the negative parliamentary procedure.

917 Subsection (11) inserts new section 135A after section 135. Subsections (1) to (5) provides the Secretary of State with the power to make regulations, via the affirmative parliamentary procedure, setting out how an oversight authority is to oversee the regeneration of a locally-led urban development area. Regulations may prescribe the transfer of functions under the Act from central government to the local authorities and other changes to the Act to enable this to work in practice. These regulations may include how an oversight authority is to exercise specified functions, such as plan making and development management powers, and may make provision about the board membership of a locally-led Urban Development Corporation.

Example

A proposed locally-led urban development corporation area covers three sites in close proximity to each other. The proposed area covers three Districts and two County Councils.

Districts A and B plus both County Councils want to propose and become an oversight authority for a locally-led Urban Development Corporation. They also want to transfer local plan making, neighbourhood planning and development management planning powers to the development corporation to facilitate the delivery of the three sites.

District C only covers a small portion of the area and therefore does not want to become part of the proposing or oversight authority.

Before making a proposal to the Secretary of State, Districts A, B plus both County Councils consult on designating the proposed area, establishing a development corporation and transferring planning powers.

District C is content with the proposals and responds positively to the consultation on designating the urban development area, establishing the development corporation and transferring planning powers.

Districts A and B, plus both County Councils have regard to the consultation responses. Districts A and B, plus both County Councils may then submit the proposal to the Secretary

Clause 157: Development corporations for locally-led new towns

Background

918 Section 16 of the Neighbourhood Planning Act 2017 inserted section 1A into the New Towns Act 1981. It provides that the oversight of new town development corporations may rest with the local authority or authorities covering the designated area for the new town, rather than the Secretary of State.

919 This clause inserts new section 1ZA and 1ZB into the New Towns Act 1981 to reflect the establishment process of designating a locally-led urban development area and corporation to ensure consistency.

1ZA Local authority proposal for designation of locally-led new town in England

Effect

a. This clause amends the New Towns Act 1981.

b. Subsection (2) inserts new subsections 1ZA and 1ZB after section 1 of the New Towns Act 1981 and provides that one or more local authorities may submit a proposal to the Secretary of State to designate an area as a new town under New Section 1ZA(1). New section 1ZA(2) provides that the proposal must include the name of the development corporation, the name of the local authority or authorities which will become the oversight authority and a map of the proposal area. New section 1ZA(3) provides that the proposal may also specify other matters that should be included in the order. This could include what planning functions should be conferred on the locally-led New Town Development Corporation. New section 1ZA(4) provides that a local authority may only make a proposal where the proposal area falls within its whole area or where a proposal is made by two or more local authorities, they may make a proposal if the proposal area falls partly or wholly within each area or wholly within their combined area. New section 1ZA(5) provides that an authority or authorities must consult before

making a proposal to the Secretary of State with individuals and bodies specified in new section 1ZA(6). The proposing authority or authorities must have regard to the responses, and publish a consultation statement setting out reasons for non-acceptance from comments made by a local authority or Greater London Authority. New section 1ZA(7) provides who can be an oversight authority. A local authority can only be an oversight authority if the new town area is partly or wholly within the area of the local authority. New section 1ZA(8) provides that where there are two or more local authorities being proposed as the oversight authority, they may propose who carries out a particular function. New section 1ZA(9) sets out the definitions for 'local authority', 'locally-led proposal', 'proposing authority' and 'constituent council' for this section.

1ZB Designation of locally-led new town in England

a. New subsection 1ZB(1) relating to the designation of a locally-led new town only applies when a proposal has been made to the Secretary of State by the proposing authority under new Section 1ZA. New section 1ZB(2) allows the Secretary of State to designate an area as a new town, by order where a proposal has been made by a local authority or authorities and whether it is expedient in the local interest to designate the area and establish a development corporation in relation to the proposal. New section IZB(3) applies current section 1(3) and (5) of the New Town Act 1981 to the designation of a locally-led new town. The new town area can include existing towns or other populated areas and an order under this section will be a local land charge.

920 Subsection (3) amends section 3 of the New Towns Act 1981. Subsection (3)(a) provides that the Secretary of State shall make an order establishing a development corporation for a new town area as a result of a proposal for designating a new town area under new section 1ZB. Subsection (3)(b) has the effect of separating the consultation provisions for New Town Development Corporations from locally-led New Town Development Corporations that are designated under new section 1ZB. Subsection (3)(c) inserts new subsections (2B) to (2D) which provides that the order designating the locally-led new town development must give effect to the proposal by giving it the name, designating the oversight authority and establishing which authorities are to perform which functions where there are two or more local authorities that make up the oversight authority.

921 Subsection (4) amends Section 77 of the New Towns Act 1981 (regulations and orders) and provides that an order designating a new town area and establishing the related development corporation will be via the negative parliamentary procedure.

Clause 158: Minor and consequential amendments

922 This clause gives effect to Schedule 13 which makes consequential amendments to the Local Government, Planning and Land Act 1980 and New Towns Act 1981 in connection with sections 156 and 157.

Planning functions

Clause 159: Planning functions of urban development corporations

Background

923 Development corporation models have access to varying planning powers. Currently section 149 of the Local Government, Planning and Land Act 1980 (the '1980 Act') makes provision for the Secretary of State to transfer by order the power for Urban Development Corporations to become the local planning authority for the purposes of development management – the process of deciding planning applications.

924 The new provisions which apply to England only, allow for Urban Development Corporations to have access to planning powers that are equivalent to those available to Mayoral Development Corporations. This includes the ability for Urban Development Corporations to become the local planning authority for the purposes of plan-making and neighbourhood planning in addition to development management purposes that can already be given to an Urban Development Corporation.

Effect

925 This clause amends the 1980 Act.

926 Subsection (2)(a) inserts new subsection (1A) into section 149 of the 1980 Act to allow the Secretary of State to make an order, making an Urban Development Corporation the local planning authority in its area for the purposes of local plan-making and neighbourhood planning. This can be, separately or collectively, for those purposes and for the whole or any part of the Urban Development Corporation Area.

927 Subsection (2)(b) allows the order conferring planning functions for the purposes of development management, local plan-making and neighbourhood planning to specify which enactments relating to local planning authorities should apply or apply with modifications

928 Subsection (2)(c) inserts subsection (2A) into section 149 of the 1980 Act. This makes provisions for an Urban Development Corporation to become the minerals and waste planning authority for the purpose of plan-making. This can be for the whole or any part of the urban development corporation area. This provision does not apply to locally-led Urban Development Corporations.

929 Subsection 2(ca) amends subsection 3 of section 149 of the 1980 Act. This removes references to specific legislation in relation to planning functions listed in Schedule 29. Subsection 2(cb) inserts new subsection 3a into section 149 of the 1998 Act so that specific planning functions that can be passed onto Urban Development Corporations by paragraphs 1,3 and 5 of Part 1 of Schedule 29 only apply to development corporations in England.

930 Subsection (2)(cc) inserts new subsection (4A) into section 149 of the 1980 Act. This makes provisions for an Urban Development Corporation to take on functions set out by schedule 8 of the Electricity Act 1989 for consenting planning applications under section 37 of the 1989 Act. This can be for the whole or any part of the urban development corporation area.

931 Subsection (3) inserts new section 149A into the 1980 Act (Arrangements for discharge of, or assistance with, planning functions in England).

149A Arrangements for discharge of, or assistance with, planning functions in England

a. Subsections (1) to (4) of section 149A provide that an Urban Development Corporation, may make arrangements for the discharge of its development management functions, in whole or part, by the relevant council(s) but without prejudice to its own ability to perform those functions. This allows a development corporation to delegate its functions to the local authorities in the area.

b. Subsection (3) allows for the discharge of the function by a committee, sub-committee or officer of the council and that section 101(2) of the Local Government Act 1972 (delegation by committees and sub-committees) applies.

c. Subsections (5) and (6) allow an Urban Development Corporation to seek the relevant council(s) assistance in the discharge of its other planning functions including local plan-making and waste and minerals plan-making functions. Subsection (7) provides for the definition of "council" for the purposes of this section.

d. Subsection (4) amends Part 1 of Schedule 29 to the Local Government, Planning and Land Act 1980, which expands the list of specific planning functions that can be taken on by Urban Development Corporations in relation to functions contained in the Land and Compensation Act1961, the Town and Country Planning Act 1991 and the Planning (Listed Buildings and Conversation Areas) Act 1990.

Clause 160: Planning functions of new town development corporations

Background

932 Currently, New Town Development Corporations cannot be local planning authorities for their areas.

933 The new provisions, which apply to England only, allow for New Town Development Corporations to be a local planning authority for their area so that they have access to planning powers that are equivalent to those available to Mayoral Development Corporations. This includes the ability for new town development corporations to become the local planning authority for the purposes, separately or collectively, of local plan-making, development management and neighbourhood planning.

Effect

934 This Clause amends the New Towns Act 1981.

7A Development corporation as planning authority in England

935 Subsection (1) and (2) inserts new section 7A (Development corporation as planning authority in England) and 7B (Arrangements for discharge of, or assistance with, planning functions in England) into the New Towns Act 1981. New section 7A (1) to (3) allows for New Town Development Corporations to become the local planning authority for the purposes of local plan-making, development management, and neighbourhood planning by order. This can be, separately or collectively, for those purposes for any part of the New Town Development Corporation area. It can also be for such purposes and such kinds of development in relation to development management functions and for such purposes for local plan making and neighbourhood planning.

a. Section 7A(4)allows the New Town Development Corporation to have other planning functions under part 1 and part 2 of schedule 29 to the Local Government Planning and Land Act 1980. Section 7A (4A) in respect of Schedule 29, allows references to local planning authorities to be applied to a New Town Development Corporation specified in an order and provides that legislation in Schedule 29 can be applied to the corporation subject to modification in an order. Section 7A(5) provides for a New Town Development Corporation to become the minerals and waste planning authority for the purpose of plan-making. This provision does not apply to locally-led New Town Development Corporations.

b. Section 7A(6) provides for a New Town Development Corporation to take on functions set out by schedule 8 of the Electricity Act 1989 for consenting planning applications under section 37 of the 1989 Act.

c. Section 7A(7) provides that the planning functions in section 7A can be for the whole or any part of the area designated as a new town. Section 7A(8) allows for supplementary of transitional provisions and savings and section 7A(9) sets out the meaning of 'specified'.

7B Arrangements for discharge of, or assistance with, planning functions in England

a. Subsections (1) to (4) of section 7B (Arrangements for discharge of, or assistance with, planning functions in England) allow a New Town Development Corporations to

make arrangements for the discharge of its development management functions, in whole or part, by the relevant council(s) but without prejudice to its own ability to perform those functions. This allows a development corporation to delegate its functions to the local authorities in the area. Subsections (5) and (6) allows the New Town Development Corporation to seek the relevant council(s) assistance in the discharge of other planning functions including local plan-making functions and waste and minerals plan-making functions. Subsection (7) provides for the definition of "council" for the purposes of this section.

936 Subsection (3) amends Schedule 3 by inserting paragraph 10A and paragraph 10B. Paragraph 10A(1) to (2) allows New Town Development Corporations to discharge any of their planning functions made by order under new subsection (7A) to a committee. Paragraph 10A(3) allows any functions that are authorised or required to be done by the corporation to be done by a member of the corporation or of its staff, or by a committee or sub-committee. Paragraph 10A(4) to (6) allows the development corporation or Secretary of State to set out the arrangements for meetings and the minimum number of people in a committee or sub-committee . The validity of the committee or sub-committee is not affected by a vacancy or a flaw in the appointment of members.

937 Paragraph 10B(1) to 10B(4) sets out the arrangements for membership in relation to the membership of the committee and the sub-committee. Paragraph 10B(2) and 10B(3) sets out that the membership of a committee or sub-committee to be appointed by members of the development corporation, or any other person the development corporation considers appropriate, provided that they have consent from the Secretary of State. Paragraph 10B(4) sets out that the membership of a committee or sub-committee must always have at least one member of the development corporation, and must not include any person who is a member of the staff of the development corporation.

Clause 161: Mayoral development corporation as minerals and waste planning authority

Background

938 Section 202 of the Localism Act (2012) makes provision for a Mayoral Development Corporation to become the local planning authority for the purposes, separately or collectively, of plan-making, development control and neighbourhood planning.

939 This clause amends section 202 which allows for the Mayor to decide on a case-by-case basis whether the Mayoral Development Corporation for the area should be the minerals and waste planning authority for the purposes of plan making. Previously, when Mayoral Development Corporations were conferred powers to be the local planning authority for the purposes of plan-making under Part 2 of the PCPA 2004, they were local planning authorities capable of preparing local development documents on a range of topics, including minerals and waste.

Effect

940 This clause amends sections 202 to 204 of the Localism Act 2012. Subsection (2) insert new subsection (3A) into section 202. It makes provisions to allow mayoral development corporations to become the minerals and waste authority for the purpose of plan-making. This can be for the whole or any part of the mayoral development corporation area.

941 Subsection (3) amends section 203 and allows for the Mayoral Development Corporation to seek the relevant council(s) assistance in the discharge of its minerals and waste functions.

942 Subsection (4) amends section 204 and provides that if an order establishing a Mayoral Development Corporation has been made, the Mayor may decide to remove the Mayoral Development Corporation's planning functions or apply restrictions to their use which now includes minerals and waste.

Clause 162: Minor and consequential amendments

Effect

943 This clause gives effect to schedule 14 which makes consequential amendments in relation to the planning functions of development corporations.

Membership

Clause 163: Removal of restrictions on membership of urban development corporations and new town development corporations

Background

944 The legislative provisions for the governance of development corporations vary depending on the type of corporation. In some cases, there are prescribed caps on the number of other board members (excluding the chairman and deputy chair) a corporation can have.

945 This clause amends Schedule 26 of the Local Government, Planning and Land Act 1980 and Section 3 of the New Towns Act 1981. It removes the previous board member cap and the need to set board membership numbers out in an order establishing a New Town Development Corporation and an Urban Development Corporation, in England. This brings them in line with Mayoral Development Corporations and locally-led New Town Development Corporations which have no upper cap.

Effect

946 Subsection (1) amends paragraph 1 of Schedule 26 of the Local Government, Planning and Land Act 1980. This has the effect of removing the upper limit on the number of other board members and the need to set out the number of members in an order establishing an Urban Development Corporation in England. The limit was previously set at up to 11 other members. New paragraph 1A maintains the existing position for Urban Development Corporation in Scotland and Wales. The number of other board members will need to be prescribed by order when setting up a locally-led Urban Development Corporation and must not be less than 5 other members for both Urban Development Corporations and locally-led Urban Development Corporations.

947 Subsection (2) amends Section 3 (2)(c) of the New Towns Act 1981. This has the effect of removing the upper limit on the number of other board members and the need to set out the number of other members in an order establishing a New Town Development Corporation in England. This was previously set at up to 11 other members. New subsection (2ZA) maintains the existing position for New Town Development Corporations in Wales. New subsection (2ZB) establishes that the number of board members will need to be prescribed by order when setting up a locally-led New Town Development Corporation.

948 Subsection 3 has the effect of maintaining the current position of board membership for existing development corporation orders which were made before the section comes into force.

Finance

Clause 164: Removal of limits on borrowing of urban development corporations and new town development corporations

Background

949 This clause amends Paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 and Section 60 of the New Towns Act 1981.

950 Paragraph 8 of Schedule 31 of the Local Government, Planning and Land Act 1980 makes financial provisions for Urban Development Corporations, in England, Scotland and Wales by addressing how much money can be borrowed from HM Treasury, or any other person approved by HM Treasury or the Secretary of State. It states that the total sum of money that all Urban Development Corporations can borrow should not exceed £30 million, or up to £100 million through an order made by the Secretary of State.

951 Sections 58 to 60 of the New Towns Act 1981 makes financial provisions for New Town Development Corporations by addressing how much money can be borrowed from HM Treasury, or any other person approved by HM Treasury or the Secretary of State. Section 60 states that the total sum of money that a New Town Development Corporation can borrow should not exceed £4,600 million, or a greater sum not exceeding £5,250 million as the Secretary of State may by order specify.

952 The amendments to Paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 and Section 60 of the New Towns Act 1981 removes the financial and borrowing limits for Urban Development Corporations and New Town Development Corporations, in England, for money borrowed after the commencement of this section.

Effect

953 Subsection 1 and 2 amends paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 and Section 60 of the New Towns Act 1981. This has the effect of removing the financial and borrowing limits for Urban Development Corporations and New Town Development Corporations, in England, for money borrowed after the commencement of the clause. This ensures that development corporations can borrow sufficient funds in line with the current economy on a case-by-case basis.

Part 9: Compulsory Purchase

Powers

Clause 165: Acquisition by local authorities for purposes of regeneration

Background

954 Local authorities have the power, under section 226 of the Town and Country Planning Act 1990 (TCPA), to acquire land compulsorily if it will facilitate the carrying out of development, re-development or improvement of the land and it is in the interests of the proper planning of an area.

955 This clause amends section 226.

956 The aim of the measure is to give local authorities greater confidence that they have the power to acquire land by compulsion to support regeneration schemes.

Effect

957 This clause will ensure that local authorities can use this power to compulsorily purchase land for regeneration purposes.

958 This clause amends section 226 to make it clear that, for the purposes of the power, improvement includes regeneration.

959 This also aligns local authorities with other authorities that have compulsory purchase powers in relation to regeneration such as the Greater London Authority and Homes England.

Procedure

Clause 166: Online publicity

Background

960 This clause amends sections 7, 11, 12, 15 and 22 and paragraph 9 of Schedule 3 of the Acquisition of Land Act 1981 which set out the publicity requirements for certain documents and notices issued as part of the compulsory purchase order (CPO) process. It also inserts a new section 12A into the 1981 Act.

961 The changes are being made to help modernise the CPO process and, by making information more accessible online, raise awareness and increase engagement in the CPO process.

Effect

962 This clause will make certain documents and notices available online while ensuring that those who do not have internet access are able to find the information they need in local newspapers or in physical locations.

963 Subsection (1) explains that this clause amends the Acquisition of Land Act 1981.

964 Subsection (2) inserts a new definition of 'appropriate website' into the Act. This is intended to be one that the public can reasonably be expected to find and access.

965 Subsection (3) amends section 11 which sets out the requirements to publish notice of a CPO in local newspaper(s) prior to submitting a CPO for confirmation. It:

a. introduces a new additional requirement for acquiring authorities to publish the notice on an appropriate website for 21 days

b. introduces a new additional requirement for the notice to specify a website where the CPO and associated map can be viewed

c. requires that the notice should specify the final date for making objections

d. gives confirming authorities a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the confirming authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make the documents available in a physical location.

966 Subsection (4) amends section 12 which sets out the requirements to notify certain persons prior to submitting a CPO for confirmation. It introduces a new requirement for the notice to include details of a website where a CPO and associated map can be viewed. It also requires that the notice should specify the final date for making objections.

967 Subsection (5) inserts a new section 12A into the Act. This new section explains what the final day for making objections to a CPO is. The time period for making objections has not changed. This section is only needed to clarify the position following the introduction of the additional requirements to publish notices under sections 11 and 12 on an appropriate website.

968 Subsection (6) amends section 15 which sets out requirements to publish notices after a CPO has been confirmed. It:

a. introduces a new additional requirement for acquiring authorities to publish the notice on an appropriate website for 6 weeks

b. introduces a new additional requirement for the notice to specify a website where a CPO and associated map can be viewed

c. gives confirming authorities a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the confirming authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make copies available in a physical location.

969 Subsection (7) amends section 22 which sets out the publicity requirements where a confirming authority issues a certificate in relation to the acquisition of special kinds of land under Part 3 of the 1981 Act. It introduces a new additional requirement for acquiring authorities to publish notice that a certificate has been issued on an appropriate website for 6 weeks.

970 Subsection (8) amends paragraph 9 of Schedule 3 which sets out the publicity requirements where a confirming authority issues a certificate in relation to the acquisition of new rights over special kinds of land. It introduces a new additional requirement for acquiring authorities to publish the notice of the certificate on an appropriate website for 6 weeks.

Example (1):

An acquiring authority makes a CPO and is required to publicise the CPO in accordance with section 11. They will now be required to place the notice under section 11(1) online together with a copy of the CPO and the map. This could be on the acquiring authority's website.

Clause 167: Confirmation proceedings

Background

971 This clause 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 CPO.

972 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. In practice, in such circumstances, this usually results in a public local inquiry being held.

973 The aim of this measure is to make the confirmation process more efficient by ensuring that the most appropriate and proportionate procedure for considering objections to a CPO is used.

Effect

974 This clause gives the confirming authority greater discretion to use the appropriate procedure while still giving any remaining objector who wishes to be heard in person by the confirming authority the right to do so.

975 Subsection (1) explains that this clause amends the Acquisition of Land Act 1981. To make new provision for the procedure to be followed when considering confirmation of a CPO.

> Example
>
> On receipt of a CPO for confirmation, a confirming authority will be able to decide whether the appropriate procedure will be the representations procedure or a public local inquiry. If the confirming authority decides it is the representations procedure, then a remaining objector will still be able to provide oral representations at a hearing if they wish to.

976 Subsection (2) sets out the circumstances in which a public local inquiry must be held. Where those circumstances do not apply, the confirming authority has the power to decide whether to hold either a public local inquiry or follow a representations procedure. Details of the representations procedure will be set out in secondary legislation. The procedure will allow remaining objectors to provide oral representations at a hearing if they wish to. It will also allow acquiring authorities and any other person who the confirming authority thinks appropriate to make representations in writing or at any hearing requested by a remaining objector.

977 Subsection (3) makes consequential amendments to section 13B to reflect the changes in section 13A.

978 Subsections (4) and (5) amend sections 13C and 14D to update references to section 13A.

Clause 168: Conditional confirmation

Background

979 This clause inserts a new provision (section 13BA) into the Acquisition of Land Act 1981 and makes consequential amendments to section 15 of that Act. It also makes consequential amendments to paragraph 3 of Schedule 5A to the Housing Act 1985.

980 At present confirming authorities have the power to reject a CPO or confirm it with or without modifications or to confirm the CPO in stages.

981 The new provision will give confirming authorities an additional option of confirming a CPO subject to conditions before the powers under it can be exercised. The aim of the measure is to increase the certainty of land assembly through compulsory purchase generally and shorten the delivery of a scheme by encouraging acquiring authorities to make a CPO earlier in the delivery process alongside other consenting and funding processes. Acquiring authorities often make their CPO only after other impediments to the delivery of project have been overcome, delaying the overall delivery of a scheme.

Effect

982 Subsection (1) explains that this clause amends the Acquisition of Land Act 1981.

983 Subsection (2) inserts new section 13BA into the Act.

13BA Conditional Confirmation

a. New subsection 13BA(1) gives confirming authorities the power to confirm a CPO conditionally.

b. New subsection 13BA(2) provides that acquiring authorities will only be able to implement CPOs which have been confirmed conditionally, once an application to discharge the conditions has been approved by the confirming authority. Where such an application has not been received within the required time or the confirming authority declines the application, the CPO cannot be implemented.

c. New subsection 13BA(3) gives confirming authorities discretion as to what conditions to impose and the timeframe in which the conditions must be met.

d. New subsection 13BA(4) provides that the application process will be set out in secondary legislation.

e. New subsection 13BA(5) requires that the application process must provide for relevant objectors to be notified of the application and have the opportunity to submit written representations to the confirming authority.

f. New subsection 13BA(6) defines a relevant objector.

g. New subsection 13BA(7) provides that the application process may also set out requirements around the giving of reasons for the confirming authority's decision on the application.

h. New subsection 13BA(8) applies subsections (2)-(6) of section 13B to the new representations procedure introduced in clause [x].

984 Subsection (3) makes consequential amendments to ensure that notices issued after confirmation of a CPO under section 15 reflect where conditional confirmation has been given. It also inserts new subsections 4B – 4F to make new provision for notices to be served on discharge of any condition imposed:

a. new section 4B introduces a requirement, where a CPO has been conditionally confirmed, for the acquiring authority to serve a copy of the CPO and a fulfilment notice on those who need to be notified under section 12

b. New subsection 4C requires the acquiring authority to attach a fulfilment notice to an object on or near the acquired land, publish it in one or more local newspapers and publish on an appropriate website for 6 weeks

c. New subsection 4D sets the time period in which an acquiring authority must comply with 4B and 4C (a) and (b)(i)

d. New subsection 4E makes clear that if acquiring authority fails to comply with relevant provisions, the confirming authority make take the necessary steps and recover its costs of doing so

e. New subsection 4F explains what a fulfilment notice is

985 Subsection (4) makes consequential amendments to paragraph 3 of Schedule 5A to the Housing Act 1985 (which deals with the termination of initial demolition notices) to reflect what would happen if a CPO was conditionally confirmed. The amendments do not change the substance of the provision and are for clarification purposes only.

Example

An acquiring authority may choose to make a CPO alongside seeking other consents such as planning or alongside confirming the full funding package for the scheme, knowing that the CPO may be confirmed conditionally, if at the point of decision those elements are not sufficiently certain for the CPO to be fully confirmed at that point.

Clause 169: Corresponding provision for purchases by Ministers

Background

986 As well as public bodies such as local authorities, Government Ministers also have compulsory purchase powers. The procedure which must be followed for CPOs made by Ministers is set out separately in Schedule 1 to the Acquisition of Land Act 1981 and operates differently. This is because certain modifications are required for Ministerial CPOs to reflect the fact that they are both the acquiring and confirming authority.

987 This clause and Schedule [6] amend Schedule 1 of the Acquisition of Land Act 1981.

Effect

988 The effect of this clause and Schedule [6] is to make the same provision for Ministers who are the acquiring authorities and for the CPO process changes in the rest of the Bill.

Clause 170: Consequential amendments relating to date of operation

Background

989 Section 26 of the Acquisition of Land Act 1981 sets out that the date on which a CPO becomes operative as the date on which notice of the confirmation or making of the CPO is first published.

990 This clause amends section 26 to make provision for CPOs which are confirmed conditionally under clause [4].

Effect

991 The effect of the clause is to set out the different dates for when a CPO becomes operative depending on whether it is confirmed with or without conditions.

992 Subsection (1) amends section 26 to make clear that a CPO which is confirmed conditionally only becomes operative on the date the fulfilment notice is first published as required under clause [4]. It does so for both Ministerial and non-Ministerial CPOs.

993 Subsection (2) makes consequential amendment to section 5(2) of the Compulsory Purchase (Vesting Declarations) Act 1981 to reflect the amendments to section 26.

Clause 171: Time limits for implementation

Background

994 Section 4 of the Compulsory Purchase Act 1965 and section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 set out the timeframe in which compulsory purchase powers under a CPO must be implemented after it has been confirmed. In both cases the current time period is 3 years.

995 Sections 4A and 5B of the respective Acts allow for an extension to this time period where there is a legal challenge to the CPO. Both sections do so by reference to 'the three year period' in the preceding section.

996 This clause amends these sections and inserts a new section 13D into the Acquisition of Land Act 1981 to give confirming authorities the flexibility to allow a longer implementation period where appropriate.

997 The aim of this measure is to give acquiring authorities greater confidence to bring forward more complex schemes, for example, regeneration schemes, which in some cases may need longer than three years to implement.

998 The effect of the clause is to give acquiring authorities longer than three years to implement a CPO after it has been confirmed where a confirming authority considers this is justified

Effect

999 Subsection (1) inserts new section 13D (Power to extend time to implementation) into the Acquisition of Land Act 1981. This gives confirming authorities a new power to extend the time limit for implementing a CPO (beyond the current 3 years) for both Ministerial and non-Ministerial CPOs. It will be for the confirming authority to decide whether a longer period is justified in the circumstances and what that longer period should be, if any.

1000 Subsections (2) and (3) make the required corresponding changes to sections 4 and 4A of the Compulsory Purchase Act 1965 and sections 5A and 5B of the Compulsory Purchase (Vesting Declarations) Act 1981.

> Example 1: Staged development
>
> An acquiring authority may wish to bring forward a CPO for the whole of a staged development. The later stages of the development may not have been planned for delivery until more than three years from the operative date of the CPO.

> Example 2: Earlier certainty of land assembly
>
> An acquiring authority may make a CPO earlier in the delivery process to ensure it has certainty over land assembly knowing there is the possibility of conditional confirmation of a CPO. This may in term mean that the period between the CPO becoming operative and delivery of the scheme is longer.

Clause 172: Agreement to vary vesting date

Background

1001 Under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 ('the 1981 Act') an acquiring authority must give at least three months' advance notice of the date on which it will take ownership of the land which is the subject of the CPO. At present, once that date is set it cannot be varied.

1002 This clause introduces a new section 8A into the 1981 Act to allow for the postponement of the date on which the acquiring authority will take ownership of an interest in the land. It also makes consequential amendments to reflect new section 8A.

1003 The aim of the measure is to give greater flexibility to the acquiring authority and the owner of an interest in the land should circumstances change after notice has been given.

Effect

1004 Subsection (1) explains that this clause amends the Compulsory Purchase (Vesting Declarations) Act 1981.

1005 Subsections (2) and (3) make consequential amendments to sections 7 and 8 of the Compulsory Purchase (Vesting Declarations) Act 1981 to refer to new section 8A (as introduced by subsection (4)).

1006 Subsection (4) inserts new section 8A (postponement of vesting by agreement) into the 1981 Act. This allows the acquiring authority and the owner of any interest in the land to agree a later date for transfer of ownership of that interest in the land than was specified in the notice given under section 4.

1007 Subsection (5) makes a consequential change to section 10 of the 1981 Act to clarify that compensation liability in respect of the interest in the land which is the subject of an agreement under subsection (4) applies from the new vesting date.

1008 Subsection (6) makes consequential amendment to paragraph 5 of Schedule A1 to the 1981 Act. It amends the definition of 'original vesting date' to provide for any agreements to vary the vesting date.

1009 Subsection (7) makes consequential amendment to section 5A of the Land Compensation Act 1961 to clarify the relevant valuation date for the purposes of calculating compensation in relation to the interest in the land which is subject to an agreement to vary the vesting date. It inserts new subsection (4A) to provide specifically for circumstances where an agreement is in place. It clarifies that the relevant valuation date for the interest in the land which is the subject of an agreement is the earlier of the date the land vests and the date when the assessment is made.

> Example
>
> An acquiring authority will give notice to an owner of land that it intends to acquire that person's interest in the land. An acquiring authority will give at least three months' advance notice and the date for acquisition will be set. An acquiring authority and an owner of the land will now be able to agree in writing a different date between that point and the acquisition date. That might be because the owner of the land is relocating to another property and needs to tie in the acquisition to the relocation, the exact date for which may only become apparent after the original acquisition date was set. In the circumstances, there would be a more suitable date for acquisition than the one set by the acquiring authority.

Clause 173: Common standards for compulsory purchase data

Background

1010 This clause provides a new provision giving the Secretary of State the power to set data standards in relation to CPO information.

1011 The aim of the measure is to facilitate 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.

1012 The effect of this clause is to provide for common data standards within the CPO process which all acquiring authorities must comply with. The data standards will apply only to acquiring authorities and not to those whose land is being acquired or other parties involved in the CPO process.

Effect

1013 . Subsection (1) gives the Secretary of State the power to make regulations requiring acquiring authorities to comply with approved data standards in relation to certain compulsory purchase data.

1014 Subsections (2) and (3) explain the terms 'acquiring authority' and 'approved data standards'.

1015 Subsection (4) provides that approved data standards may differ for different purposes.

1016 Subsections (5) and (6) provide definitions for "relevant compulsory purchase data" and "relevant compulsory purchase documentation". These definitions cover information in CPO documents prepared by acquiring authorities under "relevant compulsory purchase legislation".

1017 Subsection (7) defines ''relevant compulsory purchase legislation" by reference to a list of the relevant Acts.

1018 Subsection (8) explains and the meaning of the term "providing" for the purposes of this clause.

> Example
>
> Data standards may, for example, be applied to the order and map that an acquiring authority produces for a CPO to ensure they are provided in standard digital format, accessible and searchable.

Compensation

Clause 174: 'No-scheme' principle: minor amendments

Background

1019 For the purposes of assessing the compensation for an interest in land that is acquired by compulsion, the effect on the value of that land arising from 'the scheme' which is the subject of the CPO, is disregarded.

1020 Section 6D of the Land Compensation Act 1961 sets out the meaning of 'the scheme' for these purposes. In particular, it provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project. Relevant transport project is defined in section 6E of the Act.

1021 This clause amends sections 6D and 6E of the Land Compensation Act 1961 to ensure that the definition of 'the scheme' also includes re-development, regeneration and improvement.

1022 The effect of this clause is to ensure that where greenfield land is acquired for development which is made possible by a relevant transport project, then that scheme will

include the relevant transport project. It further aligns the acquisition of such land to other compulsory purchase powers such as those of a local authority under section 226 of the Town and Country Planning Act 1990.

Effect

1023 Subsection (1) makes amendments to section 6D of the Land Compensation Act 1961 so that "regeneration and redevelopment" is substituted for "development" which in turn is then defined as including "re-development, regeneration and improvement". The effect is that where land is acquired for "development" and "improvement" which is facilitated or made possible by a relevant transport project, then the scheme includes the relevant transport project. This is in addition to its continuing application to regeneration and re-development.

1024 Subsection (2) makes consequential changes to section 6E and also applies the effect of the change in respect of development and improvement that facilitates a relevant transport project to a date which is three months after the Bill comes into force.

Clause 175: Prospects of planning permission for alternative development

Background

1025 This clause amends sections 14, 17, 18, 19, 20 and 22 of the Land Compensation Act 1961.

1026 The Land Compensation Act 1961 provides the basic framework for the payment of compensation to an owner of an interest in land for the compulsory acquisition of their interest or its acquisition in certain other situations where there is deemed compulsory acquisition.

1027 Section 5 of the Land Compensation Act 1961 provides the rules for assessing compensation. This includes rule 2 that the value of the land shall, subject as further provided in the Act, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise. This is to be assessed in light of the no-scheme principle set out in section 6A.

1028 Section 14 contains specific provisions for taking into account actual or prospective planning permission including the effect of establishing appropriate alternative development.

1029 Section 17 provides a mechanism whereby parties involved with the acquisition of land may in certain circumstances (set out in section 22(2)) apply to the local planning authority for a certificate of appropriate alternative development which will confirm whether planning permission for appropriate alternative development could reasonably have been expected to be granted in the absence of the scheme.

1030 Section 18 provides a mechanism to appeal against a certificate of appropriate alternative development to the Upper Tribunal.

1031 Section 19 extends the application of sections 17 and 18 to special situations involving absent or unknown owners of an interest.

1032 Section 20 provides a power to prescribe certain matters related to sections 17 and 19.

1033 Section 22 makes provision for the interpretation of sections 17 to 20 of the Act.

1034 The changes are being made to put more onus on the owner of the interest in land to evidence development value associated with that interest. They also streamline the process for obtaining a certificate of appropriate alternative development and change where the burden of costs fall, thereby reducing the administrative burden on the local planning

authority, reducing the cost burden on acquiring authorities and ensuring that the outcome of the certificate is relevant to the valuation exercise it informs.

Effect

1035 Subsection (1) explains that this clause amends the Land Compensation Act 1961.

1036 Subsection (2) amends section 14. It amends section 14(2)(b) and substitutes new sections 14(2A) and 14(2B) for sections 14(3) and 14(4). The effect is that planning permission for a description of development would only be taken as certain for the purposes of assessing the prospect of planning permission under section 14(2)(b) if it has been certified under section 17 as appropriate alternative development. Otherwise, the prospect of planning permission will be assessed under section 14(2)(b) and on the basis of the matters set out in section 14(2B). Further consequential amendments are made to section 14.

1037 Subsection (3) amends section 17. Subsection (3)(a) amends section 17(1) so that an application for a certificate of appropriate alternative development to a local planning authority is now for a specific description of development, which the applicant must set out. It removes the ability to apply for a certificate that there is no appropriate alternative development. This removes the administrative burden for the local planning authority of assessing all types of possible alternative development. Consequently, following such an application, either a certificate for appropriate alternative development will be issued or the application will be rejected. An application may specify more than one description of development, following section 6(c) of the Interpretation Act 1978.

1038 Subsection (3)(b) introduces new sections 17(1A), 17(1B) and 17(1C) and a new definition of "appropriate alternative development" that replaces the previous definition under section 14(4). The new definition provides a test to determine whether a description of development is appropriate alternative development. The definition of appropriate alternative development no longer includes a future date. This means that a certificate of appropriate alternative development will only be determined against the "relevant planning date" in section 17(1C). Assessment of the future prospect of planning permission can continue to be assessed under section 14(2)(b). The amendment further deals with an issue where a certificate of appropriate alternative development is applied for before the relevant valuation date and provides that in such cases the date of assessment is the date on which the application is determined.

1039 Subsection (3)(c) substitutes new subsection (ba) for sections 17(3)(a) and (b), relating to what the application should contain. This is consequential upon the amendment to section 17(1) and the nature of the application for a certificate of appropriate alternative development that can now be made.

1040 Subsection (3)(d) substitutes new subsections (5A) to (5C) for sections 17(5) to (8). It provides the amended framework for the issue of a certificate of appropriate alternative development by a local planning authority because of the amendment to section 17(1). The effect of this is that a local planning authority will no longer need to consider and issue a certificate for all forms of appropriate alternative development, whether applied for or not. Instead, the local planning authority will decide whether to issue a certificate against the description(s) of development applied for. The authority may issue a certificate for the description(s) of development that is less extensive than, but otherwise falls within, the description(s) of development set out in the application. New section 18(4) has the effect of substituted section 17(8).

1041 Subsection (3)(e) amends section 17(10). The consequence of the amendment is that, in assessing compensation payable to any person in respect of any compulsory acquisition, no

account is to be taken of any expenses incurred by the person in connection with the issue of the certificate, including any expenses incurred in connection with an appeal under section 18.

1042 Subsection (4) amends section 18. Subsection (4)(a)(i) codifies the test that the Upper Tribunal must apply in determining an appeal. Subsection (4)(a)(ii) extends the options for the Upper Tribunal in making a decision on appeal as a result of the changes to section 17.

1043 Subsection (4)(b) inserts new sections 18(2A) and (2B) to provide for an appeal where the local planning authority rejects an application for a certificate of appropriate alternative development.

1044 Subsection (4)(c) amends section 18(3) to provide that if a local planning authority does not determine an application for a certificate of appropriate alternative development within the prescribed time, it is to be treated as if the local planning authority had rejected the application.

1045 Subsection (4)(d) inserts new section 18(4) which ensures that for valuation purposes, the certificate of appropriate alternative development as issued or varied by the Upper Tribunal has effect. This replicates and replaces substituted section 17(8).

1046 Subsection (5) makes a consequential amendment to section 19(3) arising from the amendments to section 17(3). It inserts new section 19(4) that makes clarificatory amendments to how an appeal is dealt with under section 18 if the application for a certificate of appropriate alternative development is made in accordance with section 19.

1047 Subsection (6) makes a minor clarificatory amendment to section 20(a) relating to certificates under section 17, changing the words "time within which a certificate is required to be issued" to "the period within which an application under that section is to be determined"

1048 Subsection (7) inserts new section 22(2A) and clarifies that an application for a certificate of appropriate alternative development may still be made despite the acquisition of the interest in land having already occurred. The limitation in section 17(2), where a notice to treat has been served or agreement for sale made and a reference has been made to the Upper Tribunal to determine compensation continues to apply. This amendment is made to reflect the different ways in which compulsory purchase powers may be exercised, with acquisition of the interest occurring either before or after compensation has been agreed.

Example

A land interest is subject to compulsory purchase as part of a wider scheme. The owner of the land interest considers that, in the absence of the scheme, there was the prospect of planning permission being granted on their land for a five-storey residential block with 20 units. The owner of the land interest applies for a certificate of appropriate alternative development in accordance with the requirements of section 17 and will be responsible for their own expenses in making that application. The local planning authority will consider whether it would have been more likely than not to grant planning permission for that description of development in accordance with the test provided in section 17, or for a less extensive form of the development applied for (eg four-storey residential block with 15 units). If it considers that it would be more likely than not that it would not have granted planning permission for that description of development, it should reject the application. If a form of appropriate alternative development is certified, then it will be taken as certain for the purposes of section 14(2)(b) that planning permission for the description of development would have been granted on the relevant valuation date. The owner of the land interest or the acquiring authority may appeal the decision under section 18 and the Upper Tribunal will determine that appeal in accordance with the provisions and test set out in section 18. If the local planning authority fails to determine the application within the prescribed time, then the applicant may appeal, and the appeal will be considered on the basis the local planning authority rejected the application.

Part 10: Letting by Local Authorities of Vacant High-street premises

Significant concepts

Clause 176: Designated highstreets and town centres

Background

1049 This clauses specifies that the premises to which this Part applies must be on a high street or within a town centre which has been designated by a local authority. This clause sets out the criteria which must be met before a local authority can make a designation of a high street or town centre. It also deals with other matters relating to designations. HRSA refers to 'High Street Rental Auctions'.

Effect

1050 This clause sets out the criteria which must be met before a local authority can make a designation of a high street or town centre. It also deals with other matters relating to designations.

1051 Subsection (1) provides the circumstances in which a local authority may designate a high street. A local authority must consider the high street meets the criteria in subsection (1).

1052 Subsection (2) provides the circumstances in which a local authority may designate a town centre. A local authority must consider a town centre meets the criteria in subsection (2).

1053 Subsection (3) sets out where a street or area may not be designated by a Local Authority. An example would be an industrial estate where transactions or business are principally conducted between one business and another.

1054 Subsection (4) allows a local authority to vary or withdraw a designation.

1055 Subsection (5) sets out a requirement for a local authority to make available to the public a list and map showing any designations.

1056 Subsection (6) provides a designation is registrable as a local land charge. A local land charge will (if appropriate searches are carried out) alert purchasers of premises on high streets or in town centres to the existence of a designation.

1057 Subsection (7) provides definitions for ''designated high street'' and ''designated town centre''. The definition of "street" used in this clause and throughout Part 10 can be found in clause 203(5), which adopts the meaning from section 48(1) of the New Roads and Street Works Act 1991.

Clause 177: High-street premises and uses

Background

1058 This clause specifies that in order for this Part to apply, in addition to being in a designated area, the premises must be considered by the local authority to be suitable for a high street use.

Effect

1059 Subsection (1) sets out those uses which can be considered to be a high-street use.

1060 Subsection (2) provides that premises must be situated on a designated high street or designated town centre and considered by the local authority to be suitable for a high-street use to qualify for the exercise of this power. Premises which qualify are 'qualifying high-street premises' for the purpose of Part 10.

1061 Subsection (3) clarifies that premises used wholly or mainly as a warehouse cannot be qualifying high-street premises.

1062 Subsection (4) provides the meaning of the term "suitable high-street use" for the purpose of Part 10, which is premises considered suitable by the Local Authority for a high-street use.

1063 Subsection (5) provides for matters which the Local Authority is to have regard to in assessing whether the premises are suitable for a high-street use.

Clause 178: Vacancy condition

Background

1064 A vacancy condition must be satisfied before a local authority may start the procedure preliminary to a letting for qualifying high-street premises.

Effect

1065 Subsection (1) sets out the criteria for satisfaction of the vacancy condition on any given day. The premises must be unoccupied on that day and either have been unoccupied for the whole of the previous year or for 366 days within the previous two years.

1066 Subsection (2) clarifies that days of part-occupation count as full days of occupation in assessing the vacancy condition.

1067 Subsection (3) allows for days in which premises were unoccupied before this clause came into force to count towards the assessment of the vacancy condition.

1068 Subsection (4) provides that occupation of premises by trespassers, or persons living in a premises not designed or adapted for residential use, will not count towards the assessment of the vacancy condition.

1069 Subsections (5) and (6) give the Secretary of State the power to make regulations to alter the circumstances in which the vacancy condition is satisfied. This alteration must relate to the time during which premises are or have been unoccupied.

1070 Subsection (7) clarifies that a state of affairs does not amount to occupation of premises for the purpose of assessing the vacancy condition unless it is substantial, sustained and involves the regular presence of people at the premises.

Clause 179: Local benefit condition

Background

1071 A local benefit condition must also be satisfied before a Local Authority may start the procedure preliminary to a letting for qualifying high-street premises.

Effect

1072 This clause sets out the criteria for satisfaction of the local benefit condition. The Local Authority must consider the occupation of the premises for a suitable high-street use would be beneficial to the local economy, society or environment.

Procedure preliminary to compulsory letting

Clause 180: Initial notice

Background

1073 If the vacancy condition and local benefit condition are met in relation to qualifying high-street premises, the Local Authority may start the procedure preliminary to letting by serving an initial letting notice on the landlord.

Effect

1074 Subsection (1) sets out the requirements which must be met before a Local Authority may serve an initial letting notice on the landlord. The landlord is the person entitled to possession of the premises and who can grant a tenancy of the premises of one year or more (see clause 203 (Interpretation), subsection(6)).

1075 Subsection (2) provides that an initial letting notice will be in force for 10 weeks. A final letting notice must be served whilst the initial letting notice is in force – see clause 183(Final notice), subsection (1)(a). This subsection therefore sets a time limit for the Local Authority to serve the final letting notice.

1076 A Local Authority may withdraw an initial letting notice at any time – see clause 199 (Further provision about letting notices), subsection (6).

Clause 181: Restriction on letting while initial notice in force

Background

1077 The initial letting notice provides the landlord with an opportunity to let the premises to avoid the local authority exercising its power to carry out a HSRA. There are certain requirements which must be met by a landlord before it can let the premises following an initial letting notice.

Effect

1078 Subsection (1) requires the landlord to obtain the written consent of the local authority to the letting while the initial letting notice is in force. The landlord is required to obtain this consent before it enters into the letting. Consent is not required where the landlord is transferring or surrendering its interest in the premises.

1079 Subsection (2) requires a local authority to respond to a landlord's request for consent within a reasonable time after it is sought.

1080 Subsection (3) does not require consent where the tenancy is granted pursuant to an obligation that bound the landlord before the initial letting notice took effect. An example would be where the landlord has entered into an agreement for lease. This exception does not apply where the obligation to grant the lease is conditional on service of an initial letting notice (see subsection (4)).

1081 Subsection (5) sets out the implications for the letting if the landlord does not obtain consent from the local authority. It will be void.

1082 Subsection (6) provides for circumstances where a tenancy, licence or agreement which is void by virtue of subsection (5) is no longer treated as void. This is where the Local Authority does not trigger the procedure for letting by serving a final letting notice, or does not complete the procedure for letting having served a final letting notice, and the parties to such tenancy, licence or agreement have treated it as valid.

Clause 182: Circumstances in which letting to be permitted

Background

1083 There are certain circumstances in which a letting by the landlord is permitted following an initial letting notice.

Effect

1084 Subsections (1) and (2) provide for circumstances where the Local Authority must consent to the letting; this is where the letting is for one year or more and would be likely to lead to the premises being occupied for a high street use. The term of the letting must begin within 8 weeks of the initial letting notice taking effect. The letting can be by way of licence or lease.

1085 Subsection (3) provides that a letting will not be considered to be for one year or more if it includes a landlord's break right within the first year. The same does not apply if the letting includes a tenant's break right during the first year.

1086 Subsection (4) provides that consent which has been given to a letting by a landlord is then treated as not having been given where the term of the letting does not begin within 8 weeks of the initial letting notice taking effect.

Clause 183: Final notice

Background

1087 If the landlord does not let the premises in accordance with clauses 181 and 182, the local authority may start the procedure to letting by serving a final letting notice on the landlord.

Effect

1088 Subsection (1) sets out the requirements which must be met before a Local Authority may serve a final letting notice on the landlord, in particular that no tenancy or letting has been agreed within the rules of an initial review notice. At the time of serving the final letting notice, the landlord needs to be the person entitled to possession of the premises and who can grant a tenancy of the premises of one year or more (see clause 203 (Interpretation), subsection (6)).

1089 The combined effect of subsection (1)(b) and subsection (2) is to provide a 2-week window for the local authority to serve the final letting notice after serving an initial notice. This window opens 8 weeks after the initial letting notice takes effect (see subsection (1)(b)).

1090 Subsection (3) provides the Local Authority with a 14-week window to complete the procedure for letting. This window is extended where the landlord serves a counter-notice or where the landlord brings an appeal (see clauses 186 (counter notice), subsection (6) and 187 (appeals) subsection (6)).

Clause 184: Restriction on letting while final notice in force

Background

1091 The local authority may start the procedure for letting once a final letting notice is served, which includes making arrangements to carry out the rental auction. This clause therefore places restrictions on the landlord letting the premises itself whilst the final letting notice is in force.

Effect

1092 Subsection (1) requires the landlord to obtain the written consent of the local authority to any letting while the final letting notice is in force. The landlord is required to obtain this consent before it enters into the letting. Consent is not required where the landlord is transferring or surrendering its interest in the premises.

1093 Subsection (2) requires a local authority to respond to a landlord's request for consent to a letting within a reasonable time after it is sought.

1094 Subsection (3) does not require consent where the tenancy is granted pursuant to an obligation that bound the landlord before the initial letting notice took effect. An example would be where the landlord has entered into an agreement for lease. This exception does not apply where the obligation to grant the lease is conditional on service of an initial letting notice (see subsection (4)).

1095 Subsection (5) sets out the implications for the letting if the landlord does not obtain consent from the Local Authority. It will be void.

1096 Subsection (6) provides for circumstances where a tenancy, licence or agreement which is void by virtue of subsection (5) is no longer treated as void. This is where the local authority does not complete the procedure for letting, and the parties to such tenancy, licence or agreement have treated it as valid.

Clause 185: Restriction on works while final notice in force

Background

1097 The Local Authority may start the procedure for letting once a final letting notice is served, which includes making arrangements to carry out the rental auction. This clause therefore places restrictions on the landlord who wishes to carry out works to the premises. These restrictions only apply after the final letting notice has been served by the Local Authority.

Effect

1098 Subsection (1) requires the landlord to obtain the written consent of the Local Authority to any works it wishes to carry out to the premises, including the alteration or removal of fixtures and fittings (see subsection (2)), after the final notice has been served.

1099 Subsection (3) provides that the landlord can carry out works to the premises under certain circumstances without the Local Authority's consent.

1100 Subsection (4) requires a Local Authority to respond to a landlord's request for consent to works within a reasonable time after it is sought. It also sets out the grounds upon which the Local Authority can refuse consent to works.

1101 An offence is committed if a person without reasonable excuse fails to obtain the Local Authority's consent to carry out works after the final letting notice has been served. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).

Clause 186: Counter-notice

Background

1102 The landlord can appeal against the final letting notice. This clause sets out the first step in the appeals procedure.

Effect

1103 Subsections (1) and (2) require the landlord to give a counter-notice to the Local Authority within 14 days of the final letting notice taking effect if it wishes to appeal against the final notice.

1104 Subsections (3) and (4) require the landlord to specify its grounds of appeal in the counter-notice. The grounds of appeal which the landlord can include are set out in Part 1 Schedule 16, (Grounds of appeal against final letting notice).

1105 Subsection (5) gives the Secretary of State the power to make regulations which amend the grounds of appeal.

1106 Subsection (6) extends by 28 days the 14-week window for the Local Authority to complete the procedure for letting in circumstances where a counter-notice is served by the landlord.

Clause 187: Appeals

Background

1107 This clause sets out the second step in the appeals procedure.

Effect

1108 Subsection (1) sets out two requirements which must be met before a landlord can bring an appeal. The landlord must have given a counter-notice in accordance with

clause 186. The Local Authority must not have withdrawn the final letting notice within 14 days of receipt of the counter-notice.

1109 Subsection (2) requires any appeal to the brought in the county court.

1110 Subsection (3) provides that the any appeal to the court county must only be on the grounds specified in the counter-notice.

1111 Subsection (4) provides a time limit for the landlord to bring an appeal. An appeal must be brought by the landlord within 28 days of the counter-notice being received by the Local Authority.

1112 Subsection (5) provides the court with power to confirm or revoke the final letting notice in deciding any appeal.

1113 Subsection (6) extends the 14-week window for the Local Authority to complete the procedure for letting in circumstances where the landlord brings an appeal. The extension period begins on the day on which the appeal is brought and ends with the day on which the appeal is finally determined, withdrawn or abandoned.

1114 Subsection (7) sets out when an appeal will be finally determined for the purpose of establishing the time limits in subsection (6).

Procedure for letting

Clause 188: Rental auctions

Background

1115 The first stage of the procedure for letting is for the Local Authority to arrange a rental auction for the qualifying high-street premises.

Effect

1116 Subsection (1) sets out the circumstances in which a Local Authority may arrange a rental auction for the qualifying high-street premises. Subsection (1)(b) prevents the rental auction from being initiated while an appeal remains possible.

1117 Subsection (2) defines "rental auction".

1118 Subsections (3) and (5) give the Secretary of State the power to make regulations which provide for the process for the rental auction and how the 'successful bidder' at auction will be identified. These matters must be provided for in regulations.

1119 Subsection (4) requires provision in the regulations for the Local Authority to specify the suitable high street use ahead of the auction.

1120 Subsections (6) – (8) set out matters which the Secretary of State may provide for in the regulations in connection with the rental auction.

1121 Subsection (9) imposes a requirement on Local Authorities to have regard to representations made by the landlord where there is a choice as to procedure for the carrying out of the rental auction.

Clause 189: Power to contract for tenancy

Background

1122 The second stage in the procedure for letting is for the Local Authority to enter into a contract with the successful bidder from the auction. The purpose of the contract is to allow for works to be carried out to the premises before the tenancy is granted.

Effect

1123 Subsection (1) sets out the circumstances in which a Local Authority can enter into a contract (referred to in Part 10 as the 'tenancy contract') with the successful bidder from the auction. This includes a final notice still being in force, the period for any appeal by the landlord having expired (42 days), the rental auction having been carried out by the Local Authority and no tenancy, licence or agreement having been granted by the landlord with the consent of the Local Authority.

1124 Subsection (2) provides that the contract may be entered into with the successful bidder from the auction.

1125 Subsection (3) describes what is meant by 'tenancy contract'. This is a contract between the landlord and tenant to grant a 'short-term tenancy' (this is a tenancy of at least one year and not exceeding five years, as defined in clause 203 (Interpretation), subsection (8). The contract can be conditional.

1126 Subsections (4) and (5) give the Local Authority the power to enter into the contract as if it was entered into by the landlord.

1127 Subsection (6) provides for a copy of the completed contract to be sent to the landlord by the Local Authority.

Clause 190: Terms of contract for tenancy

Background

1128 This clause deals with the terms of the tenancy contract.

Effect

1129 Subsection (1) is self-explanatory.

1130 Subsections (2) – (4) sets out certain matters the contract must include, such as the terms of the tenancy. It also sets out other matters which the contract may include, such as works to be carried out by the landlord or the tenant before the term of the tenancy begins (referred to as 'Pre-tenancy works'). These works can be inside or outside the premises. The contract may also make provision for the remedies available to the tenant if the landlord fails to carry out any Pre-tenancy works.

1131 Subsection (5) provides a definition of "Pre-tenancy works".

1132 Subsection (6) gives the Secretary of State the power through regulations to make further provision about the terms of the contract and, in making the regulations, subsection (7) requires the Secretary of state to have regard to the terms on which contracts for the grant of short-term tenancies are typically entered into on a commercial basis.

1133 Subsection (8) imposes a requirement on Local Authorities to have regard to representations made by the landlord in deciding the terms of the contract.

1134 Subsection (9) provides definitions which are used in this clause.

Clause 191: Terms of tenancy

Background

1135 The terms of the tenancy must be included in the contract which is entered into under section 189. This clause deals with the terms of the tenancy.

Effect

1136 Subsection (2) provides for a further limit on the length of term of the tenancy which can be granted by the landlord. A tenancy can be for a term of at least one year but not exceeding 5 years (see clause 203 (Interpretation), subsection (8)) but also needs to take into account the length of the landlord's own interest, which may be leasehold and shorter than 5 years. For example, if the landlord has 3 years and 1 day remaining on the term of its own lease then it can only grant a tenancy for a term of up to 3 years.

1137 Subsections (3), (4) and (6) set out what terms the tenancy must include. This includes those matters described in Schedule 16 (Provision to be included in terms of tenancy further to agreement under clause 189).

1138 Subsection (5) provides that the terms of the tenancy may include the grant of rights to the tenant over land outside the premises.

1139 Subsections (7) and (8) give the Secretary of State the power through regulations to make further provision about the terms of the tenancy and, in making the regulations, subsection (9) requires the Secretary of State to have regard to the terms on which contracts for the grant of short-term tenancies are typically entered into on a commercial basis.

1140 Subsection (10) imposes a requirement on Local Authorities to have regard to representations made by the landlord in deciding the terms of the tenancy.

1141 Subsection (11) provides definitions for the purpose of this clause.

Clause 192: Power to grant tenancy in default

Background

1142 The tenancy contract will require the landlord to grant the tenancy where certain requirements are met. This clause deals with the power of the Local Authority to grant the tenancy where the landlord fails to do so.

Effect

1143 Subsections (1) – (4) give the Local Authority the power to grant the tenancy as if it was granted by the landlord, where the landlord fails to grant the tenancy as required by the contract.

1144 Subsection (5) provides for a copy of the completed tenancy to be sent to the landlord by the Local Authority.

Clause 193: Deemed consent of superior lessor or mortgagee

Background

1145 The landlord may require consent from a third party to enter into the tenancy contract and the short-term tenancy. This could include consent from a 'superior landlord', where the landlord has a leasehold interest in the premises. It could also include consent from a mortgagee where the landlord's interest is charged.

Effect

1146 This clause provides that the tenancy contract and short-term tenancy will be deemed to be with the express consent of any superior landlord or mortgagee.

1147 Regulations under clause 199 (Further provision about letting notices),subsection (8) may provide for copies of letting notices to be served on superior landlords or mortgagees.

Clause 194: Exclusion of security of tenure

Background

1148 The Landlord and Tenant Act 1954 provides security of tenure to tenants who occupy premises for the purpose of their business. Security of tenure provides the tenant with the automatic right to remain in possession after the lease term ends.

Effect

1149 This clause provides that the security of tenure provisions will not apply to the short-term tenancy, so the tenant will not have the right to remain in possession once the term of the short-term tenancy ends.

Powers to obtain information

Clause 195: Power to require provision of information

Background

1150 This clause provides Local Authorities with an additional power to require the provision of information in connection with HSRAs.

Effect

1151 Subsections (1)-(3) provide the Local Authority with the power to request information about premises on a designated high street or designated town centre from persons who appear to have an interest in those premises.

1152 Subsection (4) sets out what is meant by information about premises, which may include information about the occupation of the premises, matters affecting the premises, persons interested in the premises and their interests in the premises.

1153 Subsection (5) requires the Local Authority to state the time by which and manner in which the person is required to provide the information about premises.

1154 Subsection (6) provides that the Local Authority may only require the provision of information from persons if it thinks it likely to be necessary or expedient for the exercise of its functions under Part 10. For example, the Local Authority may need to use this power to find out the details of the person who it needs to serve with the letting notices. Or the Local Authority may require information on the premises which is needed to be provided to prospective bidders as part of the auction process.

1155 An offence is committed if a person without reasonable excuse fails to comply with a request for information about premises, or gives information that is false as per subsection (7). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500) as per subsection (8).

Clause 196: Power to enter and survey land

Background

1156 This clause provides Local Authorities with an additional power to require the provision of information in connection with High Street Rental Auction's (HSRAs).

Effect

1157 Subsections (1)-(3) provide the Local Authority with the power to authorise someone to enter and survey a premises on a designated high street or designated town centre.

1158 Subsection (4) sets out that this power can only be used for the purpose of obtaining information about the premises the authority thinks is necessary or expedient to exercise its functions under this Part.

1159 Subsection 5 specifies that this power can only be exercised if the local authority has given or made reasonable efforts to issue a written notice to the landlord or to the person who appears to be landlord at least 14 days before the day on which the power of entry is entry exercised.

1160 Subsection (6) states that the power may only be exercised at a reasonable time. Subsection (7) states that the power may not exercised in way that involves use of force, except on the authority of a warrant issued by a magistrate.

1161 Subsection (8) clarifies that such a warrant may only be issued on an application supported by evidence, if the magistrate is satisfied that reasonable efforts have been made to exercise the power without the use of force and must state the number of occasions the power will be used.

1162 A person exercising the power must produce evidence of the authorisation and a copy of the warrant (subsection (9)).

1163 If no one is present when the power is exercised, the person exercising the power must leave the premises as secure as they found it on leaving (subsection (10)).

Clause 197: Offences in connection with section 196

Background

1164 This clause sets out the offences in connection with the power of entry at clause 196.

Effect

1165 An offence is committed if a person without reasonable excuse obstructs another person in the exercise of this power of entry (see subsection (1)). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000) (see subsection (2))

1166 In addition, a person exercising the power of entry commits an offence if the person obtains and discloses confidential information other than for the purposes for which the person was exercising the power (see subsection (3)). A person who commits such an offence is liable on summary conviction to a fine and on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both (see subsection (4)).

Clause 198: Power to extend time limits

Background

1167 Part 10 provides certain time limits for the Local Authority to serve a final letting notice or to complete the procedure for letting. The ability of the Local Authority to serve a final letting notice or to complete the procedure for letting may rely on obtaining information about the premises.

Effect

1168 This clause allows a court to extend the time limits for the Local Authority to serve a final notice or to complete the procedure for letting in certain circumstances. This is where the Local Authority is impeded in the exercise of its functions under Part 10 due to a failure by a person to comply with a requirement to provide information about premises, or is obstructed in the exercise of its power to enter and survey land. The Local Authority would need to apply to the county court for such an extension.

General and supplementary provision

Clause 199: Further provision about letting notices

Background

1169 Part 10 provides for the Local Authority to serve letting notices on the landlord as part of the procedure preliminary to letting in clauses 180 to 187.

Effect

1170 This clause makes further provision about letting notices.

1171 Regulations must make provision about the form of letting notices, the service of letting notices and when letting notices take effect (see subsection (2)).

1172 Subsection (3) sets out matters which must be included on the letting notices.

1173 Subsections (4) and (5) deal with matters relating to the serving of letting notices which must be dealt with in the regulations.

1174 Subsection (6) provides that a letting notice may be withdrawn by the local authority at any time.

1175 Subsection (7) provides that a letting notice is not affected by any change in the landlord of the premises in relation to which it has been served. A letting notice is a local land charge.

1176 Subsection (8) provides that regulations may provide for copies of letting notices to be served on superior landlords and mortgagee.

Clause 200: Other formalities

Background

1177 This clause supplements the main clauses in Part 10.

Effect

1178 This clause gives the Secretary of State the power to make regulations in relation to the manner of or procedure to be followed in connection with a number of matters in Part 10. This includes the designation of high streets and town centres by Local Authorities, the giving of consent by a Local Authority to a letting by the landlord where an initial notice or final notice are in force, the giving of a counter-notice by the landlord, the making of representations by the landlord as to the procedure to be

followed by the Local Authority in connection with the rental auction, the making of representations by the landlord in connection with the terms of the tenancy contract and the terms of the short-term tenancy, the power of the Local Authority to require provision of information about premises, and the giving of notice by the Local Authority where it exercises its power to enter and survey.

Clause 201: Compensation

Background

1179 There is a power to enter and survey land at clause 197.

Effect

1180 Subsections (1) to (4) makes provision for compensation to be recovered from the Local Authority for any damage done as a result of the exercise of the power of entry.

1181 Subsection (5) provides that no compensation is otherwise payable in the exercise of the powers in Part 10.

Clause 202: Power to modify or disapply enactments applicable to letting

Background

1182 This clause supplements the main clauses in Part 10.

Effect

1183 This clause provides the Secretary of State with the power to make regulations to modify or disapply enactments applicable to letting.

Clause 203: Interpretation of Part 10

Background

1184 This clause supplements the main clauses in Part 10.

Effect

1185 Subsection (1) provides that the interpretative provisions in clause 203 apply for the purpose of Part 10.

1186 Subsection (2) sets out what is meant by a Local Authority for the purpose of Part 10.

1187 Subsection (3) provides clarification on what is meant by "premises" for the purpose of the power relating to HSRAs. This can mean the whole of a building that is designed or adapted to be used as a whole, or any part of a building which is designed or adapted to be used separately from other parts of the building, or any part of a building that could with reasonable adaptation be used separately from other parts of the building.

1188 Subsection (4) provides clarification of when premises are situated on a street for the purpose of Part 10.

1189 Subsections (5) and (6) provide definitions of "street" and "landlord".

1190 Subsection (7) provides for circumstances where a tenancy, licence or agreement is ignored for certain purposes.

1191 Subsection (8) defines "short-term tenancy", subsection (9) clarifies what is meant by terms of a contract or tenancy, and subsection (10) defines "mortgagee".

1192 Subsection (11) clarifies that references to regulations in Part 10 are regulations made by the Secretary of State.

Part 11 Information about dealings in land

Clause 204: Requirements to provide information about ownership and control

Background

1193 This clause provides the Secretary of State with an enabling power to require the Chief Land Registrar (HM Land Registry—responsible for land registration in England and Wales) or another person exercising public functions in England and Wales (as determined by regulations) to collect information on the ownership of land, of relevant rights concerning land and others with the ability to control or influence (directly or indirectly) over the owner of a relevant interests or rights relating to land.

Effect

1194 Subsection (1) allows Secretary of State, through regulations, to impose requirements to provide information on ownership and control of land.

1195 Subsection (2) sets out that key information can be sought where it appears to the Secretary of State that it would be useful for the purposes of identifying persons with ownership, rights or control or ascertaining the nature, extent or duration of ownership, rights or control.

1196 Subsection (3) makes clear that 'control or influence' includes control or influence by reason of interests or rights in or under a company, partnership, trust or other arrangement.

Clause 205: Requirements to provide transactional information

Background

1197 This clause provides the Secretary of State with an enabling power to require the Chief Land Registrar (HM Land Registry—responsible for land registration in England and Wales) or another person exercising public functions in England and Wales (as determined by regulations) to collect transactional information about instruments, contracts and other arrangements affecting interests and rights relating to land.

Effect

1198 Subsection (2) specifies what 'transactional information' can be sought, specifically details of the parties, persons acting on their behalf, terms of the transaction, details of persons providing professional services, sources of funds and documents evidencing the transaction.

1199 Subsection (3) defines a transaction as an instrument, contract or other arrangement within (1).

Clause 206: Supplementary provision about information requirements

Background

1200 This clause elaborates on section 178 and section 179 by specifying what the regulations requesting the provision of information must include.

Effect

1201 Subsection (1) provides that the regulations made under section 178 and section 179 must specify the description of the person on whom the requirement to give information falls, the occurrence or circumstances that give or give rise to the requirement, the time limit for complying with the requirement and the person to whom the information must be provided.

1202 Subsection (2) makes clear that the person to whom information must be provided is either by the Chief Land registrar or another person exercising public functions on behalf of the Crown

1203 Subsection (3) allows the Secretary of State, through regulations, to state how the information is provided, including electronically.

1204 Subsection (4) makes clear that the information requested may pre-date the coming into force of Part 9 and, to that limited extent, is retrospective.

Clause 207: Use of information

Background

1205 This Government anticipates collecting information on a range of transaction types for a range of purposes.

i. To meet the 2017 housing white paper land transparency commitment by collecting and publishing data on contractual arrangements used by developers to control land, such as rights of pre-emption, options, and conditional contracts.

ii. To identify attempts to evade sanctions or the new disclosure requirements placed on companies owing UK land and property contained in the Economic Crime (Transparency and Enforcement) Act 2022.

iii. For wider national security and macroeconomic purposes.

Effect

1206 Subsection (1) allows regulations to be made on the use of the information collected by the Secretary of State. The regulations will set out how the information may be shared with other government departments and bodies exercising public bodies, and the publication of such information for example to deliver on the 2017 housing white paper commitment to publish data on options and other arrangements used by developers to exercise control over land.

1207 Subsection (2) provides for the payment of fees by persons providing information further to a requirement imposed by section 178 and section 179 to the person named in the regulation, with the intention of covering administrative costs.

1208 Subsection (3) makes clear that no civil liability will arise from inaccuracies or omissions in respect of information that is shared or published.

Clause 208: Enforcement of requirements

Background

1209 This clause sets out how the requirement to provide information may be enforced.

Effect

1210 Subsections (1) and (2) permit the creation of offences by the regulations relating to a failure to comply with an information requirement or the provision of false or misleading information, and set limits for the penalties that may be levied under the regulations.

1211 Subsections (3), (4) and (5) allow regulations to be made that would prevent the Chief Land Registrar from undertaking certain registration activities until the required information had been provided. Applications to register a disposition (transfer of legal title of a property), or for the grant (or amendment) of a notice or restriction.

Clause 209: Interpretation of Part 9

Background

1212 This clause provides definitions of various terms used in this part.

Effect

1213 This clause defines the key terms and concepts used in section 178 to section 179. This includes making clear that the land interests affected are those in England and Wales and the regulations as regulations made by the Secretary of State

Part 12: Miscellaneous

Clause 210: Registration of short-term rental properties

Background

1214 This clause requires the Secretary of State to make regulations for a new registration scheme for short-term rental properties.

Effect

1215 Subsection (1) commits the Secretary of State to make regulations that will establish a registration scheme of specified short-term rental properties in England. The regulations may require or permit registration.

1216 Subsection (2) sets out the definition of a short-term rental property, which can be added to by specifying further dwellings or premises not captured by subsection (2)(a).

1217 Subsection (3) requires that the Secretary of State consults the public before making regulations, and this can take place before the clause comes into force (subsection (4)).

1218 Subsection (5) describes the various provisions that may be included in the regulations. These are who administers the register or registers, who is required to register a short-term rental property, the conditions of registration, and the circumstances in which registration may be removed. It also sets out that the provisions may include the detail of how a scheme will be administered, including any appeals process against decisions made about registration, and the format and content of the register, applications to register, and any other document that may be required. Subsection (5) also sets out that the provisions may include details of how the scheme should be publicised, as well as the collection, provision or publication of information connected with the scheme. Finally it also sets out that the regulations may include any relevant exemptions, the circumstances in which registration or promotion of a property to the public could be prohibited, and how the requirements of the regulations should be enforced.

1219 Subsections (6) and (7) make provision for enforcement by way of civil sanctions of the type contained in the Regulatory Enforcement and Sanctions Act 2008.

1220 Subsection (8) enables provision for fees or other charges to be included in the regulations, enables any function (including one exercised with discretion), for example in relation to administering the registration scheme, to be placed on any person, and states that the regulations may apply to either all of England or only part of England.

1221 Subsection (9) defines various terms used within the clause.

Clause 211: Pavement licences

Background

1222 This clause inserts a new Schedule which amends the Business and Planning Act 2020. Part 1 of the Business and Planning Act 2020 makes provision for a temporary

streamlined route to pavement licensing across England. The purpose of these provisions is to make permanent the regime for pavement licences with certain amendments set out.

Clause 212: Historic environment records

Background

1223 Historic Environment Records are an important source of information about the historic environment of any given area, especially its archaeology. They can help the public learn more about where they live and ensure local plans and planning decisions are informed by an understanding of an area's history.

1224 All local authorities have access to some kind of Historic Environment Record, but they can vary in what type of information they hold and how up-to-date they are. This clause introduces a new statutory duty for local authorities to have access to an up-to-date Historic Environment Record.

Effect

1225 Subsection (1) sets out that a relevant authority must maintain an historic environment record for its area.

1226 Subsection (2) details that an historic environment record is a system for storing and making available to the public information about various heritage assets, listed in (a) (i)-(vii), (b), (c) and (d) (i)-(ii)

1227 Subsection (3) details that a "designated heritage asset" as defined in (2)(a)(vii) is an object, structure or site designated, registered or otherwise formally recognised under an enactment and that appears to the Secretary of State to be so wholly or partly because of historic, architectural, archaeological or artistic importance.

1228 Subsection (4) details the circumstances in which it would be expected for the relevant authority to include the information on the historic environment record.

1229 Subsection (5) specifies that relevant authorities must take such steps as it considers reasonable to (a) obtain information for inclusion in the historic environment record and (b) keep information included in its historic environment record up to date.

1230 Subsection (6) allows the Secretary of State by regulations to make provisions for (a) how information is to be stored or made available and (b) for and in connection with charging fees by relevant authorities in respect of (i) the provision of advice or assistance to persons making use, or proposing to make use, of an historic environment record, or (ii) the provision of documents copied or derived from an historic environment record.

1231 Subsection (7) states that under (6)(a) the Secretary of State may, in particular, from time to time publish provisions requiring or enabling information to be stored or made available in accordance with specified standards.

1232 Subsection (8) sets out which authorities the section applies to.

1233 Subsection (9) details that (a) the Common Council includes the Inner Temple and the Middle Temple, (b) an area comprising a National Park for which there is a National Park authority is the area of that authority and no other relevant authority, and (c) the area comprising the Broads, as defined by section 2(3) of the Norfolk and Suffolk Broads Act 1998, is the area of the Broads Authority and no other relevant authority.

Clause 213: Review of governance etc of RICS

Background

1234 The Royal Institution of Chartered Surveyors (RICS) is a professional body for surveyors. RICS commissioned an Independent Review led by Alison Levitt QC following a number of allegations of bad governance. RICS published the Levitt report on 9 September 2021, which articulated RICS' responsibility to the public and the public's "…interest in ensuring that RICS is well-managed. It is a professional membership organisation with a Royal Charter, which provides that in its regulatory activities it must promote the public advantage."

Effect

1235 This clause will enable the Secretary of State to commission periodic reviews of RICS that will give government information about the governance and performance of RICS, in order to satisfy itself that RICS performs in the public interest.

1236 The clause will enable the Secretary of State, from time to time, to appoint someone to review RICS. The review will look at the governance of RICS and its effectiveness in achieving its objective, which is to "maintain and promote the usefulness of the [surveying] profession for the public advantage in the United Kingdom", and any other matter specified in the appointment which is connected to those two review purposes. The independent reviewer must provide a written report setting out its results and recommendations to the Secretary of State, who will publish a copy of the report.

Clause 214: Marine Licensing

Background

1237 This clause creates new fee charging powers which replace fee charging powers under the Public Bodies Act 2011, which have expired.

1238 This clause allows the Secretary of State to amend current fees for the monitoring, variation, and/or transfer of a marine licence and for certain connected expenses.

Effect

1239 Clause 214 amends sections 72A, 98, 107A, 107B, and 108 of the Marine and Coastal Access Act 2009 to give powers to the Secretary of State, where the Secretary of State is the appropriate licensing authority, to make regulations to charge fees for the monitoring of a marine licence and the variation and transfer of a marine licence, and for certain connected expenses.

1240 Subsection (2) amends Section 72A to provide powers to the Secretary of State as appropriate licensing authority to make regulations to charge fees for monitoring of marine licences, and for variations and transfers of marine licences under section 72(3) or section 72(7) of that Act.

1241 Subsection (3) amends the delegation of functions in section 108 of the Marine and Coastal Access Act 2009 to the Secretary of State or Welsh Ministers.

1242 Subsection (4) amends Section 107A (powers to charge for deposits for fees). Section 107A is extended to apply to the Secretary of State as appropriate licensing authority.

1243 Subsection (5) amends Section 107B (supplementary provision about fees). Section 107B is extended to apply to the Secretary of State as appropriate licensing authority.

1244 Subsection (6) amends Section 108 (appeals against notices) – subsection (2A). This is amended to require the Secretary of State to make provision enabling applicants to appeal

against notices for non-payment of monitoring fees or monitoring fee deposits under sections 72A(7) or 107A(4).

1245 The territorial extent is given in subsection (7).

1246 Under subsection (8) the Public Bodies (Marine Management Organisation) (Fees) (Order) 2014 (S.I. 2014/2555), made under the expired Public Bodies Act 2011 powers, is revoked.

1247 The territorial extent of this clause is England, Wales, Scotland and Northern Ireland.

Part 13: General

Clause 215: Data protection

Effect

1248 Clause 215 makes explicit provision for the compatibility of the Bill with data protection legislation.

1249 Subsections (1) and (2) provide that, where the Bill operates to create a requirement or ability to disclose information, those requirements and abilities do not override data protection legislation although their existence is a relevant factor in determining compatibility of disclosure with data protection legislation.

1250 Subsection (3) provides that "data protection legislation" should be interpreted in accordance with the definition of "data protection legislation" in section 3 of the Data Protection Act 2018.

Clause 216: Crown application

Effect

1251 Clause 216 set out the effect of the bill on the Crown.

1252 Subsection (1) provides for the measures in the bill to bind the Crown, subject to subsection (2) which provides that measures which amend existing legislation do not bind the Crown unless the legislation being amended also binds the Crown.

1253 Subsection (3) excludes Crown Land as defined in Part XIII of the TCPA 1990 from the effect of Part 10 (Letting by Local Authorities of Vacant High-street Premises).

1254 Subsection (4) excludes land belonging to His Majesty in right of His private estates (for which see section 1 of the Crown Private Estates Act 1862) from the effect of Part 11 (Information about Interests and Dealings in Land).

Clause 217: Abbreviated references to certain Acts

Effect

1255 Clause 217 sets out the abbreviations of Acts which are used in the Bill.

Clause 218: Power to make consequential provision

Effect

1256 Clause 218 provides a power to make amendments to primary legislation which are necessary to maintain the effect of that legislation in consequence of this Bill.

1257 Subsection (1) provides for consequential amendments to be made as a result of, or under, this Bill.

1258 Subsection (2) provides for those amendments to be made to any primary legislation passed before or during the same session as this Bill.

1259 Subsection (3) defines primary legislation for the purposes of this power as including Acts, Acts or measures of Senedd Cymru, Acts of the Scottish Parliament and Northern Ireland legislation.

Clause 219: Regulations

Effect

1260 Clause 219 makes ancillary provision regarding regulation making powers provided for under this Bill.

1261 Subsection (1) provides for regulations under this Bill to be able to provide differently depending upon the purpose or area for which those regulations are made and to make provision arising from, and in connection with, their main provisions.

1262 Subsection (2) provides that regulations for the purposes of Combined County Authorities may amend, apply, disapply, repeal or revoke any enactment. This does not apply to regulations which deal with:

a. membership of a CCA;

b. proposals for the creation of, or changes to, a CCA;

c. removing regulations restricting the general power of a CCA; or

d. imposing conditions on the use of a CCA's general power or imposing conditions on a CCA undertaking commercial activities.

1263 Subsection (3) provides for how to make regulations under this Bill.

1264 Subsections (4) and (5) require that draft regulations listed in subsection (5) must be laid before, and approved by a resolution of, both Houses of Parliament before they may be made.

1265 Subsections (6) to (9) provide that regulations set out under subsections (8) and (9) can be annulled by a resolution of either House of Parliament unless previously approved by a resolution of both Houses.

1266 Subsection (10) provides for regulations in connection with CCAs, and registration of short-term lets, to proceed without engaging any procedure attaching to hybrid instruments under the standing orders of either House of Parliament where otherwise they would.

1267 Subsection (11) excludes regulations for the purposes of the commencement or transition as a result of commencement, for which Clause 195 makes provision, from the effect of this clause.

1268 Subsection (12) defines primary legislation for the purposes of this clause as including Acts, Acts or measures of Senedd Cymru, Acts of the Scottish Parliament and Northern Ireland legislation.

Clause 220: Financial provisions

Effect

1269 Subsections (1) and (2) of clause 220 authorises expenditure arising from the Bill which is either new or increases expenditure under other Acts.

Clause 221: Extent

Effect

1270 Clause 221 provides for the territorial extent of measures in the Bill, for the detail of which see Annex A.

Clause 222: Commencement and transitional provision

Effect

1271 Clause 222 makes provision for the commencement of measures in the Bill.

1272 Subsections (1), (2)(b), (2)(c), (2)(e), (2)(g), (2)(i), (3)(a), (5), (6) and (9)(b) provide for the measures set out thereunder to commence two months after this Bill would be enacted.

1273 Subsections (2)(a), (2)(d), (2)(f), (2)(h), (2)(j), (2)(l), (8) and (10) provide for the measures set out thereunder to commence on the day this Bill would be enacted.

1274 Subsections (2)(k), (2)(m), (3)(b), (4), (7) and (9)(a) provide for the Secretary of State to set the date on which measures set out thereunder commence. Subsection (11) permits that power to be used so that commencement for those measures can be different in different areas and for different purposes.

1275 Subsection (12) allows regulations to make provision in connection with the commencement of any measure in this Bill. Subsection (13) permits that power to be used differently in according to area and purpose and to allow the Secretary of State to determine how matters covered by those regulations are to be treated.

1276 Subsection (14) provides for how to make regulations under this section, it having been excluded from clause 219.

Clause 223: Short title

Effect

1277 Clause 223 sets the short title which would apply to this Bill if enacted.

Schedule 1: Combined county authorities: overview and scrutiny committees and audit committee

Background

1278 Schedule 1 requires all combined county authorities (CCAs) to establish one or more overview and scrutiny committee(s) and an audit committee, with the functions and powers specified. It also sets out the way in which such committees will be comprised and operate.

Effect

1279 Schedule 1 provides that an overview and scrutiny committee for a CCA has the power to review and scrutinise decisions made, or action taken, by the CCA and, in the case of a mayoral CCA, the mayor on behalf of the CCA. The committee may also make reports and recommendations in respect of the discharge of functions of the CCA and about any matters that affect the authority's area or its inhabitants. An overview and scrutiny committee will be able to call-in a decision which has been made but not implemented, direct that the decision cannot be implemented while it is called in, and recommend that the decision be reconsidered. Paragraph 3(2)(i) gives the Secretary of State the power to provide for a minimum or maximum call-in period.

1280 Schedule 1 includes provisions about the membership and structure of an overview and scrutiny committee for a CCA. Paragraph 2(1) provides that an overview and scrutiny committee may appoint one or more sub-committees to discharge its functions. The Schedule provides that the majority of members of an overview and scrutiny committee must be members of constituent councils of the CCA area and the membership may not include any member of the CCA.

1281 Paragraphs 3(1) and 3(2) enable the Secretary of State to make provision by regulations about the overview and scrutiny committee(s) of a CCA. This provision may include: details about the membership of an overview and scrutiny committee and the voting rights of such members; the payment of allowances to 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; and the information which must, or must not, be disclosed to an overview and scrutiny committee.

Schedule 2: Mayors for CCA areas: further provisions about elections

Background

1282 Schedule 2 makes provisions about the election of mayors of CCA areas.

Effect

1283 Schedule 2 (paragraph 2) provides a default term of office of four years for an elected mayor, and the default dates on which elections for the return of a mayor will take place. It enables the Secretary of State to make further provision on the timing of elections, for example the date on which an election is to be held and the length of a mayor's term.

1284 Schedule 2 (paragraph 4) details that the voting system for an elected mayor will be by simple majority. The Schedule sets out that those entitled to vote are those that would be entitled to vote at local government elections.

1285 Schedule 2 (paragraph 6) provides that an elected mayor for the area of a CCA cannot also be a councillor and sets out the qualification and disqualification criteria for people to be able to stand for election or hold the office of elected mayor of the area of a CCA.

1286 Schedule 2 (paragraph 11) also provides that the Secretary of State, after consulting the Electoral Commission, may make provision about the conduct and the questioning of the elections for elected CCA mayors.

Schedule 3: Mayors for CCA areas: PCC functions

Background

1287 Schedule 3 makes provisions in relation to regulations made under section 29(1) providing for a mayor of a CCA to exercise the functions of a police and crime commissioner.

Effect

1288 Schedule 3 (paragraph 1 and 2) enables the Secretary of State to provide by regulations that the mayor of a CCA may exercise all functions of a police and crime commissioner or a specified number of those powers. The Schedule further provides that some functions that must always be exercisable by the mayor (including holding the relevant chief constable to account and issuing a police and crime plan).

1289 Schedule 3 (paragraph 3) also details a number of essential matters that, where functions of a police and crime commissioner are transferred to a mayor, the Secretary of State must put in place by regulations. These include: enabling the mayor to appoint a deputy mayor for functions of a police and crime commissioner, to be known as a deputy mayor for policing and crime; requiring the establishment of a scrutiny panel for policing matters (under paragraph 4); giving the panel the power to suspend the mayor from exercising functions of a police and crime commissioner (paragraph 8); and requiring the mayor to keep a police fund and prepare an annual budget in relation to the exercise of functions of a police and crime commissioner (paragraph 6).

1290 Schedule 3 provides that a police and crime panel may have scrutiny functions over any general functions of the mayor which have been arranged for the deputy mayor for policing and crime to exercise, ensuring scrutiny of these functions is undertaken by the appropriate body(paragraph 5). The Secretary of State may by regulations make provision about the payment of allowances by members of a police and crime panel (paragraph 6).

1291 The Secretary of State is also required to make provision in respect of the conduct of the mayor and the deputy mayor for policing and crime as "relevant officers" for the purposes of regulations made under section 31(1)(a) to (c) of the Police Reform and Social Responsibility Act 2011, regarding the making and handling of complaints about, the recording of matters in the case of which there is an indication that a relevant office holder may have committed a criminal offence, and the manner in which qualifying complaints and conduct matters are investigated or otherwise dealt with. (Paragraph 9)

1292 Where a mayor is to exercise functions of a police and crime commissioner, paragraph 10 of Schedule 3 requires the Secretary of State to apply the same disqualification criteria to persons being elected or holding office as a mayor as currently apply to police and crime commissioners. These provisions will be additional to the criteria that already exist in relation to mayors (paragraphs 7 and 8 of Schedule 2) and therefore mean that more stringent qualification and disqualification criteria can be applied to CCA mayors that exercise functions of a police and crime commissioner, in line with the criteria that currently apply in relation to police and crime commissioners.

1293 The Secretary of State must require the mayor to have regard in the exercise of police and crime commissioner functions to the policing protocol issued under section 79 of the Police Reform and Social Responsibility Act 2011. (Paragraph 11)

1294 The Secretary of State may also make provision for the application of enactments to apply to the mayor, in the exercise of police and crime commissioner functions, as though the mayor were a police and crime commissioner.

Schedule 4: Combined county authorities: consequential amendments

Effect

1295 Schedule 4 makes provisions for consequential amendments to the Local Government Act 1972 and 2003, Local Transport Act 2008, Local Democracy, Economic Development and Construction Act 2009, Local Government Act 1989, Local Government Act 1999 and Cities and Local Government Devolution Act 2016 to include combined county authorities among the bodies specified in this legislation.

Schedule 5: Alteration of street names: consequential amendments

Background

1296 The current legislation governing the process of changing the name of a street is found in the Public Health Acts Amendment Act 1907 (the 1907 Act) and the Public Health Act 1925 (the 1925 Act), the Greater London by the London Building Acts Amendment Act (LBAAA) of 1939 and the Local Government Act 1972.

Public Health Acts Amendment Act 1907

Background

1297 Paragraph 1 amends section 21 of the Public Health Acts Amendment Act 1907. Under Section 21 of the 1907 Act, the local authority must gain consent of at least two-thirds of the local council tax or ratepayers before modifying the name of a street.

Effect

1298 Paragraph 1 disapplies section 21 of the 1907 Act.

Public Health Act 1925

Background

1299 Paragraph 2 amends section 18 of the Public Health Act 1925 Act. This Act stipulates that the Local Authority, referred to as the 'urban authority' in the Act, may at any time alter the name of a street or part of a street subject to providing a months' notice, displayed prominently in the street concerned. The public are then permitted to appeal the decision.

Effect

1300 Paragraph 2 disapplies the 1925 Act in relation to renaming streets in England.

London Building Acts (Amendment) Act 1939

Background

1301 Paragraph 3 amends section 6 of the London Building Acts Amendment Act (LBAAA) of 1939. The current legislation obliges local authorities in London to provide a month's notice following a street-name-change proposal to enable objections, which the council must then consider.

Effect

1302 Paragraph 3 disapplies the notice and duty to have regard to objections.

Local Government Act 1972

Background

1303 Paragraph 4 amends paragraph 26(c) of Part 2 to Schedule 14 to the Local Government Act 1972. These paragraphs have the effect of allowing local authorities outside of London to choose whether the 1907 Act or the 1925 Act should apply in their area and requiring the 1939 act to apply in Greater London.

Effect

1304 Paragraph 4 omits the reference to section 21 as a result of it no longer applying in England.

Schedule 6: Determinations and other decisions: having regard to national development management policies

Town and Country Planning Act 1990

1305 Paragraph 1 gives effect to the amendments made by paragraphs 2-13 to the TCPA.

1306 Paragraph 2 amends section 59A(11) to include relevant national development management policies (NDMPs) in the considerations local authority must have regard to in directing that a permission in principle shall not have effect until the specified date.

1307 Paragraph 3 amends section 70 to include NDMPs in the list of matters which a local planning authority must take into consideration and provides for this to be in England only.

1308 Paragraph 4 amends section 70A to include NDMPs in the list of matters which, if there has been no significant change in England regarding those matters, allow the local planning authority not to decide an application for permission.

1309 Subparagraph (a) of paragraph 5 includes derogations from NDMPs in England in the matters which a development management order or direction under a development management order may authorise a local planning authority to make.

1310 Subparagraph (b) of paragraph 5 includes NDMPs in the matters which the mayor of London must take into consideration in directing a local planning authority to refuse an application.

1311 Paragraph 6 amends section 91(2) such that in setting a period after which permission for development expires, local planning authorities must take NDMPs into consideration, in addition to the development plan and other material considerations.

1312 Paragraph 7 provides that where authorities granting outline planning permission make provision for time periods after which the outlying planning permission expires, that authority must have regard to NDMPs in addition to the development plan and any other material considerations

1313 Paragraph 8 amends section 97(2) to provide that in England the considerations which a local planning authority must take into account in deciding whether to modify or revoke a permission, should include NDMPs in addition to the development plan and any other material considerations.

1314 Paragraph 9 amends section 102(1) and inserts new subsection (1A) such that in deciding whether to require changes of use, the removal of works or the imposition of conditions upon use of land, a local planning authority must have regard to NDMPs in addition to the development and any other material considerations.

1315 Paragraph 10 amends section 172(1B) such that in England the issuing of an enforcement notice must take into account NDMPs in addition to the development plan and any other material considerations.

1316 Paragraph 11 amends section 177 to replace subsection (2) so that in deciding an appeal against an enforcement notice the Secretary of State must take into account NDMPs in addition to the development and any other material considerations.

1317 Subparagraph (a) of paragraph 12 mends Schedule 4B 5(5) to insert NDMPs into the list of matters which, if there has been no significant change regarding those matters, allow a

local planning authority to treat proposals for neighbourhood development orders as repetitious.

1318 Subparagraph (b) of paragraph 12 amends Schedule 4B 8(2) to insert paragraph (da) to require neighbourhood development orders to be in general conformity with NDMPs.

1319 Paragraph 13 amends Schedule 9 1(1) and inserts new subparagraph (1A) such that in deciding whether to require that land should cease to be used or subject to conditions or buildings, works or plant and machinery be removed or altered, an authority in England must have regard to NDMPs in addition to the development plan and any other material considerations.

Planning (Hazardous Substances) Act 1990

1320 Paragraph 14 amends section 9(2) of the Planning (Hazardous Substances) Act 1990 to insert paragraph (ca) which adds NDMPs into the list of matters, which a hazardous substances authority must have regard to in deciding whether to grant a hazardous substance consent.

Greater London Authority Act 1999

1321 Paragraph 15 amends section 337(2) of the Greater London Authority Act 1999 to insert paragraph (ca) which adds NDMPs into the list of matters which may require a modification of the mayor of London's spatial development strategy prior to its publication.

Schedule 7: Plan making

Joint spatial development strategies

New Section 15A: Agreements to prepare joint spatial development strategy

Background

1322 This section creates a new power for at least two local planning authorities to work jointly together to produce a Spatial Development Strategy (SDS). Planning authorities agreeing to produce a joint SDS will be referred to as participating authorities. The power is available to all local planning authorities outside of Combined Authorities, Mayoral Combined Authorities and Greater London. The power is optional for local planning authorities to use at their discretion.

Effect

1323 New section 15A(1) sets out that there must be at least two participating authorities but there is no upper limit on the number of authorities that can agree to produce an SDS.

1324 Subsection (2) sets out the local planning authorities that are eligible to be participating authorities in a joint SDS.

1325 Subsection (2)(b) sets out that any planning authorities within a combined authority cannot enter into arrangements to produce a separate SDS. The principle being that either the combined authority already has a duty to produce an SDS or that it could seek the duty to produce an SDS through a devolution agreement.

1326 Subsection (2)(e) set out that any planning authorities already covered by an SDS cannot enter into arrangements to produce a separate SDS, unless they withdraw from the existing SDS.

1327 Subsection (4) defines the terms "preparation agreement", "participating authorities" and "joint strategy area."

New Section 15AA: Contents of joint spatial development strategy

Background

1328 New section 15AA mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out what a joint spatial development strategy must and may include. The permitted content of a joint SDS is the same as those for the Mayor of London and MCAs.

Effect

1329 Setting out the permitted content of a joint SDS will ensure that they focus purely on strategic matters and not cover ground that is better suited to either local plans or national policy, and also reduce their size making them quicker to produce.

1330 Subsections (1) – (3) set out what a joint SDS must and may include.

1331 Subsection (5) also enables the Secretary of State to set out further in regulations any matters that a joint SDS may or must include.

1332 Subsection (4) sets out when a matter may be of strategic importance.

> Example (1): Authorities agreeing to produce a joint SDS
>
> Three district councils and a unitary authority could agree to produce a joint SDS, as long as none of the authorities were covered by a combined authority, or mayoral combined authority, or were within the Greater London area. The area to be covered need not include the whole of the county (or counties if there were more than one) but would need to cover the whole of the area of the relevant districts within the county.

1333 Subsection (6) provides that the joint SDS must include whatever diagrams, illustrations etc that are needed in connection with the content of the SDS.

1334 Subsection (7) provides that different provisions can be made for different parts of the joint SDS area.

1335 Subsection (8) provides that a joint spatial development strategy must be designed to secure that the use and development of land in area contribute to the mitigation of, and adaption to, climate change.

1336 Subsection (9) sets out what a joint SDS cannot do, include requiring any land to have a particular planning designation nor identifying any specific sites for development. This does not prevent the joint SDS from identifying more generic areas which are suitable for or have capacity for development. An SDS cannot be contrary to or repeat national development management policy.

New Section 15AB: Consultation on draft strategy

Background

1337 Section 15AB is a new section which mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London.

Effect

1338 Subsection (1) sets out the minimum requirements for publicising, consulting on and considering any representations made during the consultation (details of which will be set in regulations).

1339 Subsections (2) and (3) set out the organisations or individuals that should receive a copy of the draft joint SDS.

1340 15AB(4) sets out that when sending a copy of the draft joint SDS, notice must also be given as to the period of consultation.

1341 15AB(5) – (7) set out that anyone may make representations during the consultation and the requirements for those representations to be properly made.

> Example (1): Identifying capacity for development (clauses 15AA(9)
>
> A joint SDS could identify a broad area for an approximate scale of development, such as, to the north-west of town x and the south of river y there is scope for new development of at least xx new homes, capacity of yy new jobs, and the provision of 2 new schools, a health facility, expansion of waste water treatment capacity and the provision of a new railway station.
>
> The SDS could not however specify that, for example, the railway station will be on land bounded by features w,x,y, or shown on map z or that any specific piece of land was to be used or protected for a specific purpose.

1342 Under new section 15LE of the PCPA 2004 the Secretary of State may set down more specific details regarding consultation on a joint SDS.

New Section 15AC: Public examination

Background

1343 15AC is a new section which mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out the procedure for examination of a joint SDS. A joint SDS is examined to assess whether it has been prepared in accordance with legal and procedural requirements and is consistent with national policy. The person/panel appointed by the Secretary of State to conduct the examination is responsible for deciding which matters need to covered, and will report their findings to the participating authorities. The Secretary of State will be able to make regulations or publish guidance concerning the conduct of the examination. The intention is that the examination should provide a non-adversarial opportunity for the discussion and testing in public of the justification for selected policies and proposals; it will not be a hearing of objections, nor need it cover every aspect of the proposals.

Effect

1344 Subsections (1) - (3) states that an examination in public into the joint SDS, conducted by a person or persons appointed by the Secretary of State, must be held before the SDS can be adopted, unless the Secretary of State directs otherwise.

1345 Subsections (4) and (5) provides that the person or persons conducting the examination will determine the matters to be discussed at the examination and make a report to the participating authorities.

1346 Subsections (6) and (7) provides that no organisation or individual has a right to appear at the examination, regardless of whether they have made representations during the consultation or have land or other interests that they feel may be affected by the joint SDS. The participating authorities, and anybody invited to do so by the person or persons conducting the examination, may take part in the examination.

New Section 15AD: Adoption of strategy

Background

1347 Section 15AD is a new section which mirrors, with some differences, the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. 15AD sets out the provisions for the participating authorities to adopt the joint SDS and the powers of the Secretary of State in relation to adoption.

Effect

1348 A SDS will not be able to be adopted until all representations made in response to the consultation exercise have been considered, the report from the examination in public has been received, and any directions given by the Secretary of State have been complied with. The Secretary of State is able to give directions requiring the modification of the SDS to secure consistency with national policies or if they feel that the joint SDS would be detrimental to adjoining areas. Subsection (1) sets out that each of the participating authorities may adopt the Joint SDS individually as there is no overarching organisation which can do this on behalf of all the participating authorities.

1349 Subsections (2) - (4) set out that a joint SDS can only be adopted once all representations made during consultation and the examiners report have been taken into account and any directions made by the Secretary of State have either been complied with or the directions withdrawn.

1350 Subsection (5) provides that a joint SDS cannot be adopted by an authority where an SDS is already operative.

1351 Subsections (6), (7) and (8) set out the role of the Secretary of State with regard to the adoption of a joint SDS. The Secretary of State's role is limited to any matters which involve inconsistencies with national policy or where the joint SDS would be detrimental to areas outside of the SDS area. The Secretary of State's role enables him/her to exercise powers in these respects, rather than requires him/her to exercise powers in these respects.

1352 Subsection (9) sets out that the joint SDS becomes operative on a date after all the participating authorities have adopted the joint SDS.

1353 Subsection (10) states that the prescribed period may be set in regulations.

New Section 15AE: Review and monitoring

Background

1354 15AE is a new section which mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out the requirements for participating authorities to review and monitor a joint SDS once it is operative. In practice it is anticipated that this will involve sharing/consolidating monitoring reports that constituent local planning authorities create for their local plans. It is therefore not mandatory to publish an individual monitoring report for a joint SDS.

Effect

1355 Subsection (1) provides that, once a joint SDS is operative, it must be reviewed and monitored.

1356 Subsection (2) and (3) requires the participating authorities that have adopted a joint SDS to keep the relevant matters affecting the joint SDS under review. If any of those matters lie outside the area of the joint SDS, the participating authorities must consult the relevant planning authority.

1357 Subsection (4) requires the participating authorities to review the joint SDS from time to time. No timeframe is specified given that the strategy may look forward a number of years.

1358 Subsection (5) sets out that the Secretary of State has the power to direct the participating authorities to undertake a review of the joint SDS at any point in time. The Secretary of State may also direct a timetable for the review and whether it is the whole joint SDS or specific parts of it that are to be reviewed.

1359 Subsection (6) sets out that the participating authorities are required to monitor the implementation of the joint SDS and collect information relevant to the joint SDS.

New Section 15AF: Alteration of strategy

Background

1360 Section 15AF is a new clause which mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out the procedure for altering an adopted joint SDS. Alterations can be made voluntarily by participating authorities or if directed to by the Secretary of State. In developing proposals for altering the strategy the same consultation procedures and other provisions apply as for the original strategy.

Effect

1361 Subsection (1) sets out that the participating authorities may prepare and adopt alterations to an adopted joint SDS.

1362 Subsection (2) enables the Secretary of State to direct the participating authorities to make amendments.

1363 Subsection (3) provides that any such amendments need to be subject to the same consultation, examination and adoption proposals as the original joint SDS, namely the provisions within 15AB to 15AD.

1364 Subsection (4) provides that where the alterations are in response to the withdrawal of a participating authority, but that the joint SDS for the remaining authorities is substantially the same, then no further consultation (under 15AB) or examination (under 15AC) is required.

New Section 15AG: Withdrawal before strategy becomes operative

Background

1365 Section 15AG is a new section which sets out the procedures for withdrawing from a joint SDS before it is operative.

Effect

1366 Subsection (1) and (2) sets out that a participating authority may withdraw from the joint SDS agreement at any point before a draft strategy is published for consultation.

1367 Subsection (3) sets out that a participating authority may withdraw from a joint SDS agreement after a joint strategy has been published for consultation only after providing 12 weeks notice to the other participating authorities.

1368 Subsection (4) provides that a participating authority may withdraw from a joint SDS agreement after it has passed a motion to adopt the strategy and before the joint SDS becomes operative, but only if the motion to adopt is rescinded.

1369 Subsection (5) provides that an authority must give notice of its intention to withdraw from the joint SDS agreement under subsections (2) or (3) to all of the other participating authorities. It is expected that this notice is in writing.

1370 Subsection (6) provides that if all of the participating authorities are in agreement, they can cancel the agreement to produce a joint SDS at any point prior to the joint SDS becoming operative.

1371 Subsection (7) provides that, if participating authorities withdraw from the joint SDS, such that there are fewer than two remaining participating authorities, the joint SDS agreement is considered to have been cancelled.

1372 Subsection (8) to (10) provides that a joint SDS may be withdrawn during consultation by the participating authorities and they must do so if the preparation agreement has been cancelled. When withdrawing a proposed strategy copies made available for inspection must be withdrawn and notice of withdrawal given to all persons listed in 15AB(1) and any person who made representations during consultation.

1373 Subsection (11) makes provision such that, if following the withdrawal of one or more participating authorities from the agreement, the remaining participating authorities intend to continue with a joint SDS, but that SDS would be substantially different to the version previously published, then the remaining participating authorities must withdraw the proposed SDS and publish a fresh joint SDS for consultation and examination.

1374 Subsection (12) provides that, when a draft plan is made available for inspection or sent to any person under section 15AB(1)(C), it is considered "published for consultation."

1375 Subsection (13) provides that, if all participating authorities agree to withdraw the Joint SDS, even once consultation has begun, or been completed, then the requirement in 15AG(3) to provide 12 weeks' notice can be ignored.

New Section 15AH: Withdrawal after strategy becomes operative

Background

1376 Section 15AH is a new section which sets out the procedures for the withdrawal of a joint SDS after it becomes operative.

Effect

1377 (1) A joint SDS may be withdrawn after it has become operative. Subsection (2) provides that once the joint SDS becomes operative no single participating authority can withdraw from it until a period of 5 years has elapsed, and that authority has given 12 week notice of its intention to withdraw. This is to provide some stability once an SDS is in place, given that emerging local plans in the area need to be in general conformity with it.

1378 Subsection (3) provides that notice must be given by all participating authorities to withdraw a joint SDS.

1379 Subsection (4) provides that if all the participating authorities are in agreement, the joint SDS can be withdrawn at any point after it becomes operative.

1380 Subsection (5) provides that if all but one of the participating authorities withdraw from the joint SDS, then the joint SDS must be withdrawn.

1381 Subsection (6) provides that the Secretary of State may direct that the joint SDS is withdrawn at any point if the Secretary of State feels it is unsatisfactory.

1382 Subsection (7) provides that if a participating authority withdraws from the strategy the other authorities must consider either altering or withdrawing the strategy.

1383 Subsection (8) provides that a joint SDS is no longer operative in the area of a participating authority that withdraws from it.

New Section 15AI: Effect of creation of combined authority in joint strategy area

Background

1384 This section creates new provisions for a circumstance where a combined authority is created in an area where one or more authorities are already in an arrangement to produce, or have produced a joint SDS. The principle is that no area should be subject to more than one SDS, and where a new combined authority is created, it has the ability to seek powers to produce an SDS.

Effect

1385 Subsection (1) applies this section if an order is made under section 103 of the Local Democracy, Economic Development and Construction Act 2009 establishing a combined authority the area of which includes, or is the same as, the area of a participating authority.

1386 Subsection (2-4) provides that if a new combined authority is created prior to when a joint SDS is published for consultation and at least two of the joint SDS participating authorities are outside the area of the combined authority, then the authorities within the new combined authority are deemed to be no longer participating in the joint SDS. If none or only one of the joint SDS participating authorities is/are outside the area of the new combined authority, then production of the joint SDS must cease.

1387 Subsection (5-7) provides that if a new combined authority is created after a joint SDS has been published for consultation but before it has become operative and at least two of the joint SDS participating authorities are outside the area of the combined authority, then the authorities within the new combined authority are deemed to be no longer participating in the joint SDS and to have rescinded any resolution to adopt the strategy. If none or only one of the joint SDS participating authorities is/are outside the area of the new combined authority, then production of the joint SDS must cease.

1388 Subsection (8-10) sets out the procedure if a joint SDS is operative and a combined authority adopts an SDS that overlaps with the strategy area of the joint SDS. If a least two of the joint SDS participating authorities are outside the area of the combined authority, then authorities within the new combined authority are deemed to have withdrawn from the joint SDS once the combined authority's SDS is adopted. If none or only one of the joint SDS participating authorities is/are outside the area of the combined authority, then the joint SDS is deemed to have been withdrawn once the combined authority's SDS is adopted.

1389 Subsection (11) provides that once a decision has been made to withdraw an SDS, prior to adoption, the fact that it was published for consultation can be disregarded for the purposes of subsections (2) and (5).

Plan timetables

New Section 15B: Local plan timetable

Background

1390 Section 15 of the Planning and Compulsory Purchase Act 2004 also enables the Secretary of State or Mayor of London to; prepare a local development scheme and direct the local planning authority to bring that scheme into effect; direct the authority to make

amendments to the scheme, or direct the authority to revise the scheme. A direction to amend the scheme must be 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 documents (taken as whole) for that area, whilst a direction to revise the scheme may only be given if the person giving it thinks that the revision is necessary for such purposes.

1391 Section 15B retains the concept of a public timetable for a local plan, any supplementary plans the authority are to make, and a minerals and waste plan timetable if the local planning authority are the minerals and waste planning authority for the area. This is set out in a document prepared by a local planning authority and retains the existing intervention powers. However, the intention is to achieve, by prescribing via regulations under Subsection (5)(a) and drawing on broader data standards powers in Part 4 Chapter 1 (Planning Data), a shift from a "document" based requirement to one that will make the relevant data publicly available in a prescribed digital format. This will ensure the timetable is clearer and simpler for local planning authorities to update.

Effect

1392 Section 15B (1) and (2) set out that all local planning authorities will be required to prepare a local plan timetable which must specify matters including the geographical area that a local plan will cover and a timetable for its production. Among other things, local planning authorities will also be required to specify any supplementary plans that they intend to produce, their subject matter and geographical extent. The Secretary of State may prescribe the form and content of the local plan timetable and further matters which the local plan timetable must deal with.

1393 Subsection (3) establishes that timetables for any joint plans must be consistent with the individual local plan timetables of each constituent authority.

1394 Subsection (4) sets out that a local plan timetable may incorporate a minerals and waste timetable where the LPA is also a minerals and waste authority.

1395 Subsection (5) gives the Secretary of State the power to prescribe the form and content of the timetable, including any further matters that they should address.

1396 Subsections (6) and (7) provide the Secretary of State or Mayor of London with the power prepare a local plan timetable for an authority which doesn't have one and direct the authority to bring that timetable into effect, and also to direct the local planning authority to amend an existing timetable

1397 Subsection (8) and (9) explain how an Local Planning Authority can bring a timetable into effect, and that once in effect, the Local Planning Authority must comply with it.

1398 Subsection (10) provides the Secretary of State with a power to set out in regulations the circumstances in which a timetable must be revised. Where regulations make such provision, there is also a power for the regulations to confer a direction making power. If exercised this would enable directions to be given to local planning authorities to revise their timetables.

1399 Subsection (11) clarifies that the provision in sub sections (1) to (9) and section 15BA also apply to the revision of a timetable.

1400 Subsection (12) confirms that Section 15BA contains further provisions in relation to directions given under subsections (6) and (7).

New Section 15BA: Local plan timetable: further provision about directions under section 15B

Background

1401 Section 15BA sets out the things that the Secretary of State or Mayor of London must do (or may do) where they make directions under Section 15B(6) or (7).

Effect

1402 Subsection (1) sets out that the Mayor of London can only give directions under section 15B(6) or (7), where the authority is a London borough. It also requires the Mayor to have regard to any guidance issued by the Secretary of State. Subsection (2) requires the Secretary of State (or the Mayor of London) to give reasons for any such direction. Subsection (3) requires the Mayor to send a copy of the direction to the Secretary of State, while also setting out that the direction will not have effect until such time as prescribed through regulations.

1403 Subsection (4) provides the Secretary of State with the power to direct a local authority to disregard any such directions made by the Mayor of London, or to give effect to any direction with modifications. Subsection (5) requires the Secretary of State to give reasons for any direction under subsection (4), while subsection (6) requires that they send a copy to the Mayor of London.

1404 Subsection (7) clarifies that section 38(1) of the Greater London Authority Act 1999 does not apply where the Mayor of London provides directions under section 15B(6) or (7).

New Section 15BB: Minerals and waste plan timetable

Background

1405 Section 16 of the Planning and Compulsory Purchase Act 2004 requires that county councils prepare and maintain a 'minerals and waste development scheme'. Section 15 of the Act (with some exceptions) relating to local development schemes applies in relation to a minerals and waste development scheme as it applies in relation to a local development scheme.

1406 The scheme must specify (among other matters) the development plan documents that the county council intends to prepare and the timetable for their preparation. The minerals and waste development scheme helps local communities and other interested stakeholders to understand which documents are due to be prepared and the stages at which they can get involved.

1407 Section 15BB retains the concept of a public timetable for plans relating to minerals and waste and retains the existing intervention powers. However, the intention is to use regulations under section 15B(5)(a) (which, by section 15BB(4), applies to minerals and waste plan timetables too) and data standards powers in Part 3 Chapter 1 (Planning Data) to require minerals and waste planning authorities to make the relevant data publicly available in a prescribed digital format.

Effect

1408 Sub section (1) sets out that all Minerals and Waste Planning Authorities (MWPAs) will be required to prepare a minerals and waste plan timetable for their area.

1409 Sub section (2) sets out the range of matters which the minerals and waste timetable must specify, including the matters to be dealt with by the minerals and waste plan and the geographical area that a minerals and waste plan will cover and a timetable for its production. Subsection (2) further sets out that MWPAs will also be required to specify any

supplementary plans that they intend to produce, their subject matter and geographical extent. Finally, subsection (2) requires MWPAs to set out whether their minerals and waste plans and any supplementary plans with be joint plans with other MWPAs, and if so, name the other MWPAs they will be working with.

1410 Subsection (3) establishes that timetables for any joint minerals and waste plans must be consistent with the individual minerals and waste plan timetables of each constituent authority.

1411 Subsection (4) sets out that sections 15B (5) – (12), 15BA and 15LE apply in relation to a minerals and waste plan timetable as they apply in relation to a local plan timetable. See the separate explanatory notes on these clauses for further details.

Local, minerals and waste and supplementary plans

New Section 15C: Local plans

Background

1412 The measures in this clause simplify the structure of the overall development plan for an area, as defined in the Planning and Compulsory Purchase Act 2004. Section 15C replaces the concept of a suite of development plan documents, as set out in section 19 of the Planning and Compulsory Purchase Act 2004, with a requirement for each local planning authority to prepare a single local plan and which defines what a local plan must, must not, and may optionally contain. The primary requirement is for the local plan to establish the amount, type, locations and timetable for the implementation of development in the local planning authority's area.

1413 An express restriction is introduced that only one local plan may be in effect at a given time in a local planning authority's area.

1414 The requirement in section 19 of the Planning and Compulsory Purchase Act 2004 for an authority's development plan documents to ensure development and the use of land contributes to the mitigation of, and adaption to, climate change, is reflected in the revised requirements for preparing a local plan, minerals and waste or supplementary plan.

1415 The established principle that the local plan may contain policies relating to minerals and waste matters, where the local planning authority is also responsible for minerals and waste planning, is also explicitly retained in the context of new provisions for minerals and waste plans at section 15CB.

Effect

1416 Subsections (1) and (2) require a local planning authority to prepare a single local plan and stipulates that only one local plan may be in force in a local planning authority's area at any one time.

1417 Subsection (3) sets out that a local plan must set out the authority's policies for development in the area of the plan, setting out the amount, type, location, and timeframe for delivery of that development.

1418 Subsection (4) sets out that a local plan may include: other land use or development related policies in relation to particular characteristics or circumstances of their area; details of any infrastructure and affordable housing requirements and specific design requirements that would need to be met (across the area and/or in particular locations) in order for planning permission to be granted.

1419 Subsection (5) introduces a power for the Secretary of State to prescribe by regulations further matters that a local plan must, or may, deal with. This would enable

provision to be made as to further requirements for local plans, or what is permissible, to adopt or respond flexibly to matters of national importance.

1420 Subsection (6) requires a local plan to be prepared so that development and the use of land contributes to the mitigation of, and adaptation to, climate change.

1421 Subsection (7) prevents a local plan from including anything not explicitly permitted or required in this section and requires that the plan is not inconsistent with or essentially repeats any national development management policy (as defined at Clause 87 which inserts new section 38ZA).

1422 Subsection (8) provides that where the local planning authority is also the minerals and waste planning authority (for example, a unitary authority), the local plan may also incorporate policies pertaining to minerals and waste matters. In this case, a standalone Minerals and Waste Plan (defined at section 15CB) might not be required.

New Section 15CA: Local plans: preparation and further provision

Background

1423 The existing provisions for the preparation of a local plan are set out in the Planning and Compulsory Purchase Act 2004 section 17 and section 19. Section 15CA consolidates various existing powers and provisions set out in the existing legislation and replaces terminology associated with the existing development plan framework, referring instead to the local plan and its associated timetable (provision for which is made in sections 15C and 15B respectively).

1424 Section 15CA introduces requirements in relation to how a local planning authority prepares local plans. As in the Planning and Compulsory Purchase Act 2004 Section 19(2), local planning authorities must have regard to various other documents and considerations in preparing local plans, to ensure consistency across different parts of the development plan and other spatial plans prepared by the devolved nations. A new requirement is introduced to ensure authorities have adequate regard to the view of their communities.

1425 Section 15CA also sets out the areas for which the Secretary of State may make regulations in relation to the local plan process; some existing powers (set out in Planning and Compulsory Purchase Act 2004 section 17(7) and section 19(6)) are retained, whilst new powers are introduced to introduce, via regulations, mandatory local plan preparation gateway checks and a mandatory timetable for local plan preparation.

Effect

1426 Subsection (1) requires the local plan to be prepared in accordance with the relevant local plan timetable.

1427 Subsection (2) requires that local plans must be in general conformity with the spatial development strategy, if one is operative in relation to the relevant area.

1428 Subsection (3) sets out that a local planning authority must seek observations or advice in relation to a proposed local plan, from an independent person appointed by the Secretary of Sate, at prescribed times. Any observations or advice received must be published by the local planning authority as soon as reasonably practicable, as set out a subsection (4).

1429 These collectively, together with subsection (5)(a), (which requires the local planning authority to have regard to any observations or advice received under subsection (3)), and subsections (7)(c)-(e), (which allow the Secretary of State to introduce regulations around the nature of the advice and observations, any information or documents to be provided by the authority, and the form and content of this information and the advice), enable 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, details of local plan gateway checks, that will take place before a local plan is submitted for examination to support local planning authorities and reduce that risk that plans are found unsound at examination.

1430 Subsection (5) requires a local planning authority, in preparing its local plan, to have regard to a number of other things listed (under subsections (5)(a)-(i)): other parts of the development plan and polices of the devolved nations if an authority is adjacent to another authority in Scotland or Wales; national development management policies (as defined at section 38ZA); any response to plan consultations; any relevant neighbourhood priorities statements ; any other national policies and advice published by the Secretary of State in guidance; any other part of the development plan operative in the authorities area; and other such matters prescribed by the Secretary of State in regulations.

1431 Subsection (6) clarifies that a local plan only has effect once adopted or approved under Part 2 of the Planning and Compulsory Purchase Act 2004.

1432 Subsection (7) sets out various matters which regulations made by the Secretary of State in relation to this section may do. These include a power to regulate the form and content of the plan and other documents prepared in connection with the plan ((a) and (b)), which may be used to define an indicative table of contents for a plan, prescribe templates which may be used by a local planning authority, or set out parameters around the map-based elements of the plan (as currently set out in The Town and Country Planning (Local Planning) (England) Regulations 2012 section 9(2)). The power at (f) may be used to prescribe when the local planning authority is to have regard to something mentioned in subsection (5), while the power at (g) would enable the Secretary of State to set out when a local planning authority must do something in connection with preparing plans, to allow fixed timeframes to be established for different parts of the plan preparation process.

New Section 15CB: Minerals and waste plan

Background

1433 Minerals and waste plans form part of the development plan and are a key part of the plan led system. Their role is to set the strategy and provide the local planning policy framework for minerals and waste development in the area.

1434 Under the provisions of the 2004 Act (Part 2, section 17), Minerals and Waste Plans are currently prepared as Local Development Documents (LDD) relating to a specific theme/topic area.

1435 The approach provided in section 15CB means that minerals and waste plans will become distinct from local plans in legislation, which emphasises the important role they play within the development plan.

1436 The requirement in PCPA 2004 s.19 for an authority's development plan documents to ensure development and the use of land contributes to the mitigation of, and adaption to, climate change, is reflected in the context of the requirements for minerals and waste plans.

Effect

1437 Subsection (1) requires each minerals and waste planning authority (MWPA) to prepare one or more documents which are to be known collectively as the minerals and waste plan. This will enable plans to be produced as follows:

a. Combined (i.e., A minerals and waste plan);

b. Separately (i.e.,1. A minerals plan and 2. A waste plan)

c. Where possible through local government structure, a minerals and waste plan may be incorporated into a local plan (see section 15C(8))

1438 Subsection (2) sets out that a minerals and waste plan must include policies setting out the amount, type, location, and timeframe for delivery of relevant development.

1439 Subsection (3) sets out things that a minerals and waste plan may include optionally, specifically relevant policies in relation to the particular characteristics and circumstances of the area (or part of it), non-mineral/waste development (where this is designed to enable minerals and waste development to take place), and relevant infrastructure requirements

1440 Subsection (4) introduces a power for the Secretary of State to prescribe by regulations further matters that a minerals and waste plan must, or may, deal with. This would enable the 'fine tuning' of requirements for minerals and waste plans, or what is permissible, to adapt or respond flexibly to matters of national importance.

1441 Subsection (5) requires a minerals and waste plan to be prepared so that minerals and waste development contributes to the mitigation of, and adaption to climate change.

1442 Subsection (6) prevents a minerals and waste plan from including anything not explicitly permitted or required in this section and requires that the plan is not inconsistent with or essentially repeats any national development management policy (as defined at [s.38ZA]).

1443 Subsection (7) provides that this part applies in relation to a minerals and waste plan as it applies in relation to a local plan and subsection (8) indicates that subsection (7) is subject to modification.

1444 Subsection (9) outlines the exceptions to which subsection (7) does not apply.

New Section 15CC: Supplementary plans

Background

1445 Supplementary Plans are a new type of document that may be prepared by a relevant plan-making authority (as defined in section 15LH(2)), and will replace 'supplementary planning documents' prepared under existing legislation, which do not have the weight of the development plan (and whose status can, in practice, be uncertain). Section 15CC sets out the legislative basis for supplementary plans, including the nature of the policies that they may contain. Section 15DB sets out the process for the independent examination of supplementary plans. There are certain limits on the allowable scope of supplementary plans (either by subject matter or geographically), so that they do not subvert the role of the local plan as the principal planning policy framework for the area of a local planning authority.

Effect

1446 Subsection (1) has the effect that all local planning authorities, the Mayor of London and minerals and waste planning authorities may prepare one or more supplementary plans.

1447 Subsection (2) enables the Mayor of London to prepare supplementary plans in respect of design matters for the whole of Greater London.

1448 Subsection (3) provides the subject matters that a supplementary plan can address when prepared by a local planning authority. These echo those for local plans, but limited geographically to matters relating to a specific site or two or more nearby sites; other than in the case of design matters, which may cover a wider area. This will allow supplementary

plans to address site-specific needs or opportunities which require a new planning framework to be prepared quickly (like a new regeneration opportunity), and to act as a vehicle for setting out authority-wide or other design codes.

1449 Subsection (5) sets out the matters that a mineral and waste planning authority can address within a supplementary plan.

1450 Subsection (6) enables the Secretary of State to prescribe further matters that a supplementary plan may deal with.

1451 Subsections (7) and (8) set out that authorities preparing a supplementary plan must have regard to other parts of the development plan, and ensure supplementary plans are in general conformity with any relevant spatial development strategy.

1452 Subsection (9) provides that supplementary plans must, so far as the authority consider appropriate, be designed to contribute to the mitigation of, and adaption to, climate change.

1453 Subsection (10) provides that a supplementary plan must not include anything that is not permitted by this section or be inconsistent with or repeat any national development management policy.

1454 Subsections (11) and (12) provide the Secretary of State with the power to make provision about the preparation, withdrawal or revision of supplementary plans, and that any such regulations must require that any proposed plan is subject to public consultation.

1455 Subsection (13) confirms how a supplementary plan is to have effect.

New Section 15D: Independent examination: local plans

Background

1456 Section 20 of the Planning and Compulsory Purchase Act 2004 sets out matters relating to the procedure for a range of powers relating to the conduct of the independent examination of development plan documents. Plans are examined to determine whether they are 'sound' via an examination in public.

1457 Section 15D maintains the established principle that a local plan is submitted to the Secretary of State for independent examination, to ensure that plans adopted by authorities are 'sound'. It retains powers for the Secretary of State to appoint an independent "examiner" (Inspector) to conduct the examination process, as well as various established practices around how the examination is conducted, including the "right to be heard".

1458 In addition, section 15D creates a new power enabling the Inspector, at any point during the examination of a plan, to pause the examination where certain matters need to be dealt with to make the plan sound. This pause enables the local planning authority to undertake further remedial work to deal with these matters.

Effect

1459 Section 15D replaces section 20 of the Planning and Compulsory Purchase Act 2004, but to a large extent replicates existing arrangements. Subsections (1) and (2) maintain the general principle that local plans, and other documents or information (prescribed by the Secretary of State in regulations), are submitted by the local planning authority to the Secretary of State for independent examination in public. The local plan must only be submitted once the local planning authority has been advised by a person appointed by the Secretary of State under section 15CA(3) that it meets prescribed requirements.

1460 Subsection (3) introduces a new power for the Secretary of State to prescribe how anything sent under subsections (1) and (2) should be sent.

1461 Subsections (4) and (5) maintain the existing principles that an examination will be carried out by an independent Inspector ("the examiner") appointed by the Secretary of State, to determine whether the local plan is "sound".

1462 Subsection (6) retains and updates the established principle that any person who makes representations during consultation on the local plan proposal will be able to appear before and be heard by the Inspector at the examination, should that person so request to do so.

1463 Subsection (7) provides a power for the examiner, at any time prior to the conclusion of the examination, to pause the examination if certain matters which need to be dealt with for the plan to be capable of being sound could be dealt with by a pause for the local planning authority to undertake further remedial work.

1464 Subsection (8) replicates the existing power for the Secretary of State to issue a holding direction to the independent Inspector during the examination of the local plan. This may be done to: require the Inspector to consider any specified matters (such as any policy or procedural process relating to the local plan considered at the examination); provide opportunity for a specified person to appear and 'be heard' by the Inspector; and/or require the Inspector to undertake a procedural step relating to the conduct of the examination, as specified by the Secretary of State.

1465 Subsections (9-12) set out the steps an Inspector must take once the examination has concluded, which broadly mirror the existing provisions. Where the examiner considers that the local plan is sound, they must recommend that the plan is adopted. Where, subject to modifications, the plan can be considered sound, the examiner must recommend such modifications are made and that the plan is adopted. Where the plan is not sound, it is considered that modifications could not make the plan sound, and no decision is made under subsection (7), the examiner must recommend the plan is withdrawn. The examiner must give reasons for all recommendations under these subsections.

1466 Subsection (13) replicates the existing requirement for the local planning authority to publish any recommendations and reasons received.

New Section 15DA: Pause of independent examination for further work

Background

1467 Section 15DA introduces new provisions and procedures relating to the pause of an independent examination. The local planning authority must, during the pause period, take steps as necessary to deal with the matters notified to them by the Inspector and, prior to the end of the period, document and evidence how they have addressed these matters.

Effect

1468 Section 15DA introduces a new power that the independent Inspector can use to help make the local plan sound by pausing the examination for further work. This section applies if the examiner pauses the examination under 15D(7).

1469 Subsection (2) sets out that the examiner must notify the local planning authority and the Secretary of State of the decision under 15D(7), the matters that need to be dealt with during the pause, and the duration of the "pause period".

1470 Subsection (3) enables the Secretary of State to prescribe how long the "pause period" may be.

1471 Subsection (4) suspends the examination from the beginning of the pause period.

1472 Subsections (5)-(7) require the local planning authority to deal with the matters notified to them by the examiner under subsection (2) and, before the end of the period, produce a document setting out what they have done to deal with the matters and any modifications to the plan proposed. This must be sent to the examiner and published, together with any new evidence in support of the soundness of the plan.

1473 Subsections (8)-(9) set out the steps an Inspector must take at the end of the pause period. The examiner must recommend the plan is withdrawn and give reasons if they consider that the matters have not been dealt with and there is no prospect of the plan being found sound. Otherwise, the examination is resumed under section 15D.

1474 Subsection (10) requires the local planning authority to publish any recommendations and reasons received under this section.

New Section 15DB: Independent examination: supplementary plans

Background

1475 Section 15DB sets out the process for the independent examination of supplementary plans.

Effect

1476 Subsections (1) and (2) set out that relevant plan-making authorities must submit supplementary plans for independent examination to either the Secretary of State, or an appropriately qualified person.

1477 Subsections (3) to (8) set out procedural matters for the independent examination of supplementary plans. These include the purpose of the examination, the general rule that examinations of supplementary plans must take the form of written representations, the circumstances in which the examiner must hold a hearing and the functioning of the "right to be heard".

1478 Subsections (9) to (12) cover the conclusions reached by the examiner. They set out when the examiner must recommend that a plan is adopted, adopted with modification or that the plan is withdrawn.

1479 Subsection (13) requires authorities to publish the recommendations they receive from an examiner and the reasons for those recommendations.

New Section 15E: Withdrawal of a local plan

Background

1480 The Planning and Compulsory Purchase Act 2004 sets out that a local planning authority may withdraw a local development document at any time before it is adopted.

1481 Section 15E retains the concept of withdrawal, applying it to local plans (in the context of changes to the development plan framework made elsewhere in the clauses). The key change from existing provisions in the Planning and Compulsory Purchase Act 2004 is the removal of the flexibility for a local planning authority to withdraw a plan from examination; a local plan may only be withdrawn from examination if the examiner recommends it (under provisions at new Sections 15D and 15DA) or if the Secretary of State directs it.

Effect

1482 Subsection (1) enables a local planning authority to withdraw a local plan at any time before submitting the plan for independent examination.

1483 Subsection (2) stipulates that a local planning authority may only withdraw a plan after it has been submitted for examination if the examiner recommends it or if the Secretary of State directs it.

1484 The Secretary of State's power to direct withdrawal of a local plan after it has been submitted for examination, but prior to the local planning authority adopting it, is provided in subsection (3).

New Section 15EA: Adoption of local plan or supplementary plan

Background

1485 Section 15EA broadly replicates section 23 of the Planning and Compulsory Purchase Act 2004, which allows plans to be "adopted"; meaning they come into force as part of the development plan for the relevant area.

1486 Section 15EA introduces greater clarity around the modifications which may be made by the plan-making authority prior to a plan being adopted. The established principle that a local plan or minerals and waste plan is adopted by a resolution of the relevant authority is retained, whilst a new provision is made for the Mayor of London to adopt a supplementary plan (prepared under section 15CC).

1487 The new provisions now exclude reference to the previous development plan framework (local development documents and development plan documents), instead referring to local plans, minerals and waste plans and supplementary plans.

Effect

1488 Subsections (1) and (3) enable a relevant plan-making authority to adopt a local plan or supplementary plan as submitted or with additional modifications if these do not materially affect the contents of the plan, if no modifications are recommended by the independent examiner.

1489 Where the person appointed to examine a local plan or supplementary plan finds the plan sound subject to modifications, subsections (2) and (4) enable a relevant plan-making authority to adopt a local plan or supplementary plan with those modifications, or with those modifications and additional modifications if these do not materially affect the contents of the plan.

1490 Subsection (5) prevents a relevant plan-making authority from adopting a local plan or supplementary plan unless in accordance with subsections (1), (2), (3) or (4).

1491 Subsection (6) provides that a plan is adopted by a local planning authority or a minerals and waste planning authority if it is adopted by a resolution of the authority.

1492 Subsection (7) sets out how a supplementary plan may be adopted by the Mayor of London.

Requirement in relation to design code

New Section 15F: Design code for whole area

Background

1493 The Planning and Compulsory Purchase Act 2004 requires that the person or body which exercises any function under Part 2 of the Planning and Compulsory Purchase Act 2004 in relation to local development documents, for the purposes of section 39(2), must (in particular) have regard to the desirability of achieving good design.

1494 New Section 15F introduces a new duty for local planning authorities to prepare a local design code at the spatial scale of their authority area, which will set the design requirements development must follow.

1495 New Section 15CC introduces the new concept of supplementary plans. Local planning authorities will be able to prepare and adopt local design codes as either a supplementary plan or as part of their local plan, giving the design requirements set within them the weight of the development plan in decision making.

1496 The duty covers local planning authorities as defined in section 15LF.

1497 A detailed definition of a design code is currently provided in the National Planning Policy Framework (NPPF) and the supporting planning practice guidance on design (the National Design Guide, the National Model Design Code (NMDC) and Design: process and tools)

Effect

1498 Subsection (1) of section 15F has the effect of introducing a duty on local planning authorities to ensure that design requirements, set out in the form of a design code, are prepared at the spatial scale of their authority area.

1499 Subsection (2) clarifies that, for the duty in subsection (1), local planning authorities are not required to include design requirements for every type of development for every part of their area or for every aspect of design.

1500 Section 15F should be read in conjunction with sections 15C, 15CC, 15D, 15DB, 15HB and 15B(2)(e).

1501 Section 15C(4)(c) enables local planning authorities to include design codes (requirements) as part of their local plan.

1502 Section 15CC enables local planning authorities to prepare and adopt local design codes as a supplementary plan, meaning they will become part of the development plan and will be afforded the same weight as a local plan.

1503 Design codes prepared as a supplementary plan will be subject to at least one round of consultation (section 15CC(12)(b)), and an independent examination (section 15DB).

Revocation and revision of plans

New Section 15G: Revocation of local plans and supplementary plans

Background

1504 Section 25 of the Planning and Compulsory Purchase Act 2004 enables the Secretary of State to revoke local development documents (including local plans) if a local planning authority requests that it is revoked. New Section 15G broadly replicates this but updates the wording to reflect changes to the terms used in the wider plan framework.

Effect

1505 Section 15G sets out that a local plan is automatically revoked when a new local plan for the relevant area is adopted or approved. Section 15G also provides the Secretary of State with the power to revoke local plans and supplementary plans at any time, at the request of the relevant plan-making authority. It also introduces a specific power (at (2)(c)), for the Secretary of State to define types of supplementary plans that may be revoked by the relevant plan-making authority themselves.

New Section 15GA: Revision of local plan

Background

1506 The existing provisions relating to plan revision are set out in section 26 of the Planning and Compulsory Purchase Act 2004. These provisions largely replicate those set out in section 26, updating the language to refer to the local plan rather than a local development document.

Effect

1507 Subsection (1) allows a local planning authority to prepare a revision of a local plan at any time after it has come into effect.

1508 Subsection (2) places a requirement for a local planning authority to prepare a revision of the local plan if the Secretary of State directs it to do so, in accordance with any specific timetable as directed by the Secretary of State.

1509 Subsection (3) sets out that sub-section (4) will apply if an area is part of an enterprise zone scheme, which should be construed in accordance with the Local Government, Planning and Land Act 1980 (as set out in subsection (6)).

1510 Subsection (4) sets out what an authority must do if a 'relevant event' occurs, as defined in subsection (5). If an enterprise zone is designated or an enterprise zone scheme is modified, the authority must consider whether their local plan should be revised to reflect this and, if so, prepare the revision.

1511 Subsection (7) provides that Part 2 of the Planning and Compulsory Purchase Act applies to a revision as it applies to a plan (with any prescribed modifications).

Intervention powers in relation to plans

New Section 15H: Power to require Secretary of State approval

Background

1512 The current Planning and Compulsory Purchase Act 2004 local plan intervention provisions provide the Secretary of State with a range of powers to intervene in local plan making if considered necessary. The Bill maintains and consolidates all existing interventions powers.

1513 Section 15H replicates the current power in section 21(4) that enables the Secretary of State to direct a local planning authority to submit a Local Plan to the Secretary of State for approval.

Effect

1514 Subsections (1) and (2) replicate the current section 21(4) of the Planning and Compulsory Purchase Act 2004. They enable the Secretary of State to direct a relevant plan-making authority to submit their emerging local plan or supplementary plan (or any part of it) to the Secretary of State for approval.

1515 Subsections (3) to (8) further replicate section 21 of the Planning and Compulsory Purchase Act 2004 by setting out what must happen where the Secretary of State issues directions under subsection (1) or (2), including holding an examination, giving reasons for any action and having regard to the relevant local plan (or minerals and waste plan) timetable.

New Section 15HA: Secretary of State powers where plan is unsatisfactory etc

Background

1516 Section 15HA consolidates the other provisions in sections 21 and 27 of the current Planning and Compulsory Purchase Act 2004 into one section. These powers enable the Secretary of State to take various steps including giving directions in relation to the preparation or adoption of the plan or taking over preparation of the plan.

Effect

1517 Subsection (1) consolidates the current provisions in section 21(1) and 27(1) of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to intervene if they think that an Local Planning Authority is 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, or if they think a local plan or a supplementary plan is going to be or may be unsatisfactory.

1518 Subsection (2) sets out what action the Secretary of State may take, including giving directions in relation to the preparation or adoption of the plan or taking over preparation of the plan.

1519 Subsection (3) introduces the new concept of a local plan commissioner, who would act on behalf of the Secretary of State. A local plan commissioner may investigate and report back to the Secretary of State and may take any of the actions listed in subsection (2), including giving directions in relation to the preparation or adoption of the plan or taking over preparation of the plan.

1520 Subsections (4) to (11) set out what must happen where the Secretary of State or commissioner takes over the preparation of a plan or revises a plan.

1521 Subsection (5) requires the Secretary of State or commissioner to publish a timetable for the preparation of the plan. Subsection (6) requires that an examination is held. Where this happens, subsections (7) and (8) confirm that the relevant provisions in sections 15D, 15DA and 15DB apply to the examination of a local plan or supplementary plan. Subsections (9) and (10) set out that, following the examination, the recommendations of the examiner must be published and that the Secretary of State or a local plan commissioner may then either approve the plan (so that it comes into force), direct the authority to consider adoption or reject the plan. Subsection (11) sets out that subsections (5) to (10) also apply to the revision of a plan.

1522 Subsections (12) to (14) set out that the Secretary of State or a local plan commissioner may take account of anything they think is relevant when using intervention powers and must give reasons for the use of any intervention powers.

1523 Subsection (15) defines 'relevant authority'.

New Section 15HB: Secretary of State powers where local planning authority fails to ensure design code

Background

1524 Section15HB provides intervention powers for the Secretary of State to enable the Secretary of State to take action where a local planning authority fails to meet the new legal requirement to ensure their development plan includes a design code for their area.

Effect

1525 Subsection (1) enables the Secretary of State to intervene if they think a local planning authority are unlikely to comply, or have not complied, with the requirement in section 15F(1) which requires the development plan for each area to include a design code.

1526 Subsections (2) and (3) set out what action the Secretary of State may take and a requirement for the Secretary of State to give reasons for any use of intervention powers.

New Section 15HC: Liability for Secretary of State's costs of intervention

Background

1527 Section 15HC updates the existing provisions on liability for the Secretary of State's costs relating to interventions.

Effect

1528 Subsections (1) and (2) update the existing provisions in section 27(9) and 27(10) of the Planning and Compulsory Purchase Act 2004. They provide a power for the Secretary of State to require the authority whose plan was the subject of intervention to reimburse the Secretary of State for expenditure relating to intervention action taken under section 15H to 15HB, or to pay the costs of a local plan commissioner directly where they are appointed under section 15HA.

New Section 15HD: Default powers exercisable by Mayor of London, combined authority or county council

Background

1529 Section 15HD replicates the existing section 27A, which introduces Schedule A1 of the Planning and Compulsory Purchase Act 2004 whereby the Mayor of London, a combined authority or a county council can be invited to prepare a plan.

Effect

1530 Section 15HD gives effect to Schedule A1.

1531 Schedule 8 of this Bill makes consequential amendments to Schedule A1 to the Planning and Compulsory Purchase Act 2004. Schedule A1 enables the Secretary of State to invite a local County Council, Combined Authority or in London the Mayor of London, to prepare or revise a plan where they think that a local planning authority 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. It also provides the Secretary of State with powers to intervene where those bodies have been invited to prepare a plan.

New Section 15HE: Temporary direction pending possible use of intervention or default powers

Background

1532 Section 15HE replicates the current section 21A of the Planning and Compulsory Purchase Act 2004 which enables the Secretary of State to issue a temporary holding direction to prevent a local planning authority from taking any step in relation to a plan, where the Secretary of State is considering the use of intervention powers.

1533 Procedural details relating to plan-making when intervention has occurred are set out in regulations, pursuant to the general regulation-making powers currently in section 36 of the Planning and Compulsory Purchase Act 2004. As with the existing intervention powers, this approach has been carried forward.

1534 Local plan intervention powers are used sparingly but remain an important deterrent to help ensure compliance with statutory plan-making duties.

Effect

1535 Subsection (1) replicates section 21A of the Planning and Compulsory Purchase Act 2004 to provide the Secretary of State with a power to issue a holding direction where they are considering whether to intervene under sections 15H, 15HA, 15HB or Schedule A1. The provision requires that an LPA does not progress work on their plan until the holding direction expires or is withdrawn.

1536 Subsection (2) clarifies that a plan that is subject to a holding direction has no effect while the direction is in force.

1537 Subsection (3) sets out the circumstances where a holding direction will cease to have effect. This includes where a local plan commissioner either gives directions to an authority or approves a plan.

Joint plans

New Section 15I: Joint local plans by agreement or direction

Background

1538 Section 15I updates the current arrangements set out in sections 28 and 28A of the Planning and Compulsory Purchase Act 2004 which enable the preparation of joint local development documents and enable the Secretary of State to direct two or more local planning authorities to produce a joint local document.

Effect

1539 Subsections (1) and (2) enable two or more local Planning authorities to prepare a joint local plan together for their combined areas, either voluntarily ("by agreement"), or when directed by the Secretary of State to do so (a "joint local plan direction") under subsection (3).

1540 Subsection (4) sets out that the Secretary of State may direct the preparation of a joint local plan, even in the case where a local planning authority's local plan timetable specifies otherwise.

1541 Subsection (5) provides that the Secretary of State may only give a joint local plan direction if the Secretary of State considers that it will result in the more effective planning of development and land use in the area of at least one of the local planning authorities to whom the direction is to be given.

1542 Subsection (6) says that the direction may specify the timetable for the preparation of a joint local plan.

1543 Subsection (7) provides that where a joint local plan direction is given, the Secretary of State must notify the authorities of the reasons for doing so.

1544 Subsection (8) enables the Secretary of State to direct the relevant authorities to amend their local plan timetable to reflect the joint local plan direction and timetable.

1545 Subsection (9) enables the Secretary of State to modify or withdraw their direction provided by notifying the relevant local planning authorities.

New Section 15IA: Joint local plans: application of Part

Background

1546 Section 15IA sets out procedural matters relating to the preparation of joint local plans and where joint local plan directions are given by the Secretary of State

Effect

1547 Subsection (1), (2) and (3) set out that local planning authorities preparing a joint plan by agreement or by direction are required to do anything that would otherwise be required in relation to a local plan, including completing all the steps associated with the preparation, examination and adoption of the joint local plan.

1548 Subsection (4) allows the Secretary of State to modify the way Part 2 applies to joint local plans.

1549 Subsection (5) sets out that where a spatial development strategy is also operative in the joint local plan area, or any part of it, the joint local plan will have to be in general conformity with the relevant spatial development strategy, however the effect of the strategy only applies to those parts of the joint plan area that are covered by the strategy.

New Section 15IB: Joint local plan agreement or direction: withdrawal or modification

Background

1550 Section 15IB deals with a situation in which a local planning authority withdraws from a joint local plan agreement, or the Secretary of State withdraws a joint local plan direction or it ceases to have effect for one or more parties. In such circumstances, the examination of a joint local plan is suspended. These provisions broadly mirror the existing law.

Effect

1551 Subsection (1) states that this section applies where an authority withdraws from a joint local plan agreement, or if the Secretary of State withdraws or modifies a joint local plan direction so that it ceases to apply to an authority.

1552 Subsection (2) states that any step taken in relation to the joint local plan must be treated as a step taken by the participating authorities for corresponding local plans or corresponding joint local plans. This means that things done as part of the old joint local plan count as steps taken towards the local plan that replaces it. .

1553 Subsection (3) provides that where the joint local plan has already been submitted for examination, the examination must be suspended. Subsection (4) provides that an authority may, before the end of a period of time, prescribed in regulations by the Secretary of State, ask the Secretary of State to direct recommencement of the examination.

1554 Subsection (5) enables the Secretary of State to define a corresponding local plan or corresponding joint local plan, for the purposes of this section to deal with change in geographical coverage of the joint local plan.

1555 Subsection (6) clarifies what references to the joint local plan in this section relate to. It explains that they refer to the joint local plan which the joint local plan agreement or joint local plan direction (which have either been withdrawn or ceased to have effect) related to.

1556 Subsection (7) clarifies that the relevant authorities are local planning authorities who were party to a joint local plan agreement before the authority set out in subsection (1)(a) withdrew from it, or the joint local plan direction before it was modified or withdrawn by the Secretary of State.

New Section 15IC: Joint supplementary plans by agreement

Background

1557 Section 15IC enables the preparation of joint supplementary plans.

Effect

1558 Subsection (1) enables two or more local planning authorities to agree to prepare a joint supplementary plan together, and if they do the area mentioned in subsection (3) of section 15CC on the content of supplementary plans means the combined relevant areas of the authorities involved.

1559 Subsection (2) enables two or more minerals and waste planning authorities to agree to prepare a joint supplementary plan, in which case the area mentioned in subsection (5) of section 15CC (content of minerals and waste supplementary plans) is the combined area of the authorities.

1560 Subsection (3) sets out that the provisions within Part 2 of the Planning and Compulsory Purchase Act 2004 about steps in relation to a supplementary plan also apply to a joint supplementary plan.

1561 Subsection (4) provides that any step that must be taken in relation to the preparation of the joint supplementary plan, must be taken by all the authorities involved in the joint supplementary plan.

1562 Subsection (5) allows the Secretary of State to prescribe (in regulations) modifications of Part 2 as it applies to joint supplementary plans.

1563 Subsection (6) sets out that where a spatial development strategy is also operative in the joint supplementary plan area, or any part of it, the joint supplementary plan will have to be in general conformity with the relevant spatial development strategy, however the effect of the strategy only applies to those parts of the joint supplementary plan area that are covered by the strategy.

1564 Subsections (7) to (10) set out procedural details that apply if one of the relevant authorities withdraws from a joint supplementary plan agreement.

1565 Subsection (11) provides the Secretary of State with regulation making powers to define a 'corresponding supplementary plan' or a 'corresponding joint supplementary plan'.

1566 Subsections (12) and (13) define joint supplementary plans and relevant authorities for the purposes of this section.

Joint Committees

New Section 15J: Joint committees

Background

1567 Section 15J provides for the establishment of joint committees, which can be formed by one or more local planning authorities (as defined in section 15LF) with one or more county councils in relation to any area of the county councils in relation to any area of the county council for which there is also a joint committee. The joint committee, formed by regulations made the Secretary of State, becomes the local planning authority for the area agreed between the relevant parties.

Effect

1568 As under Planning and Compulsory Purchase Act 2004 section 29, section 15J(1) permits one or more local planning authorities to agree with one or more county councils to establish a joint committee and become the local planning authority for the area set out in the agreement and purposes specified.

1569 Subsections (2)-(5) replicates the powers in existing legislation for the Secretary of State to constitute a joint committee to be the local planning authority for the area by

regulations and set out what the regulations must or could do. They must set out the local planning authorities and county councils that will make up the joint committee (the "constituent authorities"). They may also set out other matters which are necessary or expedient for the joint committee to carry out its functions, which might include provisions corresponding to relevant provisions in the Local Government Act 1972, application of other relevant legislation that may be appropriate, or modifications as to how Part 2 (as amended) is applied in relation to the joint committee.

1570 Subsection (6) sets out that if regulations relating to a joint committee are annulled by resolution of either House of Parliament, the joint committee will cease to exist from the date of that resolution. From that date, all local planning authorities that were once a member of the joint committee must carry out the functions of a planning authority on their own and must update their local plan timetable accordingly.

1571 Under subsection (7), this section does not impose on a local planning authority constituted by virtue of regulations under this section any function under section 13 or 14 of Planning and Compulsory Purchase Act 2004 ("survey of area").

1572 Subsection (8) says this section (i.e. 15J) and section 15JA are subject to the requirement in section 15C(2). This permits only one local plan to have effect in a local planning authority's area at any one time.

1573 Subsection (9) requires that if the joint committee adopts a local plan or supplementary plan, the policies contained therein apply across all local planning authorities.

1574 Subsections (10) and (11) clarify that references to a constituent authority's timetable or plan should be construed as the timetable or any plan adopted by the joint committee, as far as relates to any planning function conferred.

New Section 15JA: Joint committees: additional functions

Background

1575 Section 15JA replicates and updates section 30 of the Planning and Compulsory Purchase Act 2004 on joint committee timetables where the joint committee takes additional functions.

Effect

1576 Subsection (1) applies the section to situations where a joint committee's constituent authorities agree that the joint committee will be the local planning authority for something that was not set out in regulations or agreed before. Subsections (2)-(3) set out procedural details in relation to the requirement for each constituent authority of the joint committee to revise their local plan timetables, and give effect to the joint committee becoming the local planning authority for the area or purpose specified.

New Section 15JB: Dissolution of joint committee

Background

1577 Section 15JB replicates and updates section 31 of the Planning and Compulsory Purchase Act 2004 which provides for the dissolution of joint committees via a revocation request by a constituent authority to the Secretary of State.

Effect

1578 Subsections (1) and (2) set out that a constituent authority may request that the Secretary of State revokes the regulations that constituted a joint committee and that the Secretary of State may revoke those regulations.

1579 Subsection (3) provides that a step taken about a plan or timetable which meets the definition of a corresponding plan or timetable is treated as being done by the successor authority.

1580 Successor authority is defined in subsection (4) as a local planning authority which were a constituent authority of the original joint committee or a newly constituted joint committee for the remaining authorities. Subsection (7) allows the Secretary of State to define corresponding timetable or plan for the purposes of this section in regulations.

1581 Subsections (5) and (6) set out the procedural requirements that apply if the regulations constituting a joint committee are revoked during the independent examination of a local plan or supplementary plan prepared by the joint committee.

Neighbourhood priorities statements

New Section 15K: Neighbourhood priorities statements

Background

1582 Neighbourhood planning was introduced through the Localism Act 2011 and gave local communities new rights and powers to develop a shared vision for their neighbourhood and shape the development and growth of their local area.

1583 Through a neighbourhood plan a parish council, or a neighbourhood forum in an unparished area, can set out plan policies and, where they wish, allocate land for development, for their designated neighbourhood plan area. Proposals are shaped by consultation with the wider community and subject to independent examination, before they are put to referendum. If approved at a local referendum, the neighbourhood plan becomes part of the wider development plan, which is the basis for decisions on individual planning applications.

1584 The take-up of neighbourhood plans is uneven across the country and is generally low in urban and more deprived areas. Communities in these areas face additional barriers which makes it more difficult for them to progress a neighbourhood plan, including a lack of an established governance structure or finding volunteers to help prepare the plan. We are seeking to address this by introducing a new simpler neighbourhood planning tool called a "neighbourhood priorities statement". This will allow communities to identify their key priorities for their local area, including their development preferences, and will provide a simpler and more accessible way for them to participate in neighbourhood planning.

Effect

1585 Subsection (1) states that any qualifying body is able to make a "neighbourhood priorities statement" and sets out that it can cover a summary of the community's needs and views in relation to certain prescribed 'local matters'.

1586 Subsection (2) provides the Secretary of State with a power to set out, within the parameters specified in paragraphs (a) to (g), what 'local matter' are in regulations.

1587 Subsection (3) states that a qualifying body has the power to modify or revoke a statement covering their neighbourhood area.

1588 Subsection (4) specifies that a priorities statement will come into effect when it is published by the local planning authority and ceases to have effect when the authority publishes a notice stating that it has been revoked by the qualifying body.

1589 Subsection (5) specifies that any modification of a priorities statement by the qualifying body will come into effect when it is published by the local planning authority.

1590 Subsection (6) sets out that the Secretary of State may prescribe by regulations the requirements that a priorities statement must meet in order to be made or published.

1591 Subsection (7) specifies that regulations made under subsection (6) or section 15LE(2)(k), can state that requirements or procedures can be met or complied with, before a group is designated as a qualifying body.

1592 Subsection (8) sets out that regulations made under subsection (6) and section 15LE must (between them) require a qualifying body to publicise their neighbourhood priorities statement (or any proposed material modification to a statement); require the local planning authority to publish the neighbourhood priorities statement (or a modified version of that statement) where relevant statutory requirements have been met; and notify the public when a neighbourhood priorities statement has been revoked.

1593 Subsection (9) sets out that subsection (10) applies if a change to the boundary of a neighbourhood area results in a neighbourhood priorities statement relating to more than one neighbourhood area.

1594 Subsection (10) sets out that where a statement has been modified or revoked for one neighbourhood area, it still has effect in the other neighbourhood area(s) where it relates to.

1595 Subsection (11) sets out that regulations made under section 61G (11) of the principal Act (designation of areas as neighbourhood area) can set out the consequences of the changes to neighbourhood areas on draft or published neighbourhood priorities statements (or modifications of statements).

1596 Subsections (12) and (13) set out that the types of authorities listed in subsection (13) are a 'relevant planning authority' for the purposes of a neighbourhood priorities statement, when some or all of the neighbourhood area to which the statement relates is within the area of that authority.

1597 Subsection (14) provides definitions to terms that are relevant to neighbourhood priorities statements.

General

New Section 15L: Exclusion of certain representations

Background

1598 Section 32 of the Planning and Compulsory Purchase Act 2004 allows the Secretary of State or a local planning authority to disregard representations made through consultations on local development documents, when the representation relates to schemes or orders dealt with through other certain other legislation. This provision is retained in section 15L and applied to local plans; supplementary plans; and minerals and waste plans (by virtue of section 15CB(7)).

Effect

1599 Section 15L replicates the provision in existing legislation for the Secretary of State or a local planning authority to disregard a representation made through a local plan, supplementary plan or minerals and waste plan consultation if, in substance, such representation is made in respect of anything that is done or proposed under certain orders or schemes made under the Highways Act 1980 or the New Towns Act 1981.

1600 This might include, for example, comments relating to a trunk road scheme as defined in the Highways Act 1980, or an area designated under the New Towns Act 1981. Those Acts set out specific procedures for considering the representations and objections concerned.

New Section 15LA: Development corporations

Background

1601 Section 33 of the Planning and Compulsory Purchase Act 2004 allows the Secretary of State to direct that Part 2 of the Act relating to local plan making and regulations made under section 14A regarding the preparation of a brownfield register does not apply to the area of an Urban Development Corporation. If such a direction is made for example, the local planning authority will not be required to prepare a local development scheme, local development documents or a brownfield register in respect of the area. In addition, there might be circumstances in the future in which it is decided that Part 2 of the Planning and Compulsory Purchase Act 2004 and certain regulations made under section 14A should apply to an urban development corporation, but not in their entirety.

1602 The intention is to retain this provision and include the area of a New Town Development Corporation. This allows the planning powers under section 7 of the New Towns Act 1981 and section 148 of the Local Government, Planning and Land Act 1980 to work in practice.

Effect

1603 Section 15LA grants a power for the Secretary of State to direct that Part 2 of the Planning and Compulsory Purchase Act 2004 or any regulations made under section 14A do not apply to the area of a New Town Development Corporation or Urban Development Corporation.

New Section 15LB: Guidance

Background

1604 Section 34 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to have regard to any guidance the Secretary of State issues, and requires the Secretary of State to issue guidance about housing needs resulting from old age or disability. New section 15LB retains this provision but updates the wording to reflect changes to the terms used in the wider plan framework.

Effect

1605 Section 15LB subsections (1) and (2) broadly replicate the existing provision in section 34 of the Planning and Compulsory Act 2004, with references to local development documents replaced with the local plan and any supplementary plans.

New Section 15LC: Monitoring information

Background

1606 Section 35 of the Planning and Compulsory Purchase Act 2004 requires the preparation of Authority Monitoring Reports, which detail the implementation of the local development scheme and the extent to which the policies set out in the local development documents are being achieved.

1607 New section 15LC replaces this requirement to produce a standalone document, instead enabling the Secretary of State to prescribe, via regulations, information relating to monitoring that local planning authorities must make available to the public and provide to the Secretary of State, how they must do this, and the form of such information.

Effect

1608 Subsection (1) enables the Secretary of State to prescribe information within subsection (3) that local planning authorities must make available to the public.

1609 Subsection (2) enables the Secretary of State to prescribe information within subsection (3) that local planning authorities must provide to the Secretary of State.

1610 Subsection (3) sets out the monitoring information that is relevant to subsections (1) and (2). Information may pertain to the implementation of a local planning authority's local plan timetable or policies contained in their local plan, minerals and waste plan (by virtue of section 15CB(7)) and any supplementary plans they have prepared. Information may also pertain to the implementation of any policies which relate to the local planning authority's area, in any spatial development strategy operative in their area, or the extent to which environmental outcomes (as defined in Part 5 Environmental Outcomes Reports) are being delivered.

1611 Subsection (4) makes provision for the Secretary of State to prescribe the form of the monitoring information set out in subsection (3) and how it must be made available or provided.

New Section 15LD: Policies map

Background

1612 Section 15LD introduces a new requirement for a local planning authority to ensure a map is maintained for the area, incorporating all elements of the development plan, and sets out requirements to be met by local planning authorities, as well as powers for the Secretary of State to prescribe things in relation to the map. The provisions provide flexibility around how the map is delivered; for example, several authorities may join together to produce consolidated maps across their collective area.

1613 Separately, clause 85 amends section 38 of the Planning and Compulsory Purchase Act 2004 to include this policies map as part of the development plan.

Effect

1614 Subsection (1) requires a local planning authority to ensure that a policies map for its area is prepared and maintained, illustrating the geographic application of the allocations, policies and/or designations contained within any part of the development plan (as defined in section 38 of the Planning and Compulsory Purchase Act 2004, as amended by clause 85). This includes the local plan, the minerals and waste plan, and any spatial development strategies, supplementary plans and neighbourhood plans as may be applicable to the area.

1615 Subsection (2)(a) and (b) provide powers for the Secretary of State to prescribe, in regulations, the required form of, and content to be included in, the policies map, and when and under what circumstances it must be revised. The intention is that secondary legislation made under these powers may incorporate similar elements to the current requirements outlined in regulation 9(1)(a) of the Town and Country Planning (Local Planning) Regulations 2012 which, for example, require the use of Ordnance Survey maps; or additionally require a local planning authority to update the policies map when part of the development plan is revised.

1616 Subsection (2)(c) requires that the policies map be made available to the public.

New Section 15LE: Regulations

Background

1617 Section 15LE sets out a range of regulation making powers in relation to joint spatial development strategies, local plans, minerals and waste plans, supplementary plans and neighbourhood priorities statements. Under the Planning and Compulsory Purchase Act 2004, many of these powers are contained within section 36. The powers in section 36 cover a

variety of areas but can be summarised as enabling the Secretary of State to produce regulations that give more detail and certainty to the process of producing local development documents, as well as data standards relating to them.

1618 The new section 15LE sets out a similar broad range of regulation making powers as existing section 36. Together, they enable the Secretary of State to deliver secondary legislation that will provide detail on the process for producing different parts of the development plan, including the requirements for public consultation. Section 15LE includes new powers to make regulations in relation to the form and content of, and the process for producing, new voluntary joint spatial development strategies and supplementary plans.

1619 Powers relating to data standards, previously in section 36 of the Planning and Compulsory Purchase Act 2004, are replaced by new general powers in relation to data standards for planning data, set out in Part 3 Chapter 1 (Planning Data).

Effect

1620 Subsection (2) sets out the list of matters that the Secretary of State may make regulations for (the power to make regulations having been provided within subsection (1)). Subsection (4) notes that any such regulations may make different provisions for different areas.

New Section 15LF: Meaning of 'local planning authority' etc.

Background

1621 Section 37 of the Planning and Compulsory Purchase Act 2004 - subsections (4), (5), (5ZA), (5ZB), (5A) and (5B) - define the meaning of a local planning authority for the purposes of Part 2 of that Act.

1622 New section 15LF broadly maintains this definition, but simplifies the wording compared with the existing legislation and expands the types of development corporations that may be designated as the local planning authority for the purposes of Part 2 of the Planning and Compulsory Act 2004.

Effect

1623 Subsections (1)-(2) define a local planning authority, for the purposes of plan-making and any other function under Part 2 of Planning and Compulsory Purchase Act 2004, as: a district council; a London borough; a metropolitan district council; a county council in England where there is no district council.

1624 The following subsections set out instances where other authorities or bodies may be the local planning authority in place of another aforementioned authority or authorities, for all or part of their respective area or areas: a National Park authority (subsection (3)); the Broads Authority (subsection (4)); a development corporation, as constituted under s.149(1A) of the Local Government Planning and Land Act 1980 or s.7A(2) of the new Towns Act 1981 (subsections (5)-(6)); a Mayoral development corporation, where provided for by an order under section 198(2) of the Localism Act 2011 (subsection (6)(C)); the Homes and Communities Agency (Homes England), where a designation order is made under section 13 of the Housing and Regeneration Act 2008 (subsections (8)-(9)); and a joint committee (10)). A development corporation, a Mayoral development corporation or Homes England may be constituted as the local planning authority for some or all the purposes of Part 2.

1625 Subsection (11) clarifies that other references in Part 2 to a local planning authority's 'area' relate to the area for which they are the local planning authority in accordance with Part 2.

New Section 15LG: Meaning of 'minerals and waste planning authority' etc

Background

1626 Section 37 of the Planning and Compulsory Purchase Act 2004 - subsections (4), (5), (5ZA), (5ZB), (5A) and (5B) - define the meaning of a local planning authority for the purposes of Part 2 of that Act. Within this definition, some authorities listed (but not all) would be the planning authority for minerals and waste.

1627 Section 15LG introduces the new concept of a minerals and waste planning authority. Whilst this is a term used widely in practice, it is a new term in legislation.

1628 The provision states which authorities are responsible for minerals and waste planning and distinguishes them from the previous broader category of local planning authorities.

Effect

1629 Subsections (1) and (2) define a minerals and waste planning authority, for the purposes of the Part as: a county council in England; a London borough council; a metropolitan district council and a district council for any part of their area for which there is no county council.

1630 Subsection (3) outlines that a National Park Authority will also be the minerals and waste planning authority for the whole of its area.

1631 Subsections (4) and (5) allows a development corporation to be made the minerals and waste planning authority for its area including a Mayoral development corporation.

1632 Subsections (6) clarifies the meaning of 'relevant area' for the purpose of this section.

New Section 15LH: Interpretation

Effect

1633 Subsection (2) define which authorities are relevant plan-making authorities for the purposes of Part 2: local planning authorities (as defined in section 15LF); minerals and waste planning authorities (as defined in section 15LG); and the Mayor of London.

1634 Subsection (3) defines terms used in Part 2, cross-referencing the relevant sections that deal with these term

Schedule 8: Minor and consequential amendments in connection with Chapter 2 of Part 3

Effect

1635 Paragraphs 1 – 3 make consequential amendments to the Town and Country Planning Act 1990.

1636 Paragraph 4 makes a consequential amendment to the Greater London Authority Act.

1637 Paragraphs 5-14 make consequential amendments to the Planning and Compulsory Purchase Act 2004.

Schedule 9: Crown development: consequential amendments

Background

1638 Section 1 inserts a new Schedule into the TCPA 1990 (c.8) which updates certain provisions to reflect that the Bill introduces two new routes for crown land development, and

that the existing section 293A route for crown land development would no longer apply to England.

Effect

1639 The new Schedule has the effect of making consequential amendments to the TCPA, to reflect the new crown land development provisions.

Schedule 10: Completion notices: consequential amendments

Background

1640 Sections 94 to 96 of the TCPA 1990 relate to completion notices. Local planning authorities can serve completion notices on unfinished developments where they are of the opinion that the development will not be completed in a reasonable period specifying that planning permission for any incomplete parts of the development will cease unless it is completed within period specified in the notice.

1641 Under existing law, a served completion notice can only take effect once it has been confirmed by the Secretary of State – in effect, requiring the local planning authority to seek approval of the Secretary of State. A completion notice can also only be served after the deadline for commencement for a planning permission (typically introduced under section 91 and 92 TCPA 1990) has passed.

1642 This Bill introduces reforms to the procedure for issuing a completion notice. These provisions can be found in section 93H (Completion notices), 93I (Appeals against completion notices) and 93J (Effect of completion notices).

1643 These clauses remove, in relation to completion notices issued on land in England, the requirement for Secretary of State confirmation before a completion notice can take effect. A procedure for appeals against the issuing of a completion notice is also introduced. These provisions also allow for a completion notice to be served before the deadline for commencement of a planning permission has passed, providing development has begun.

1644 Schedule 10 provides for consequential amendments in relation to sections 93H, 93I, and 93J.

Effect

1645 Schedule 10 paragraph 2 amends section 56(3) of the TCPA 1990 (time when development begun) to include the new section 93H such that development should be considered to be begun on the earliest date on which any material operation has been carried out.

1646 Schedule 10 paragraphs 3, 4, 5, and 6 provide that sections 94, 95 and 96 of the TCPA 1990 (i.e. the existing legal provisions for completion notices) should apply only in relation to development of land in Wales.

1647 Schedule 10 paragraphs 7 through 15 incorporate the new sections relating to completion notices into the relevant planning appeals frameworks.

Schedule 11: Infrastructure Levy

Part 1 – Infrastructure Levy: England

Background

Part 1 – Infrastructure Levy: England

1648 This Part of Schedule 11 inserts a new Part 10A - Infrastructure Levy: England, comprising twenty-seven new sections, into the Planning Act 2008 to allow, in England, the

Secretary of State (with the consent of the Treasury) to make regulations providing for the imposition of a new charge to be known as the Infrastructure Levy ("IL").

Effect

1649 Each new section of the new Part 10A has its own accompanying explanatory note. Where a section in the new Part 10A replicates all or part of equivalent provision in Part 11, the section in Part 11 is referenced and any changes made in the new Part 10A are stated throughout.

Part 2 – Consequential amendments

Background

1650 This Part of Schedule 11 makes amendments made to the Planning Act 2008 that are a consequence of the insertion of a new Part 10A.

Effect

1651 These amendments consist of replacing "Part 11" with "Parts 10A and 11" in relevant sections of the Planning Act 2008. This means that these sections will now apply to both IL (Part 10A) and CIL (Part 11).

Part 10A, Section 204A: The levy

Background

a. New section 204A is a new power which provides for the introduction of the Infrastructure Levy ("IL"). It replicates section 205 of Part 11 of the Planning Act 2008, with the following amendments: the purpose of IL is amended to include any purpose specified by the Secretary of State under new section 204N(5), 204O(3) or 204P(3): the table in subsection (3) is amended to reflect the new provisions of Part 10A; additional definitions of terms are included, including a definition of affordable housing, IL and IL regulations.

Effect

b. Subsection (1) is the general power for the Secretary of State, with the consent of the Treasury, to make IL regulations. This power is elucidated by subsequent provisions in the remainder of new Part 10A.

c. Subsection (2) sets out the overall purpose of IL, which the Secretary of State must aim to ensure when making IL regulations under this part. The purpose is to ensure that costs incurred in:

   i. supporting the development of an area (such as by the provision of infrastructure of the kinds listed in new section 204N(3)) and

   ii. achieving any purpose specified by the Secretary of State under new section 204N(5), 204O(3) or 204P(3) (which allow the Secretary of State to specify other purposes for which Levy receipts may be spent),

   iii. can be funded at least in part by owners or developers of land. This should be achieved in a manner that does not make development of an area economically unviable.

d. The provisions of the new Part 10A are listed in a table in subsection (3), and definitions are provided for the terms "affordable housing" (used in new sections 204G and 204N), "IL", and "IL regulations" in subsection (4).

Part 10A, Section 204B: The charge

Background

1652 New section 204B provides for it to be compulsory for charging authorities to charge IL, and for local planning authorities ("LPAs") (as defined in Part 2 of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") – as amended by clause 90 and Schedule 7 of this Bill) to ordinarily be the charging authorities with limited, defined exceptions.

1653 The provisions in new section 204B replicate those that exist currently for CIL in section 206 of the Planning Act 2008, with the following changes: IL will be a mandatory charge, whereas it is optional for a charging authority to charge CIL; no express provision is made here for the Broads Authority to be the only charging authority for its area – this is no longer necessary as the status of the Broads Authority as the local planning authority for its area is made clear by new section 15LF PCPA 2004; IL regulations will not be able to provide for county borough councils to be a charging authority because such authorities do not exist in England; the Mayor of London will not be an IL charging authority; the Homes and Communities Agency will not automatically be a charging authority if designated as an LPA by a designation order under section 13 Housing and Regeneration Act 2008 but will instead be a charging authority to the extent provided in the relevant designation order; amendments to subsection (5) to reflect the fact that types of development corporation other than Mayoral development corporations may in future be local planning authorities and therefore IL charging authorities; amendment to subsection (6) to allow transitional provision in connection with any change in the charging authority for an area (not just a Mayoral development corporation); and definitions as they relate to Wales which will not apply to IL (which will apply in England only) are deleted.

Effect

1654 Subsection (1) mandates that a charging authority must, in accordance with IL regulations, charge IL in respect of development in its area.

1655 Subsections (2)-(5) then define which authorities are charging authorities. Subsection (2) provides that the charging authority for an area will be the LPA. LPA is given the meaning in new section 15LH PCPA 2004, which further refers to new section 15LF PCPA 2004. Subsection (3) clarifies that the Council of the Isles of Scilly (a sui generis local authority) is the only charging authority for the Isles of Scilly, and that the Homes and Communities Agency will only become the charging authority for an area if and to the extent designated in a designation order under section 13 of the Housing and Regeneration Act 2008 (see also clause 125).

1656 Subsection (4) provides a regulation-making power to depart from subsections (2) and (3) and provide for other entities in England to be charging authorities instead. These could be county councils, district councils, metropolitan district councils and London borough councils (within the meaning of the Town and Country Planning Act 1990).

1657 Subsection (5) makes provision about development corporations. Under new section 15LF PCPA 2004, a development corporation may become the local planning authority for an area for some or all purposes of Part 2 PCPA 2004, in place of the authority that would otherwise be the local planning authority for that area and those purposes. Subsection (5) provides that a development corporation is only a charging authority for an area if it is the section 15LF local planning authority for that area for all purposes of Part 2 PCPA 2004.

1658 Subsection (6) provides a regulation-making power to allow transitional provision to be made relating to any person or body becoming or ceasing to be a charging authority.

Example

Example (1): An authority other than those defined may be the charging authority instead

A National Park authority may comprise two areas, one that is large, and a separate one that is very small and is encircled by the area of another district council. The National Park authority is an LPA for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004 and is therefore the charging authority by operation of s.204B(2) and (5), but for reasons of scale and efficiency, it might not be appropriate for them to be the charging authority for the small separate area, in which case provision could be made under s.204B(4) for the surrounding district council to be the charging authority.

Part 10A, Section 204C: Joint committees

Background

1659 The provision in new section 204C replicates that which exists currently for CIL in section 207 of the Planning Act 2008.

1660 Section 204C provides for IL regulations to make provision for circumstances where a joint committee that includes a charging authority is established under section 15J of the Planning and Compulsory Purchase Act 2004.

Effect

1661 Subsection (1) provides for the application of the rest of the section in circumstances where a joint committee is established under new section 15J of the Planning and Compulsory Purchase Act 2004 to act as the local planning authority ("LPA") for the purposes of Part 2 of that Act.

1662 Subsection (2) allows IL regulations to provide that a joint committee that includes a charging authority is to exercise specified functions in relation to the area of the committee on behalf of the charging authority.

1663 Subsection (3) provides supplementary powers to make provision corresponding to that which exists in Part 6 of the Local Government Act 1972 relating to joint committees of local authorities.

Part 10A, Section 204D: Liability

Background

1664 New section 204D makes provision about how liability to pay IL is incurred. Section 209E of the Planning Act 2008, below, is related insofar as it provides definitions and interpretations of key terms in section 204D.

1665 The provisions in new section 204D replicates those that exist currently for CIL in section 208 of the Planning Act 2008, with the following minor changes: IL regulations may provide that by a specified deadline, liability must be assumed by an owner or developer of land or other specified person in circumstances where nobody else has assumed liability; a change to make clear that IL should be calculated by reference to the charging schedule in place at the point that development is first permitted; and that IL regulations may make provision about exemptions from or reductions in liability.

Effect

1666 Subsection (1) provides expressly that, where IL would arise in respect of a development, a person may assume liability for IL. This assumption may be made before

development commences (subsection (2)(a)), though this must be done in accordance with any regulations about the procedure for this (subsection (2)(b)). The person who assumes liability for IL will become liable once development commences (subsection (3) – and as to when development is 'commenced', see new section 204E(3)).

1667 Where liability is not assumed before development commences, or in other specified circumstances (such as the insolvency of a company that may have claimed IL liability), subsection (4) provides that IL regulations must provide for an owner or developer of land to be liable for IL.

1668 Subsection (5) states that IL regulations may make provision about liability as it relates to the ways in which liability may be shared and/or changed over time. These include: liability being held jointly; liability as it relates to partnerships; assumptions of partial liability; apportionment of liability; withdrawal or cancellation of an assumption of liability; and transfers of or exemptions from liability.

1669 Subsection (6) requires that the amount of any liability be determined by reference to the charging schedule which is in place at the time when planning permission first permits development. As to when planning permission 'first permits' development, see new section 204E(6).

1670 The general assumption in new section 204D is that development liable to IL will be the subject of a grant of planning permission. Subsection (7) provides a power to deal with cases where development which requires planning permission is commenced without it. This may be used to prevent development commencing unlawfully specifically to avoid IL.

1671 Subsection (8) allows IL regulations to make provision for development to be liable, where it previously was exempt from IL or subject to a reduced rate, but where the description or purpose of the development subsequently changes.

Example

Example (1): Specified circumstances in which an owner or developer will assume liability for IL

IL regulations can specify circumstances, such as the insolvency of a person who had assumed liability, or their withdrawal, in which an owner or developer of land, or other specified person will become liable for IL.

Example (2) IL can be calculated by reference to the charging schedule in place when planning permission first permits development

IL rate will be set out in the charging schedule and the developer will know the rate that applies at the point development is first permitted. However, this rate can be applied to elements that are not known at the point development is first permitted, such as the final sales value of the development.

Part 10A, Section 204E: Liability: interpretation of key terms

Background

1672 New section 204E provides definitions and interpretations of key terms in new section 204D. It replicates provisions from section 209 of the Planning Act 2008, with the following amendments: the definition of development is expanded to more explicitly include

material changes of use to an existing building, or part of a building, in order to ensure that IL can be charged on permitted development

Effect

1673 Development that is liable to IL is defined in subsection (1) as "anything done by way of or for the purpose of the creation of a new building", "anything done to or in respect of an existing building", or "any change in use of an existing building or part of a building". Subsection (2) provides that IL regulations may refine this definition by excluding works or changes of use of a specified kind from this definition of development and providing for the creation of, or for anything done to or in respect of, a structure of a specified kind to fall within the definition.

1674 Subsection (3) stipulates that IL regulations must include provision for determining when a development is to be treated as having commenced. Subsection (4) states that regulations under subsection (3) may provide for a development to have commenced when an activity occurs which is not the development in subsection (1) but has a connection with the development in subsection (1). It is intended to allow for commencement of development to be defined by reference to other works, such as those authorised by a planning permission that also authorises the works for the IL-liable building.

1675 Subsections (5) and (6) respectively provide that IL regulations must define "planning permission" and determine when a planning permission is treated as first permitting development. For instance, they may make provision about outline planning permission, or general consents such as permission under the Town and Country Planning (General Permitted Development) Order 2015.

1676 Subsection (7) defines "owner" as a person who owns an interest in the land and "developer" as a person who is wholly or partly responsible for carrying out a development. Subsection (8) provides that IL regulations may allow for a person to be treated or not to be treated as an "owner" or "developer".

Example

Example (1): Defining development for the purposes of the Levy

Subsection (1)(c) clarifies that material changes of use can be subject to the Levy. Subsection (2)(a) allows regulations to define whether something is not to be considered as development for the purposes of IL. This could include specific types of development where it is intended to retain the system of s106 planning obligations to secure developer contributions in full, such as minerals and waste development.

Part 10A, Section 204F: Charities

Background

1677 New section 204F makes provision about exemptions from or reductions in IL for charities.

1678 The provisions in new section 204F replicate those that exist currently for CIL in section 210 of the Planning Act 2008.

Effect

1679 Subsection (1) places a duty on the Secretary of State when making IL regulations to provide for an exemption from liability to pay IL to certain classes of charity (which are defined in subsection (4)). This duty applies where the person who is liable to pay IL is a relevant charity in England and Wales (i.e. a charity registered under section 29 Charities Act 2011, or a charity within the meaning of section 1(1) of the Charities Act 2011 but not required to be registered) and where the building or structure for which IL liability arises is to be used wholly or mainly for a charitable purpose of the charity concerned.

1680 Subsection (2) expressly provides two powers. First, a power in IL regulations to provide an exemption in IL to institutions established for charitable purposes. Second, a power allowing regulations to be made to require charging authorities to make arrangements for an exemption or reduction in IL to institutions established for charitable purposes. It is not essential, for the purpose of subsection (2), that the provision to be made under it apply only to 'relevant charities in England and Wales' – rather, the institutions must be 'established for charitable purposes'. Subsection (5) defines for the purposes of subsection (2) that a charitable purpose is one falling within section 3(1) of the Charities Act 2011. It also provides that IL regulations may provide for an institution of a specified kind to be, or not be, treated as an institution established for a charitable purpose.

1681 Subsection (3) contains a power for IL regulations to prescribe conditions that must be met for a charity to not qualify for an exemption or reduction under subsection (1) or (2).

Part 10A, Section 204G: Amount

Background

1682 New section 204G requires a charging authority to issue a document, called a charging schedule, in respect of development in its area. This schedule is to set out for the authority's area IL rates, or other criteria, which will be used to calculate the amount of IL that will be payable.

1683 The provisions in new section 204G largely replicate those that exist currently for CIL in section 211 of the Planning Act 2008, with the following changes:

a. Under subsection (1), all charging authorities 'must' issue an IL charging schedule – whereas under existing section 211(1), it is for a charging authority to decide whether it proposes to charge CIL (and only if it does so propose, must it issue a CIL charging schedule)

b. Charging authorities, in setting rates or other criteria, must also have regard to some additional factors, changing the way in which rates are set from CIL. These include matters relating to the economic effects on land value of various aspects of the planning and development process (subsection (4)(b)); levels of IL revenues in an authority's area (subsection (4)(c)); and its infrastructure delivery strategy (subsection (4)(d)). It is no longer a requirement of the primary legislation that charging authorities consider the actual and expected costs of delivering infrastructure, or other sources of funding for infrastructure, when setting rates.

c. A new provision is added (subsections (2)-(3)), requiring local authorities to have regard when setting rates, to the extent and in the manner specified in regulations, to the desirability of ensuring that the supply of affordable housing is maintained at a level which delivers at least the same amount of affordable housing as over a

previous specified period, which can include under the current system of section 106 obligations.

d. IL regulations may, in addition, permit charging authorities to provide for rates to change over time or when specified events occur (subsection (6)(f)).

e. IL regulations may, in addition, permit or require charging schedules to account for the kind of area in which development is undertaken (subsection (8)(c)), and permit or require any threshold below which IL is charged at a nil or reduced rate (subsection (8)(g)).

f. The wording which allows IL regulations to require a charging authority to provide estimates in connection with IL chargeable in respect of development of land (subsection (9)) is amended.

Effect

1684 Subsection (1) stipulates that charging authorities must issue a charging schedule, which they may then revise or replace (subsection (10)). IL regulations will apply to any revised or replacement charging schedule as they do to the preparation of the original charging schedule in the first place (subsection (11)).

1685 Subsection (2) provides that charging authorities must consider affordable housing when setting rates. Subsection (2) sets out that the consideration here is the desirability of ensuring that developer-funded affordable housing delivery (and the level of funding provided by developers) is maintained at a level that exceeds or equals previous delivery over a specified period. IL regulations may make provision about the manner in and extent to which charging authorities are to have regard to this consideration. Subsection (3) provides powers for IL regulations to make provision about how previous levels of affordable housing delivery and funding are to be measured for this purpose.

1686 Subsection (4) provides that charging authorities must also consider economic factors, when setting rates. IL regulations may make provision about the manner in and extent to which charging authorities are to have regard to this consideration. These factors include matters specified by IL regulations relating to the economic viability of development and the economic effects of development, including anything that impacts land value. The effect of this, compared to CIL, is to shift the focus of rate setting towards the capture of land value uplift, with the two chief constraints being the extent to which land value has increased and the viability of development in the area.

1687 Subsection (4)(c) also requires charging authorities to have regard to the amount of IL (and anything else specified in IL regulations) provided over a specified period. Subsection (4)(d) requires a charging authority to have regard to its infrastructure delivery strategy. This is a document to be produced under new section 204Q, which will be required to include the authority's plans for spending IL.

1688 IL regulations may make other provision about how IL rates are to be set (subsection (5)).

1689 Subsection (6) provides examples of other factors that IL regulations may require charging authorities to have regard to in rate setting. For example, it might be the case that a particular development typology may not generate IL revenues that are high enough to cover the costs of administering the IL liability, and provision could be made under subsection (6)(a) permitting or requiring charging authorities to take account of that when setting rates. Provision could be made under subsection (6)(b) would allow or require local authorities to

consider how the external costs of development aside from infrastructure may impact upon the viability of IL rates.

1690 Subsection (7) provides powers for IL regulations to allow charging schedules to adopt specified methods of calculation, and subsection (8) provides examples of how the regulations might do this. For instance, charging schedules could operate based on descriptions of the type of development or according to the location of the development, or determine a threshold below which IL is charged at a nil or reduced rate (subsection (8)(g)). This could include items like build costs and the existing use value of the land, to consider a threshold value at which IL should not apply.

1691 A charging authority may be required to provide estimates of IL chargeable in respect development of land (subsection (9)). This includes estimates in connection with in-kind payments of IL, such as in the form of delivery of affordable housing.

Example

Part 10A, Section 204H: Charging schedule: consultation and evidence

Example (1): Setting stepped IL rates

The intention is that charging authorities will be able to set stepped rates, which increase at specified future points. This could provide charging authorities that are cautious about not making development in their area unviable with a buffer to ensure that rates are not set too high in the first instance. This buffer could be decreased over time using stepped rates. This would allow rates to be found that capture more land value uplift, particularly in areas with high land values, without making development unviable.

Background

Example (2): Charging schedules determine a threshold below which IL is charged at a nil or reduced rate

It is envisaged that local planning authorities will set a threshold below which a nil IL rate will be charged, to account for build costs and other costs of development in an area. This will allow rates to be set that apply on development value above the minimum threshold. The minimum threshold can be set out on value per square metre basis, with the Levy being charged on any value above the threshold. Developments with value significantly above the minimum threshold will pay more than developments with value marginally above the minimum threshold.

1692 Section 204H deals with the preparation of an Infrastructure Levy charging schedule. It replicates provision made in existing section 211 (7), (7A), and (7B) Planning Act 2008.

Effect

1693 Section 204H provides an express power for charging authorities to undertake preparatory work, including consultation, in respect of a charging schedule.

1694 Subsection (2) provides that a charging authority must use appropriate available evidence to inform their preparation of a charging schedule. IL regulations may make provision under subsection (3) about the application of subsection (2). This includes determining the nature of evidence deemed appropriate, what is meant by available

evidence, how that evidence can and cannot be used, and when and how evidence may be used to inform the preparing of a charging schedule.

Part 10A, Section 204I: Charging schedule: examination

Background

1695 New section 204I deals with the examination of an Infrastructure Levy charging schedule. It replicates provision made by section 212 Planning Act 2008.

Effect

1696 This section contains several provisions relating to the independent examination of a draft charging schedule and ensures that the examiner considers that the charging authority has complied with the relevant requirements.

1697 Before a charging schedule is approved, a draft of it must be examined by a person appointed for that purpose by the charging authority (subsection (1)). Subsection (2) requires the charging authority to satisfy itself that the person is independent and has appropriate qualifications and experience. The charging authority may also, with the agreement of the examiner, appoint persons to assist the examiner (subsection (3)).

1698 By subsection (5), the examiner is required to consider whether the "drafting requirements" have been complied with (and see also new section 204J). Subsection (4) defines the "drafting requirements" as the requirements of new Part 10A and of IL regulations insofar as relevant to the drafting of a charging schedule – in particular, the requirements to have regard to the matters listed in new section 204G(2) (regarding affordable housing), (4) (regarding economic factors of land value and viability) and (6) (other factors). The examiner must make recommendations (see new section 204J) and give reasons for their recommendations. Subsection (6) requires the charging authority to publish the recommendations and reasons.

1699 Subsection (7) provides that IL regulations must require a charging authority to allow persons to make representations about a draft schedule to be heard by the examiner. Subsection (8) allows IL regulations to provide for examiners to reconsider their decisions before or after approving a schedule, with a view to correcting errors. Subsection (9) provides that a charging authority may withdraw a draft charging schedule.

Part 10A, Section 204J: Charging Schedule: examiner's recommendations

Background

1700 New section 204J replicates existing provisions set out in section 212A in the Planning Act 2008. It outlines the factors an examiner should consider when examining a charging schedule.

Effect

1701 There are three possible conclusions which an examiner of a charging schedule can reach, following an examination under new section 204I.

1702 The examiner may conclude that the drafting requirements (see new section 204I(4)) have not been complied with in one or more respects, and that the non-compliance cannot be remedied by making modifications to the draft. If so, then under subsection (2) the examiner must recommend the rejection of the draft charging schedule.

1703 Or, the examiner may conclude that the drafting requirements have not been complied with in one or more respects, but that the non-compliance could be remedied by making modifications to the draft. If so, then under subsections (3)-(4) the examiner must:

a. identify the non-compliance;

b. recommend modifications which the examiner considers would remedy the non-compliance; and

c. recommend the approval of the draft charging schedule with modifications which remedy the non-compliance (which may be, but do not have to be, those recommended by the examiner).

1704 Or, the examiner may conclude that the drafting requirements have been complied with. If so, under subsection (5) the examiner must recommend the approval of the draft charging schedule.

1705 Under subsections (6) and (7), where the examiner is recommending approval, the examiner is also entitled to make recommendations for modifications which are not necessary to remedy non-compliance with drafting requirements.

Part 10A, Section 204K: Charging Schedule: approval

Background

1706 New section 204K deals with the approval of an Infrastructure Levy charging schedule by a charging authority. It replicates powers granted under section 213 of the Planning Act 2008.

1707 Minor amendments to wording relate only to references to sections of the Planning Act 2008, which now relate to equivalent provisions in amended legislation enacting the Infrastructure Levy.

Effect

1708 Subsections (1) to (6) prescribe the circumstances in which a charging authority may approve a charging schedule and how it is to approve one.

1709 Subsections (1)-(2) provide that a charging authority may only approve a charging schedule, having had regard to the examiner's recommendations and reasons, if the examiner has recommended approval under new section 204J(4) (recommended approval with modifications) or (5) (recommended approval) – and may not approve a draft charging schedule which the examiner has recommended be rejected.

1710 Under subsection (3), if the examiner has recommended that modifications are needed in order to remedy non-compliance with the drafting requirements (see new sections 204I(4) and 204J(4)), then the charging authority may only approve the charging schedule with modifications which remedy the non-compliance (which may be, but do not have to be, those recommended by the examiner).

1711 Under subsection (4), if the examiner has recommended modifications which are not necessary to remedy non-compliance with the drafting requirements (see new section 204J(6)-(7)), the charging authority may approve the charging schedule with all, some or none of those recommendations.

1712 No other modifications may be made following the examination (subsection (5)).

1713 Subsection (6) provides that a charging authority must approve a charging schedule at a meeting of the authority and by a majority of votes of the members present.

1714 If the examiner recommended that modifications be made in order to remedy non-compliance with the drafting requirements, a report must be published by the charging authority covering how the approved schedule remedies the non-compliance (subsections (7)-(8)). IL regulations may make provision about the contents of such a report (subsection (9)).

1715 In addition, subsection (10) provides a regulation-making power to permit charging authorities to be able to correct errors in a charging schedule after it is approved (without having to formally review it).

1716 Subsection (11) confirms the definition of the examiner of the charging schedule as per the definition under new section 204I.

Part 10A, Section 204L: Charging schedule: application and effect

Background

1717 New section 204L replicates, with amendments, section 214 Planning Act 2008. It provides for when an IL charging schedule can take effect, subsequent to approval, and sets out that IL regulations may make provision about when a charging schedule is to be published, subsequent to that approval.

1718 As IL will be a mandatory charge, unlike CIL, it does not replicate subsection (3) of Section 214 of the Planning Act 2008 which provides that a charging authority can decide when its CIL charging schedule ceases to take effect.

Effect

1719 Subsection (1) provides that a charging schedule which has been approved may not take effect until it has been issued, by being published.

1720 Subsections (2)-(4) allow IL regulations to make provision about the publication and taking effect of an IL charging schedule, including when a charging schedule is to take effect and any documentation that must be published at the same time as a charging schedule.

Part 10A, Section 204M: Charging schedule: due date

Background

1721 New section 204M is a new provision. It allows for IL regulations to make requirements for when a charging authority must issue an IL charging schedule. The Secretary of State must allow a 12-month period between giving written notice that a local authority must issue a charging schedule, and the point at which they must issue it. Provision is made for when the Secretary of State can appoint a person to prepare or issue the charging schedule on behalf of the charging authority, including the process surrounding this appointment and the issue of a charging schedule.

Effect

1722 Subsection (1) provides that IL regulations may make provision for when a charging authority must issue (i.e. publish following approval) a charging schedule.

1723 Subsection (2) allows the Secretary of State to publish or provide a notice to one or more charging authorities, requiring a charging schedule to be issued. IL regulations must

allow authorities at least 12 months from the day on which such notice is given to issue a charging schedule.

1724 Where a charging authority does not issue its schedule in time, subsection (3) allows the Secretary of State to appoint a person to prepare and issue the schedule on behalf of the charging authority.

1725 Subsection (4) is a list of types of provision which may be made by IL regulations as to the person who will appointed for the purpose of preparing and issuing the schedule, the conditions that need to be met prior their appointment, and the procedures surrounding the preparation and issuance of that schedule. Regulations may also provide for when the person may be replaced, the duties of a charging authority when a person is appointed to act on their behalf, and the liability of costs resulting from the appointment.

Example

> Example (1): Appointing a person to prepare a charging schedule
>
> If the Secretary of State requires a charging authority to issue an IL charging schedule within a set period of no less than 12 months, and the charging authority does not do so, then the Secretary of State would be able to appoint a person to prepare and issue a charging schedule on the local planning authority's behalf.

Part 10A, Section 204N: Application

Background

1726 New section 204N makes provision for how IL is spent. It replicates provision made by section 216 of the Planning Act 2008, with a new subsection to enable regulations to provide for minimum spend on specific types of infrastructure, additions to the infrastructure list, a new subsection to enable spend on non-infrastructure items and new links to sections 204O, 204P and 204T.

Effect

1727 Subsection (1) provides that IL regulations must require the charging authority to apply IL to supporting the development of an area by funding the provision, improvement, replacement, operation or maintenance of infrastructure.

1728 A new provision is set out in subsection (2) to enable regulations to make provision about the extent to which charging authorities are required to apply of IL receipts to specific types of infrastructure. For example, provision could be made under this subsection 'ring-fencing' a proportion of a charging authority's IL receipts to be applied towards specific infrastructure – for instance, specifying that a minimum amount of IL receipts must be spent on providing affordable housing in an area.

1729 There is a non-exhaustive list of what is considered to be 'infrastructure' in subsection (3), which includes roads, schools, medical facilities and affordable housing (defined as in Part 2 of the Housing and Regeneration Act 2008 and as any other description of housing that IL regulations may specify – see new section 204A(4)). Subsection (4) provides powers for IL regulations to amend this definition and therefore, powers to guide at a national level what IL may be spent on.

1730 Subsection (5) is a new provision that provides for regulations to set out the circumstances where charging authorities would be enabled to spend a specified amount of

IL on items that fall outside the requirements of subsection (1), for example, on non-infrastructure items.

1731 Subsection (6) provides that regulations may specify further details of what may or may not be funded by IL for the provision, improvement, replacement, operation or maintenance of infrastructure. Regulations may also specify what may or may not be funded by IL when the provisions of new section 204O or 204P apply, (in which case IL regulations may allow the IL to be used to fund anything that is concerned with addressing demands that development places on an area). Subsection (6) also provides powers for regulations to specify what is or is not to be treated as funding.

1732 Powers are provided in subsection (7) to require charging authorities to prepare lists of projects which they propose will be funded by IL. Under this provision, IL regulations could require charging authorities to prepare a list of infrastructure to be funded through IL and, by exemption from that list, infrastructure that developers should expect to fund and provide outside of IL. This can be through the charging authority's infrastructure delivery strategy, as set out in section 204Q. Subsection (7) also includes provision for setting out the circumstances in which IL can be spent on projects which are not listed.

1733 Subsection (8) is a list of types of provision which may be made by IL regulations when making provision about funding. It includes powers to permit IL to be used for the reimbursement of expenditure already incurred and for the giving of loans, guarantees and indemnities.

1734 Under subsection (9), regulations may:

a. require separate accounting of revenue from IL;

b. require monitoring and reporting on IL;

c. permit a charging authority to spend IL outside its own area (for example, on infrastructure which supports development of the charging authority's area but which is itself located outside the charging authority's area); and

d. permit a charging authority to pass money to another body (for example, in a two-tier area where a district council is the charging authority, to pass IL receipts to the county council as highway authority to deliver road infrastructure improvements).

Example

Example (1): Allowing local authorities to borrow funds to deliver infrastructure

Subsection (8) gives a power for the relationship between IL and local authority borrowing to deliver infrastructure, to be set out in regulations. Provision made under this power could allow local planning authorities to borrow against future IL receipts in order to deliver infrastructure at the right time to support development. Local planning authorities could be permitted to borrow money from the Public Works Loan Board or other funding sources, against future IL receipts, thereby using IL money as a reimbursement of the

Example (2): Reporting on how receipts are spent

Subsection (9)(a)-(f) will enable regulations to set how charging authorities (and, potentially, anyone to whom IL receipts have been passed) should report on the expenditure of IL, including what proportion of receipts has been passed to other bodies, for example a parish council.

Part 10A, Section 204O: Duty to pass receipts to other persons

Background

1735 New section 204O deals with the duty of charging authorities to pass on IL receipts to other persons. It replicates provision made in section 216A of the Planning Act 2008.

1736 A new subsection (subsection (3)) has been added to reflect the powers granted in 204N(5) to persons receiving IL receipts from a charging authority, allowing receipts to be spent on specified items that are not related to the provision, improvement, replacement, operation or maintenance of infrastructure.

Effect

1737 Subsection (1) allows IL regulations to establish a duty – applicable to IL received in respect of development in an area – to pass such IL (whether in part or whole) to another body.

1738 Where IL regulations establish such a duty, subsection (2) provides that the regulations must require the monies so passed to be used to fund:

a. the provision, improvement, replacement, operation or maintenance of infrastructure (i.e. equivalent to new section 204N(1)); or

b. anything else (i.e. non-infrastructure items) concerned with addressing demands that development places on an area.

1739 Subsection (3) allows IL regulations to set out circumstances in which IL passed in this way may be used for purposes not specified in subsection (2). This is equivalent to the provision made in new section 204N(5) about spending of IL monies generally.

1740 The remainder of this section sets out the framework for this process, providing for regulations to set out the details including: the area in which it will apply; the bodies it will apply to; the amount and timings of payments; things that may or may not be funded; monitoring, accounting and reporting responsibilities of charging authorities; and when funding is to be returned to the charging authority.

Example

> Example (1): Passing a proportion of receipts to parish councils
>
> This section allows IL regulations to require local authorities to pass on a proportion of its IL receipts to parish councils, replicating the approach taken in CIL (pursuant to regulations 59A-59E of the Community Infrastructure Levy Regulations 2010), to allow spending on local priorities.

Part 10A, Section 204P: Use of IL in an area to which section 204O(1) duty does not relate

Background

1741 New section 204P deals with the use of IL in an area where the duty to pass on receipts, set out in section 204O subsection (1), does not relate. It replicates provisions made in section 216B of the Planning Act 2008. A new subsection (subsection (3)) has been added to replicate the powers granted in 204N(5) to persons receiving IL receipts from a charging authority, allowing receipts to be spent on specified items that are not related to the provision, improvement, replacement, operation or maintenance of infrastructure.

Effect

1742 New section 204O (see above) allows IL regulations to establish a duty – applicable to IL received in respect of development in an area – to pass such IL (whether in part or whole) to another body. This new section 204P applies where IL regulations provide for a duty under new section 204O in respect of one or more areas, and there are also one or more areas to which that new duty does not apply.

1743 In this case, for IL received in respect of development in areas to which the section 204O duty does not apply:

a. charging authorities will not be under a duty to pass IL receipts on to other bodies; and

b. IL regulations may allow the charging authority to use the IL receipts to fund:

i. the provision, improvement, replacement, operation or maintenance of infrastructure (i.e. equivalent to new section 204N(1)); or

ii. anything else (i.e. non-infrastructure items) concerned with addressing demands that development places on an area.

1744 (i.e. equivalent wider flexibilities to those under new section 204O(2)).

1745 Subsection (3) allows IL regulations to set out circumstances in which IL receipts may be used for purposes not specified in subsection (2). This is equivalent to the provision made in new section 204N(5) about spending of IL monies generally, and the equivalent provision in new section 204O(3).

Example

> Example (1): Passing a proportion of receipts in areas with no parish council
>
> This section could allow charging authorities to allow a proportion of their IL receipts to be spent on local priorities other than infrastructure, in areas where there is no parish council (as is the case for CIL under regulation 59F of the Community Infrastructure Levy Regulations 2010).

Part 10A, Section 204Q: Infrastructure delivery strategy

Background

1746 New section 204Q is an entirely new provision. It sets out the new requirement for charging authorities to publish an infrastructure delivery strategy.

Effect

1747 Subsection (1) provides a new duty on IL charging authorities to prepare and publish an infrastructure delivery strategy. This document will set out their approach to infrastructure planning and will include a strategic plan for how IL money will be spent.

1748 Subsection (2)(a) sets out the requirement for infrastructure delivery strategies to include plans for how IL will be spent at a strategic level. Subsection (2)(b) provides powers for regulations to set out other information that infrastructure delivery strategies must contain.

1749 Subsection (3) elaborates on the kind of information that can be provided for through regulations, in particular, the requirement for a charging authority to set out its plans for the improvement, replacement, operation and maintenance of infrastructure.

1750 Subsection (4) enables charging authorities to revise or replace their infrastructure delivery strategy with a new one at any time. Subsection (5) provides a new duty on IL charging authorities to replace or revise their infrastructure delivery strategy when is necessary to do so. For example, if there are major changes to the sites they have selected in their local plan.

1751 The requirement for IL regulations to provide for the independent examination of infrastructure delivery strategies is set out in subsection (6). An examination is the process by which an infrastructure delivery strategy will be approved. Subsection (7) provides that regulations must make provision for the examination of an infrastructure delivery strategy to be combined with the examination of either a charging schedule or a local plan.

1752 Subsection (8) gives examples of what provisions may be set out in regulations for the examination of an infrastructure delivery strategy, including details about the examiner, the process of examination and any circumstances in which an examination would not be required.

1753 Subsection (9) provides a duty for charging authorities to follow government guidance on infrastructure delivery strategies.

1754 Subsection (10) makes provision for another body to prepare and publish an infrastructure delivery strategy in place of or on behalf of a charging authority. This would enable development corporations to prepare an infrastructure delivery strategy.

1755 Subsection (11) sets out what must be provided for in IL regulations, including the form and content of an infrastructure delivery strategy, how it should be published, any procedures that should be followed for its revision or replacement and who should be consulted as part of the preparation process.

1756 Subsection (12) gives examples of what IL regulations may provide for, including the timings associated with preparation, replacement or revision of an infrastructure delivery strategy and how long it would be valid, what evidence is needed to prepare the document, a procedure for preparing a joint infrastructure delivery strategy.

Example

Example (1): Contents of an infrastructure delivery strategy

Subsection (2)(a) requires that the infrastructure delivery strategy must set out the strategic plans for the application of IL. Subsection (11)(a) requires that IL regulations must make provision about the form and content of an infrastructure delivery strategy, including a strategic spending plan, setting out the high-level priorities for the charging authority in spending its IL.

Example (2): Examination of an infrastructure delivery strategy

Subsection (8) requires the regulations to make provision regarding what can be considered as part of an examination of an infrastructure delivery strategy. Under (8)(b) it is envisioned that regulations will seek a streamlined process, in which the examiner will test whether a charging authority has had regard to national policy and consulted with the correct parties

Part 10A, Section 204R: Collection

Background

1757 This new section deals with the collection of IL. It replicates provision in section 217 of the Planning Act 2008, with the following amendments: subsection (4) sets out a wider range of examples of how the power to make provision about payment in kind may be used; subsection (6), which enables IL regulations to be modelled on tax regulations, has minor changes in wording to clarify how the power can be used.

Effect

1758 Subsection (1) provides that IL regulations must include provisions about the collection of IL. The remaining subsections provide instances of how that power may be exercised including:

a. Payment on account or by instalment, which would allow for payments to be made prior to the completion of a development or a phase of development (subsection (2))

b. The repayment of IL, with or without interest, in the event of an overpayment (subsection (3))

c. Payment of IL in-kind rather than in money, for instance through the delivery of infrastructure (including affordable housing) or through making land available (subsection (4))

d. Allowing a charging authority to collect funds on behalf of another charging authority (subsection (5))

e. Making regulations that correspond to enactments relating to the collection of a tax, to enable alignment between the approach taken to the Levy and the approach taken in the wider system (subsection (6))

f. The source of payments in respect of Crown interests (subsection (7))

Examples

Example (1): Payment in-kind

Provision under subsection (4) may be used to enable the delivery of onsite affordable housing as an in-kind payment of IL. It is intended that a substantial portion of the value captured through IL will be delivered in this way. In some circumstances it will also be appropriate to secure in-kind contributions towards infrastructure, and we propose to introduce through regulations (including through provision made under 204Z) an 'in-kind routeway'. Development deemed appropriate for this routeway would be able to make in-kind payments of infrastructure towards their IL liability.

Example (2): Payment by instalment or on account

It is intended that IL should be calculated on the basis of the final development value (under provision made under new section 204G). Under this approach, the final levy liability would not be known until the completion of the development (or a phase of the development). Payment by instalment or on account would allow for earlier payments. This could be used to allow the charging authority to require payments prior to the completion/occupation of the phase/development. This would mean that payment could be enforced (see new section 204S) at a point when the developer was in control of the site, rather than at a point when it has been sold on, for instance to a homeowner. Early payment may also be used to support the early delivery of infrastructure. However, as this would also increase costs for developers, and may risk overpayments, restrictions may be placed on the use of such an approach.

Example (3): Crown interests

For example, under section 8 of the Duchy of Cornwall Management Act 1863 certain capital receipts received by the Duchy of Cornwall may only be spent for the purposes specified there. Subsection (7) allows IL regulations to provide that IL which is payable by the Duchy where development takes place on its land, may be paid out of these monies.

Part 10A, Section 204S: Enforcement

Background

1759 This section deals with enforcement in connection with IL. It replicates provision in section 218 of the Planning Act 2008 with the following amendments:

a. Subsection (2) makes it a requirement, rather than an ability, for regulations to include enforcement provisions about the failure to assume liability.

b. Subsection 4(f) of section 218 is not replicated here as an equivalent power has been provided in new section 204Z(1)(c).

c. Subsection (5) of section 218 has been separated out into two separate subsections here ((5) and (7)).

d. Subsection (6) provides an express power for IL regulations to prohibit or restrict the occupation or use of a development pending payment of IL.

e. Subsection (8) replaces the word 'replicate' with 'make provision corresponding to' to clarify the power.

f. Subsection (10) sets the upper limits for surcharges or penalties, replicating subsection (8) of the Planning Act. However, the maximum rates have been increased to reflect that IL amalgamates section 106 planning obligations and CIL payments.

g. Subsections (13) and (14) have been amended to reflect the position under the Judicial Review and Courts Act 2022 and the potential future coming into force of section 281(5) Criminal Justice Act 2003.

Effect

1760 This section provides that IL regulations must include provisions on the enforcement of IL. In general, enforcement will only become necessary where there has been one or more failures to comply with IL processes.

1761 Regulations must make provision about the consequences of failing to assume liability, late payment and failure to pay (subsection (2)). Regulations may also make provision about the consequences of other failures of compliance in connection with IL (subsection (3)).

1762 The types of provision which can be made through regulations on enforcement are set out in subsections (4) – (8). These include:

a. provision for the payment of interest; the imposition of a penalty or surcharge; the suspension or cancellation of a decision relating to planning permission, conferring a power of entry onto land; creating a criminal offence and conferring jurisdiction on a court to grant injunctive or other relief to enforce the provision of the regulations (subsection (4)).

b. provision for how actual or potential liability for IL should be registered and the potential liable party notified, whether or not in the context of late payment or failure to pay (subsection (5).

c. prohibiting or restricting the use or occupation of all or part of a site pending payment of IL (subsection (6)).

d. registration of IL liability as a local land charge or in a statutory register (such as the register of planning applications which is maintained by local planning authorities under article 40 of the Town and Country Planning (Development Management Procedure) Order 2015). In addition, local land charges may be a device for charging liability to land and for ensuring that successive owners are liable for that charge.

e. providing for IL to be enforced similarly to the enforcement of any tax.

1763 Subsection (9) allows IL regulations to require that any interest, penalty or surcharge payable on application, collection and enforcement are to be treated as if they were IL (and so, for example, subject to the same rules about spending).

1764 The maximum surcharge or penalty is limited by sub-section (10), but subsection (11) allows for more than one surcharge or penalty to be applied.

1765 A power is provided to make regulations creating criminal offences (subsection (4)(f)). However, subsection (13) provides for limits on the exercise of these powers. These relate to the maximum sentence that may be imposed in respect of any criminal offence.

Example

Example (1): Defining enforcement surcharges, penalties and procedures

The CIL enforcement provisions in Part 9 of the 2010 CIL regulations enable local planning authorities to apply surcharges and penalties where the process of CIL is not followed, to serve notices to prevent the progress of development if CIL is not paid, and to recover CIL in the case of a non-payment. Examples include collecting surcharges where no party assumes liability before a development is commenced, where the notices are not served within the correct timeframe, late payments are made, or information notices are not complied with.

This section allows IL regulations to set out similar provisions for IL.

Part 10A, Section 204T: Compensation

Background

1766 This section deals with compensation that may be required as a result of enforcement action undertaken in section 204S with regards to IL. It replicates provision in section 219 of the Planning Act 2008, with an amendment at subsection (2)(c) an additional definition of enforcement action is added, to reflect the changes made in new section 204S.

1767 Regulations have not been made in respect of CIL under section 219 of the Planning Act 2008. However, IL will collect more revenue than CIL, as it is intended that it will replace much of what is currently secured through s106 planning obligations. For this reason, it remains important to have the ability to regulate for the purposes of enabling compensation, for instance if enforcement action is taken improperly.

Effect

1768 Enforcement action may be undertaken by a charging authority or other local authority through regulations granted by new section 204S (subsection (2)). Where loss or damage is suffered as a result of enforcement action, subsection (1) allows IL regulations to require compensation to be paid to the affected parties.

1769 Regulations under this section cannot require the payment of compensation to a person who has failed to pay their IL liability (subsection (3)). IL regulations will be able to provide for other situations in which compensation will not be payable.

1770 Under subsection (4), IL regulations may also provide for the time and manner in which a claim for compensation must be made and how compensation is to be calculated. Powers are provided, in subsection (5) to permit or require charging authorities to use IL receipts to pay for any compensation and other expenditure under this section.

1771 If there is a dispute about the amount of compensation payable, subsection (6) provides powers to allow this to be referred to and determined by the Upper Tribunal.

1772 Subsection (7) applies section 4 of the Land Compensation Act 1961 to determinations by the Lands Tribunal under subsection (6) subject to any necessary modifications and to the provisions of IL regulations. Section 4 of the 1961 Act cover procedures on a reference to the Lands Tribunal and the award of costs by the Tribunal.

Part 10A, Section 204U: Procedure

Background

1773 This section provides powers for IL regulations to make provision for procedures that may need to be followed for IL. It replicates provision in Section 220 of the 2008 Planning Act, with the following amendments:

a. Removal of the ability for IL regulations to make procedural provision about an authority proposing to stop charging IL (given that it is to be mandatory for a charging authority to charge IL and they will not be permitted to simply decide to stop doing so),

b. Addition of an express ability for IL regulations to make provision about valuation and disputes (given that IL is proposed to be a value-based levy),

c. Addition of an express general ability to make provision about timing;

d. An addition to subsection (3) to enable regulations to confirm what must or may be included on a charging schedule or elsewhere in relation to exemptions or reductions.

Effect

1774 Subsection (1) provides a power for IL regulations to make provisions about the procedures to be followed in connection with IL.

1775 Subsection (2) provides particular examples of what IL regulations may contain. These include procedures on consultation and valuation.

1776 Subsection (3) relates specifically to the procedure that may be followed where an exemption or reduction in IL may be sought and what the procedures would be in this circumstance.

1777 Subsection (4) provides that where there is a power elsewhere in Part 10A to make 'procedural provision', this encompasses all the types of provision which may be made under subsection (2).

1778 Subsection (5) confirms that powers related to publication also provide powers to make a published document available for inspection.

1779 Sections 229 to 231 of the Planning Act 2008 do not apply to this Part, but subsection (6) allows IL regulations to make similar provision.

Example

> Example (1): Combining the creation of a charging schedule with other requirements
>
> Subsection (2)(s) provides power to combine procedures in connection with IL with procedures for another purpose of a charging authority. An example of the use of this power might be to combine the procedures for producing a draft charging schedule with the procedures for preparing development plan documents.

Part 10A, Section 204V: Appeals

Background

1780 This new section deals with appeals in connection with IL. It consolidates and extends the provision in section 215, section 208(5)(d)(ii) and section 218(6)(b) of the Planning Act 2008, with the following amendments:

a. Subsections (1)-(2) and (4) provide general powers for regulations to provide for appeals in connection with IL. Part 11 of the 2008 Act separates different types of appeal. Section 215(1) of the 2008 Act requires that regulations provide for a right of appeal in relation to the calculation of CIL, section 208(5)(d)(ii) enables appeals against the apportionment of liability and section 218(6) enables appeals against enforcement.

b. Subsection (3), replicates section 215(1) requiring regulations to provide for a right of appeal in relation to matters of the calculation of IL. The new provision specifies that this includes matters relating to valuation. Unlike the provision in section 215, it is not mandatory that the appeal provided for be to HMRC Commissioners (instead provision may be made under subsection (2)(c) regarding to whom the appeal is made and under subsection (4) regarding who is to be the defendant in the event of judicial review proceedings in respect of a decision on such an appeal).

Effect

1781 Subsection (1) provides regulation-making powers for, or in connection with, IL appeals. The appeals system for IL will therefore be similar to the existing CIL system (see box below).

1782 Subsection (2) elaborates on the kind of appeal provisions that can be provided for through IL regulations, in particular: who may make an appeal; the grounds on which an appeal is made; the court, tribunal or other person who is to determine the appeal; the period within which a right of appeal may be exercised; the procedure on an appeal; and the payment of fees and award of costs, in relation to an appeal.

1783 Subsection (3) requires IL regulations to provide for a right of appeal on a question of fact relating to the methods for calculating IL. This includes an appeal on a question of valuation for the purposes of IL.

1784 Subsection (4) enables regulations to specify who the defendant will be in the case of a judicial review against an appeal decision.

Example

Example (1): Grounds for appeal

Subsection (1) enables the duplication of the grounds of appeal that are available under CIL, in addition to grounds for appeal that may be IL specific, for example the final valuation of a development's gross development value. Examples of grounds for appeal that could be replicated through this power include the calculation of the chargeable amount, the apportionment of liability, application of relief or surcharges or application to a residential extension or annexe.

Part 10A, Section 204W: Secretary of State: Guidance

Background

1785 This new section deals with issuing guidance on IL. It replicates the powers in section 221 of the Planning Act 2008.

Effect

1786 The effect of this section gives a power to the Secretary of State to be able to give statutory guidance on any matter connected with IL and that relevant public authorities must have regard to such guidance.

Example

Example (1): Giving guidance to an independent person carrying out an examination

This power would enable the Secretary of State to give guidance to a charging authority, an authority (other than a charging authority) that collects IL or to someone who has been appointed to carry out an independent examination into an IL charging schedule. If the Secretary of State issues guidance under this section, the party to whom the guidance is given would need to have regard to it.

Part 10A, Section 204X: Secretary of State: power to permit alteration of IL rates and thresholds

Background

1787 This new section gives the Secretary of State powers to permit charging authorities to alter IL rates and thresholds in particular circumstances. This power could be applied on a national basis or to a specific charging authority. Section 204X is a new provision in the Planning Act 2008.

Effect

1788 Subsection (1) sets out the circumstances in which the Secretary of State could consider there is reason to permit an amendment to be made to a charging schedule. Such circumstances are when the levy rate has impaired, or there is a substantial risk that it will impair, the economic viability of development in the charging authority's area. Subsection (1) also provides that IL regulations may specify other circumstances in which the Secretary of State may permit an amendment to the charging schedule.

1789 If these conditions are met, the Secretary of State can publish a notice which allows specified charging authorities (which may be all charging authorities) to amend their charging schedules to reflect the conditions. Subsection (2) sets out how the amends to the charging schedule could be made, for example through amending a charging schedule to reduce IL rates or increase the minimum threshold below which no IL is charged ((2)(a)) or delaying or cancelling a proposed increase in rates or decrease in the minimum threshold proposed under the authority's charging schedule ((2)(b)) or postponing the adoption of a new or revised charging schedule ((2)(c)).

1790 Subsection (3) allows the notice published by Secretary of State under subsection (2) to confer a discretionary power on a charging authority to choose by how much to lower its rate or increase its minimum threshold (under subsection (2)(a)) or to apply any reduction to an existing planning permission.

1791 Where amendments are made under subsection (2), Section 204G(11) does not apply (subsection (4)).

1792 Subsection (5) provides that regulations may specify the criteria that must be met by a charging authority or procedures that the must following in order for a charging schedule to be amended.

1793 Subsection (6) enables regulations to restrict the use of the power in subsection (2), for example by restricting how much rates may be reduced by or to what level the minimum threshold should be increased.

1794 Subsection (7) allows regulations to make provisions in connection with the application of subsection (2).

Example

> Example (1): Amending charging schedules in a financial crisis
>
> In the event of a financial crisis, this power would enable Secretary of State to permit amendments to IL charging schedules, if there was a significant risk that IL rates were impacting the economic viability of development. A charging authority could amend its charging schedule to reduce IL rates for a specified time period, to prevent development from stalling. This allows rates to be adjusted without the normal procedural requirements such as re-examination.

Part 10A, Section 204Y: Secretary of State: power to require review of charging schedules

Background

1795 This section deals with circumstances where the Secretary of State can require a charging authority to review its charging schedule. Section 204Y is a new provision in the Planning Act 2008.

Effect

1796 Subsection (1) sets out the circumstances in which the Secretary of State may direct a charging authority to review its charging schedule. Such circumstances could include situations in which the levy rate has significantly impaired, or there is a substantial risk that it will significantly impair, the economic viability of development

1797 If a charging authority is directed to review its charging schedule by the Secretary of State, it must, under subsection (2), consider whether to revise or replace the charging schedule under section 204G(10) and notify the Secretary of State of its decision as to whether a review is required. If it considers a revision or replacement is required, it must undertake this within a reasonable time (subsection (3)).

1798 If a direction for review is issued by the Secretary of State and the charging authority does not carry out a review is necessary within a reasonable time period, or to an acceptable standard, subsection (4) allows the Secretary of State to appoint a person to do this on behalf of the charging authority.

1799 If this person reviews the schedule and considers there is a need for the schedule to be revised or replaced, subsection (5) requires that this be done by the charging authority within reasonable time. If the charging authority does not complete the review within time, then subsection (6) allows the Secretary of State to appoint someone to do this on their behalf.

1800 Subsection (7) allows IL regulations to specify further details relating to the person appointed by the Secretary of State and also what time period is considered to be reasonable when a charging authority is required to update its charging schedule.

Example

> Example (1): Directing a review of a charging schedule
>
> If a charging schedule was set in a recession and the economy has since improved, IL may not be capturing full value from planning permissions. In such a situation (and if regulations were made under 204Y(1)(c) specifying that as a circumstance in which this power is available), this power would enable the Secretary of State to require the charging authority to review their schedule under the subsection 204G(10).

Example (2): Non-compliance with a charging schedule

If a charging authority does not comply with a direction to review its schedule, subsection (4) would allow Secretary of State to appoint a party to review the schedule on behalf of the charging authority. If this person considers that a review is required, and the charging authority doesn't meet the required timescales to undertake this review, subsection (5) would allow Secretary of State to appoint a further person to review the schedule for the charging authority.

Part 10A, Section 204Z: Regulations: general

Background

1801 This section provides a number of supplementary powers in relation to the making of IL regulations. It replicates provision in section 222(1)-(3) of the Planning Act 2008, with an amendment allowing regulations to make provision requiring the provision of information in connection with IL. It also sets out the parliamentary procedure for the making of IL regulations.

Effect

1802 Subsection (1) gives powers to the Secretary of State to design elements of IL through regulations.

1803 Subsections (2)-(3) provides that IL regulations shall be made by statutory instrument subject to the affirmative procedure (in the House of Commons only).

Example

Example (1): Creating exemptions

Paragraphs (d) and (e) in subsection (1) provide for exceptions and confer discretionary powers. In combining these powers, it would be possible to give charging authorities a degree of discretion in deciding whether to create exemptions in charging IL.

Part 10A, Section 204Z1: Relationship with other powers

Background

1804 This section provides that IL regulations may include provision about how Part 11 of the Planning Act (CIL), Sections 70 and 106 of the Town and Country Planning Act 1990 and Section 278 of the Highways Act 1980 may or may not be used alongside IL.

1805 This section replicates powers granted under section 223 of the Planning Act 2008, with the following amendments:

a. Part 11 is added to subsection (1), to provide power to make provision about the relationship between CIL and IL (given that, for a time at least, the two systems will overlap).

b. Section 70 is added to subsection (1) to control how planning conditions may be used in relation to IL.

c. Subsection (3) has been added to provide an express power for IL regulations to specify when a planning condition or other specific matter may not or may only constitute a reason for granting planning permission.

1806 The section also facilitates the creation of 'routeways' for planning applications to take in relation to IL.

Effect

1807 Subsection (1) provides that IL regulations may include provision about controlling the use of Part 11 Planning Act 2008 (which relates to CIL), section 70 of the TCPA (which relates to planning conditions) section 106 of the TCPA 1990 (which relates to planning obligations) and section 278 of the Highways Act 1980 (which relates to agreements with highways authorities for highways works).

1808 It also provides power to make IL regulations about the exercise of any other power relating to planning and development (subsection (2)) and for the Secretary of State to give guidance to charging and other authorities on the exercise of such powers (subsection (4)).

1809 Subsection (3) is an express power for Secretary of State to determine through IL regulations the circumstances in which a planning condition or another specified matter may not or may only be considered a reason for granting planning permission.

1810 The purposes to which any of these regulation-making or guidance giving powers may be put are circumscribed by subsection (5). For example, they may be used to enhance the effectiveness or use of IL regulations or to prevent or restrict the entering into of agreements under section 106 of the TCPA 1990 or section 278 of the Highways Act 1980 in addition to CIL. Finally, subsection (6) provides powers for IL regulations to control the exercise of powers to give directions or guidance.

Example

Example (1): Creating different routeways for planning applications to allow in-kind payment of IL

Combining the powers in S204Z1(1) with S204R will allow the creation of the in-kind routeway, where the provision of infrastructure through section 106 planning obligations will act as an in-kind payment of the Levy. Combined with subsection (3), IL regulations will be able to provide for the provision of infrastructure in this way to be able to act as a

Example (2): Limiting the use of S106 agreements

On sites where infrastructure is not to be used as a payment of IL, IL receipts will be used to deliver infrastructure which is required as a result of the cumulative impact of planned development. Subsections (1) and (3) will allow the use of S106 agreements to be restricted to only cover certain purposes.

Schedule 12: Amendments of the Conservation of Habitats and Species Regulations 2017: assumptions about nutrient pollution standards

Background

1811 This new Schedule amends Part 6 of the Conservation of Habitats and Species Regulations 2017 ("the 2017 Regulations") so that competent authorities, when making relevant assessments under the 2017 Regulations for planning-related decisions, are required to assume that sewage disposal works will meet the relevant nutrient pollution standards introduced by Clause 153 (Nutrient pollution standards to apply to certain sewage disposal

works) by the relevant upgrade date. The amendments also create a new power for the Secretary of State to direct authorities that the assumptions do not apply in relation to a particular plant and a particular nutrient pollution standard.

Effect

Part 1: Introductory

1812 Paragraph (1) specifies that this Schedule amends Part 6 of the 2017 Regulations (assessment of plans and projects).

Part 2: Planning

1813 Paragraph (2) is self-explanatory.

1814 Paragraphs (3) to (10) amend Chapter 2 of Part 6 of the 2017 Regulations (assessment of plans and projects: planning) to signpost the assumptions in new regulations 85A and 85B.

1815 Paragraph (11) inserts new regulations 85A to 85D into the 2017 Regulations.

85A Assumptions to be made about nutrient pollution standards: general

1816 Paragraph (1) sets out the circumstances under which the assumptions in paragraph (2) apply, which includes that the competent authority is required to make a relevant assessment before a decision is made.

1817 Paragraph (2) requires that in making that relevant assessment, defined in regulation 85A(6), the competent authority must assume that a nitrogen significant plant will meet the nitrogen nutrient pollution standard on and after the upgrade date and that a phosphorus significant plant will meet the phosphorus nutrient pollution standard on and after the upgrade date.

1818 Paragraph (3) makes paragraph (2) subject to regulation 85C, which provides the Secretary of State with a power to disapply the assumption, and clarifies that the assumption duty does not prevent the competent authority from having regard to outperformance, or expected outperformance, by a plant. "Outperformance" is defined in regulation 85D(2) and occurs where the plant meets the relevant nutrient pollution standard before the upgrade date or where there is a lower nitrogen or phosphorus concentration in treated effluent than the specified standard.

1819 Paragraph (4) defines the term "relevant decision" in relation to the assessment and review provisions in the 2017 regulations.

1820 Paragraphs (5) and (6) define the terms "potential development" and "relevant assessment" respectively.

85B Assumptions to be made about nutrient pollution standards: general development orders

1821 Paragraph (1) sets out the circumstances in which the assumptions in paragraph (2) apply, with reference to the regulations relevant to the applicable decisions. The circumstances include that the local planning authority is required to make a relevant assessment before a decision is made

1822 Paragraph (2) requires that in making the relevant assessment referred to in paragraph (1), the local planning authority must assume that a nitrogen significant plant will meet the nitrogen nutrient pollution standard on and after the upgrade date and that a phosphorus significant plant will meet the phosphorus nutrient pollution standard on and after the upgrade date.

1823 Paragraph (3) makes paragraph (2) subject to regulation 85C, which provides the Secretary of State with a power to disapply the assumption, and it also clarifies that the assumption duty does not prevent the local planning authority from having regard to outperformance, or expected outperformance, by a plant. "Outperformance" is defined in regulation 85D(2).

85C Direction that assumptions are not to apply

1824 Paragraph (1) allows the Secretary of State to direct that the assumptions to be made by competent authorities and local planning authorities in regulations 85A(2) and 85B(2) do not apply in relation to a particular plant and a particular nutrient pollution standard.

1825 Paragraph (2) specifies when such a direction may be made, which is only if the Secretary of State is satisfied that the plant will not be able to meet the standard by the upgrade date.

1826 Paragraph (3) allows the Secretary of State to revoke such a direction if satisfied that the plant will in fact meet the standard on the upgrade date.

1827 Paragraph (4) sets out that the Secretary of State may, in particular, have regard to when the plant can be expected to meet the standard in deciding whether to make the direction.

1828 Paragraph (5) introduces a consultation requirement and lists the bodies and persons that the Secretary of State must consult before making or revoking a direction under this regulation.

1829 Paragraph (6) requires that a direction or revocation under this regulation is made in writing and specifies when it takes effect.

1830 Paragraph (7) sets out the notification requirements on the Secretary of State after a direction has been made or revoked.

85D Regulations 85A to 85C: interpretation

1831 This regulation defines terms used in regulations 85A to 85D.

Part 3: Land Use Plans

1832 Paragraph (12) is self-explanatory.

1833 Paragraphs (13) to (15) amend regulations 105, 106 and 110 in the 2017 Regulations to signpost the assumption in new regulation 110A.

1834 Paragraph (16) inserts new regulations 110A to 110C into the 2017 Regulations.

110A Assessments under this Chapter: required assumptions

1835 Paragraph (1) sets out the circumstances under which the assumptions in paragraph (2) apply, which includes where the authority is required to make a relevant assessment before a decision is made.

1836 Paragraph (2) requires that in making the relevant assessment, defined in regulation 110A(5), the authority must assume that a nitrogen significant plant will meet the nitrogen nutrient pollution standard on and after the upgrade date and that a phosphorus significant plant will meet the phosphorus nutrient pollution standard on and after the upgrade date.

1837 Paragraph (3) makes paragraph (2) subject to regulation 110B, which provides the Secretary of State with a power to disapply the assumption, and clarifies that the assumption duty does not prevent the authority from having regard to outperformance, or expected outperformance, by a plant. "Outperformance" is defined in regulation 110C(2)

1838 Paragraphs (4) and (5) define the terms "relevant decision" and "relevant assessment" respectively.

110B Direction that assumptions are not to apply

1839 Paragraph (1) allows the Secretary of State to direct that the assumptions to be made by authorities in regulation 110A(2) do not apply in relation to a particular plant and a particular nutrient pollution standard.

1840 Paragraph (2) specifies when such a direction may be made, which is only if the Secretary of State is satisfied that the plant will not be able to meet the standard by the upgrade date.

1841 Paragraph (3) allows the Secretary of State to revoke such a direction if satisfied that the plant will in fact meet the standard on the upgrade date.

1842 Paragraph (4) sets out that the Secretary of State may, in particular, have regard to when the plant can be expected to meet the standard in deciding whether to make the direction.

1843 Paragraph (5) introduces a consultation requirement and lists the bodies and persons that the Secretary of State must consult before making or revoking a direction under this regulation.

1844 Paragraph (6) requires that a direction or revocation under this regulation is made in writing and specifies when it takes effect.

1845 Paragraph (7) sets out the notification requirements on the Secretary of State after a direction has been made or revoked.

110C Regulations 110A and 110B: interpretation

1846 This regulation defines terms used in regulations 110A to 110C.

Schedule 13: Locally-led development corporations: consequential amendments

Background

1847 This Schedule contains amendments to the Local Government, Planning and Land Act 1980 and New Towns Act (1981), that are minor and consequential to the introduction of locally-led development corporations.

Consequential amendments to Section 134 (urban development area) of the Local Government, Planning and Land Act 1980.

1848 Paragraph 2 amends section 134 (urban development areas) of the Local Government, Planning and Land Act 1980. These are not substantive changes; instead, it reflects the true position in the Local Government, Planning and Land Act 1980 since the transfer of Secretary of State functions to the Scottish Ministers and Welsh Ministers.

1849 Paragraph 2(5) of this schedule also inserts new subsection (3C) into section 134 of the Local Government, Planning and Land Act 1980 to set out the procedure of altering boundaries to exclude areas of land from an urban development area of a locally-led Urban Development Corporation.

Effect

1850 Paragraph 2(1) to (4) and (6) to (9) changes the references to the Secretary of State to 'appropriate national authority' and/or make amendments consequential to this, including

where regulations are to be made either by the Houses of Parliament, Scottish Parliament, or Senedd Cymru. This is in recognition that these functions are performed by, or powers fall to, the Secretary of State in England, Scottish Ministers in Scotland, and Welsh Ministers in Wales. Legislative competence lies with the Houses of Parliament in England, the Scottish Parliament, and Senedd Cymru.

1851 Paragraph 2(5) inserts new subsection (3C) into Section 134 of the Local Government, Planning and Land Act 1980. The effect of the change is that the Secretary of State must have consent from the oversight authority before making any changes to exclude areas of land from the urban development area of a locally-led Urban Development Corporation.

1852 Paragraph 2(9) inserts new subsection (7) which defines 'appropriate national authority' as the Secretary of State in England, Scottish Ministers in Scotland, and Welsh Ministers in Wales in amended Section 134 of the Local Government, Planning, and Land Act 1980.

Consequential amendments to Section 135 (urban development corporation) of the Local Government, Planning and Land Act 1980.

Background

1853 Paragraph 3 of this schedule amends subsection (2) of Section 135 and inserts new subsection (7) into section 135 of the Local Government, Planning and Land Act 1980.

Effect

1854 Paragraph 3(2) has the effect of allowing the Secretary of State, by order, to designate a locally-led Urban Development Corporation via the same order used to designate a locally-led urban development area as set out under section 134 (1B), or a separate order.

1855 Paragraph 3(3) inserts subsection (7) into section 135 which sets out the definition of a 'local authority' which means a district, county or London borough council, and the City of London Corporation. This is consistent with the definition of section 134A.

Consequential amendments to section 140 consultation with local authorities for locally-led urban development corporations.

Background

1856 Paragraph 4 of this schedule amends section 140 (consultation with local authorities) for locally-led Urban Development Corporations. This currently sets out that the urban development corporation shall prepare a code of practice on how it should consult with local authorities about the exercise of the Urban Development Corporations powers.

Effect

1857 This has the effect of disapplying the need to prepare a code of practice when consulting with local authorities on how a locally-led development corporation is to exercise its powers.

Key definitions

Background

1858 Paragraph 5 amends section 171 of the Local Government, Planning and Land Act which sets out interpretation and key definitions.

Effect

1859 Paragraph 5(2) of this schedule provides new definitions of key terms. These terms are "locally-led urban development area", "locally-led urban development corporation",

and "oversight authority". Paragraph 5(3) updates the definition of 'urban development area' to reference orders made under 1B.

Consequential amendments to the New Town Act (1981)

Background

1860 Paragraph 6-9 of this schedule makes consequential amendments to the New Town Act 1981.

Effect

1861 Paragraph 7 amends section 1A (local authority to oversee development of new town) which has the effect of removing subsections (1), (2), (3) and (7) as a result of new section 1ZA and 1ZB which now cover the local authority proposal for a locally-led New Town and its designation; amending terminology from 'local authority' to 'oversight authority' in subsection 4 and removing the definition of specified in subsection (8) paragraph (a) as a result of removing subsection (2).

1862 Paragraph 8 inserts new subsection (1A) into section 2 (reduction of designated area). The effect of this change is that the Secretary of State must have consent from the oversight authority before making any changes to exclude areas of land from the area designated as a locally-led New Town.

1863 Paragraph 9 amends section 80 (general interpretation), which sets out general interpretation and definitions. Paragraph 9(2) of this Schedule provides new definitions of key terms. These terms are "locally-led development corporation", "locally-led new town", and "oversight authority". Paragraph 9(3) applies the existing reference to the area of a new town to a locally led new town designated under 1ZB

Schedule 14: Planning functions of development corporations: minor and consequential amendments

Background

1864 The schedule contains amendments to the New Towns Act 1981, the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, and the Localism Act 2011. These amendments are minor and consequential to the conferral of planning functions to Urban Development Corporations, New Town Development Corporations and Mayoral Development Corporations.

Effect

1865 Paragraph 1 amends the heading of section 7 and amends section 77 of the New Towns Act 1981. This allows the conferral of planning functions to a New Town Development Corporation under new subsection 7A to be made by order using the negative parliamentary procedure.

1866 Paragraph 2 inserts new section 7ZA into the TCPA 1990. This defines the local planning authority for development management purpose when a New Town Development Corporation becomes the local planning authority under new subsection 7A(2)(a) or (4)(a) of the New Towns Act 1981.

1867 Paragraph 2(5) amends section 62B(5) of the TCPA 1990 to include New Town Development Corporations alongside existing development corporation models as a planning authority that cannot be designated for the purposes of allowing direct planning applications to the Secretary of State.

1868 Paragraph 2(6) updates the definition of 'relevant authority' to include New Town Development Corporations in relation to local finance considerations to be taken into account in planning decisions.

1869 Paragraph 2(7) updates the different types of development corporation that are subject to local highway authority restrictions when planning permission is granted to include New Town Development Corporations where they are the planning authority. This allows the Secretary of State, by order, to include provisions enabling a local highway authority to impose restrictions on planning permissions by a development corporation.

1870 Paragraph 3 amends Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Act 1990. This includes New Town Development Corporation and Mayoral Development Corporations in the definition of local planning authority when they take on planning powers under new subsection 7ZA and subsection 7A respectively of the TCPA 1990.

1871 Paragraph 4 amends section 3 of the Planning (Hazardous Substances) Act 1990. This amends the definition of hazardous substances authorities to include all types of development corporation provided they take on these specified functions.

1872 Paragraph 5 amends section 205(5) of the Localism Act 2011 so that the reference relating to Urban Development Corporation should be read as Mayoral Development Corporations in relation to Part 2 of Schedule 29 to the Local Government, Planning and Land Act 1980

Schedule 15 Compulsory purchase: corresponding provision for purchases by Ministers

Background

1873 Schedule 15 makes provisions for circumstances in which Ministers are the acquiring Authority for the purposes of the acquisition of Land Act 1981.

Effect

1874 Subparagraph (1) gives effect to the amendments made in (2) to (6) in Schedule 1 of the Acquisition of Land Act 1981.

1875 Subparagraph (2) changes the cross heading "Notices in newspapers" to "Public notices".

1876 Subparagraph (3) amends paragraph (2) of Schedule 1. It:

a. amends subsection (1) to maintain the requirement for a newspaper notice to be published for two successive weeks and introduces the requirement to publish a notice in the prescribed form for 21 days on an appropriate website.

b. makes consequential amendments to subparagraph (2) as a result of paragraph (a).

c. gives the appropriate authority a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the appropriate authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make the documents available in a physical location.

d. makes a consequential amendment as a result of the changes to subparagraph (2).

1877 Subparagraph (4) amends paragraph (3) which sets out the requirements to notify certain persons prior to submitting a CPO for confirmation. It introduces a new requirement

for the notice to include details of a website where the draft CPO and associated map can be viewed. It also requires that the notice should specify the final date for making objections.

1878 Subparagraph (5) inserts a new section "Final day for making objections" into the Schedule. This new section explains what the final day for making objections to a CPO is. The time period for making objections has not changed. This section is only needed to clarify the position following the introduction of the additional requirements to publish notices under paragraphs (2) and (3) on an appropriate website.

1879 Subparagraph (6) amends paragraph (6) which sets out requirements to publish notices after a CPO has been confirmed. It:

a) introduces a new additional requirement for acquiring authorities to publish the notice on an appropriate website for 6 weeks.
b) introduces a new additional requirement for the notice to specify a website where a CPO and associated map can be viewed.
c) gives appropriate authorities a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the appropriate authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make copies available in a physical location.

Proceedings for considerations of draft order

Effect

1880 Sub paragraph (1) gives effect to the amendments made in (2) to (3) in the Acquisition of Land Act 1981, Schedule 1.

1881 Subparagraph (2) makes amendments to paragraph 4A and sets out the circumstances in which a public local inquiry must be held. Where those circumstances do not apply, the confirming authority has the power to decide whether to hold either a public local inquiry or follow a representations procedure. Details of the representations procedure will be set out in secondary legislation. The procedure will allow remaining objectors to provide oral representations at a hearing if they wish to. It will also allow acquiring authorities and any other person who the confirming authority thinks appropriate to make representations in writing or at any hearing requested by a remaining objector.

1882 Subparagraph (3) makes consequential amendments to paragraph (4B) to reflect the changes to paragraph 4A.

Conditional orders

Effect

1883 Subparagraph (1) gives effect to the amendments made in (2) and (3) in Schedule 1 of the Acquisition of Land Act 1981.

1884 Subparagraph (2) inserts paragraph 4AA.

1885 New paragraph 4AA(1) gives the Minister the power to confirm a CPO conditionally.

1886 New paragraph 4AA(2) provides that acquiring authorities will only be able to implement CPOs which have been confirmed conditionally, once an application to discharge the conditions has been approved by the Minister. Where such an application has not been received within the required time or the confirming authority declines the application, the CPO cannot be implemented.

1887 New paragraph 4AA(3) gives the Minister discretion as to what conditions to impose and the timeframe in which the conditions must be met.

1888 New paragraph 4AA(4) provides that the application process is to be prescribed.

1889 New paragraph 4AA(5) requires that the application process must provide for relevant objectors to be notified of the application, have the opportunity to submit written representations to the confirming authority and include provision as to the giving of reasons for the decision by the Minister.

1890 New paragraph 4AA(6) defines a relevant objector.

1891 Subparagraph (3) makes consequential amendments to notices issued after confirmation of a CPO and provision for notices to be served on discharge of any condition imposed.

Schedule 16: Grounds of appeal against final letting notice

Background

1892 Clause 187 provides that the landlord may appeal against a final letting notice to the county court.

Part 1: Grounds

Effect

1893 Part 1 sets out the grounds upon which the landlord may appeal against a final letting notice to the county court. These include that the vacancy condition was not met, that the premises were not suitable for high street use or that the local benefit condition was not met.

Part 2: Interpretation and application

Effect

1894 Part 2 sets out matters of interpretation and application in connection with the grounds of appeal.

Schedule 17: Provision to be included in terms of tenancy further to agreement under section 163

Background

1895 Clause 191 provides that the terms of the tenancy must include certain provisions.

Effect

1896 This Schedule sets out the provisions which need to be included in the terms of a tenancy further to agreement under clause 189. These include what obligations the landlord has with respect to maintenance, the supply of utilities and whether the tenant should insure the premises.

Schedule 18: Pavement Licences

Introductory

Effect

1897 Paragraph 1 provides definitions of key terms to be used throughout the Schedule. These terms are "the 2020 Act", "the commencement date" and "pavement licence".

Making pavement licence provisions permanent

Background

1898 Paragraph 2 (1) amends the Business and Planning Act 2020 to omit section 10 which sets out the expiry date of the temporary pavement licence provisions, and to omit from section 23 (4) of the 2020 Act, which sets out the regulation making powers, the word "10". This is a consequential change as a result of omitting section 10.

Effect

1899 This has the effect of removing the sunset clause and associated references, which previously applied to these provisions when they were made to be temporary. This means that the provisions for pavement licensing in section 1 of the Business and Planning Act 2020 now do not sunset on a particular date and are permanent.

Applications: fees

Background

1900 Paragraph 3 amends section 2 of the 2020 Act to replace the previous fee cap chargeable by a local authority for a pavement licence. This is expressed as 'the relevant amount'. Paragraph 3 also introduces new subsection (1A) to section 2 of the 2020 Act which defines the relevant amount, and new subsection (1B) to section 2 of the 2020 Act which introduces a power for the Secretary of State to be able to amend the relevant amount.

Effect

1901 Subparagraph (2) has the effect of changing the fee cap from the previous £100 level, to the concept of the "relevant amount".

1902 Subparagraph (3) inserts (1A) which has the effect of introducing the definition of the new concept of the "relevant amount". This introduces two new fee caps under which the local authority can charge a fee for a pavement licence, £350 in the case of a renewal application and £500 in the case of any other application. This replaces the previous fee cap of £100. The fee cap is a maximum the local authority is able to charge, and local authorities should only charge to cover their costs. Local authorities are able to set a fee structure within the cap.

1903 New subsection (1B) has the effect of giving the Secretary of State a new power to be able to amend the newly defined "relevant amount" which sets the fee caps. This is intended to allow the fees to keep pace with the costs for processing applications.

Applications: procedure on renewals

Background

1904 Paragraph 5 amends section 2 of the 2020 Act to introduce a definition for what can be considered a renewal application and the details that need to be submitted for such an application.

Effect

1905 This has the effect of introducing a more streamlined application process for renewal applications. This would mean that applicants do not have to provide the full details as set out in section 2(2) of the 2020 Act, but simply need to make an application for the same licence and provide any additional evidence that the local authority may ask for. This means that the fee cap for these types of applications can be lower at £350.

Applications: periods for consultation and determination

Background

1906 Paragraph 6 amends section 2 of the 2020 Act.

1907 Paragraph 7 amends section 3 of the 2020 Act. Sections 2 and 3 provided for a period of consultation of 7 days after which the local authority had a further 7 days to determine whether to grant the licence.

Effect

1908 Paragraphs 6 and 7 amend the period of consultation to 14 days and provide a further 14 days for the local authority to make its decision.

Duration of licences

Background

1909 Paragraph 8 amends section 4 of the 2020 Act to substitute 4(1) and (2) for the new (1) and (2), which changes the limit for how long the licence is valid. Currently, the length of a licence is specified by the local authority and can be valid until but not beyond 30 September 2021.

Effect

1910 This has the effect of allowing local authorities to grant pavement licences for a length of their choosing up to a maximum of two years.

Enforcement of licences

Background

1911 Paragraph 9 introduces a new subsection (4) to section 6 of the 2020 Act.

Effect

1912 This has the effect of allowing the local authority to amend a pavement licence which has been granted or deemed to be granted by them, if it considers that the highway is no longer suitable for the use as granted by the licence. This might also be due to evidence that there is a risk to public health or safety, increased anti-social behaviour, the highway is being obstructed or the no-obstruction condition, which applies to all pavement licences, is not being complied with.

Effect of licences

Background

1913 Paragraph 10 omits subsections (4) to (6) and (8) to (10) of section 7 of the 2020 Act. Paragraph 11 amends the Highways Act 1980 to insert new subsection (5) to Section 115E. Paragraph 12 amends section 249 of the Town and Country Planning Act 1990 to permanently introduce text into subsection (7).

Effect

1914 These amendments have the effect of removing interactions between the previous route to gaining a pavement licence allowed under the Highways Act 1980 and this permanent route that are no longer relevant. Specifically, paragraph 11 requires that all applications for a pavement licence which could be granted under the regime introduced through the Business and Planning Act 2020 should be granted through that route. Paragraph 12 introduces permanent text which extends powers for the Secretary of State or the local planning authority to make an order which may make provision for the removal of an obstruction which would be allowed by the pavement licensing regime.

Enforcement

Background

1915 Paragraph 13 inserts after section 7 of the 2020 Act a new section 7A. Currently, local authorities can only revoke licences or serve a notice requiring necessary steps to be taken to remedy the breach of a condition of a licence.

Effect

1916 This has the effect of introducing a new enforcement power for authorities who are tasked with granting pavement licences. This new power applies where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence. This power allows the local authority to give notice requiring the person to remove the furniture before a date specified, and refrain from putting furniture on the highway unless they gain a licence. If furniture continues to be placed there in contravention of the notice the local authority may remove and store the furniture, recover the costs from the person and refuse to return the furniture until those costs have been paid. If the costs aren't paid, the local authority can dispose of the furniture by sale or other means and retain the proceeds.

Local authority functions

Background

1917 Paragraph 14 omits subsection (2) of section 8 of the 2020 Act and Paragraph 15 inserts the same provisions permanently into Schedule 1 of the Local Authorities Functions and Responsibilities) (England) Regulations 2000.

Effect

1918 This has the effect of making permanent the reference to pavement licensing in the list of local authority functions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

Other amendments

Background

1919 Paragraph 16 omits subsections (2) and (3) of section 9 of the 2020 Act as they are no longer required given that the provisions are spent.

Effect

1920 This has the effect of excluding the applicability of temporary traffic orders made for purposes connected to coronavirus as this is no longer in force.

Background

1921 Paragraph 17 amends section 62 of the Anti-social Behaviour, Crime and Policing Act 2014 to insert a new provision exempting areas which are granted a pavement licence from alcohol prohibition in public spaces protection orders. Public space protection orders are provisions applying restrictions to an area for the purposes of the reduction of anti-social behaviour and may make provision regarding the sale of alcohol in or around that area.

Effect

1922 This has the effect that, where there is a pavement licence in place and a public space protection order, the public space protection order will not have effect in the area granted a pavement licence.

Transitional provision

Background

1923 Paragraph 18 introduces new transitional provisions for the duration of pavement licences that are already granted prior to the commencement date of this Schedule.

Effect

1924 Where an application has already been granted or deemed to be granted under this process without a specified duration, the licence will be in force for two years from the commencement of this Schedule.

Background

1925 Paragraph 19 introduces a new transitional provision in relation to the amendment in paragraph 11 to require all applications that could be made through the route set out in the Business and Planning Act 2020 should be. This transitional provision means that paragraph 11 does not impact permissions granted under section 115E of the Highways Act 1980 prior to the commencement of this Schedule.

Effect

1926 Where an application has already been granted under section 115E of the Highways Act 1980, the provisions in paragraph 11 do not apply meaning that a council cannot require an additional application be made under section 1 of the Business and Planning Act 2020 whilst the licence granted under section 115E of the Highways Act 1980 is valid.

Commencement

1927 Part 11 of the Bill (General) will come into force on the day this Bill is enacted. Clause 195 (Commencement and transitional provision) sets out the commencement for provisions in this Bill (for which see the explanatory note to that clause).

Financial implications of the Bill

1928 The Bill is not a money Bill, however, it will have financial implications for the public sector, including local government, central government and the Planning Inspectorate. These include:

- The requirement to report on the delivery of Levelling Up missions, and the parliamentary scrutiny of progress against these missions. These costs are small and will be absorbed within Departmental budgets and the ongoing costs of the functioning of Parliament.

- The Bill will create the new combined county authority model. The establishment of a combined county authority in an area and the duties the institution would have will have financial implications for councils who seek to enter such arrangements. The Bill makes provisions for the costs of these organisations to be met by the budgets of constituent councils, and provides for the possibility of mayoral precepting where a combined county authority is mayoral. It has been agreed with His Majesty's Treasury that, should any devolution deals be negotiated that result in the establishment of a combined county authority, the costs of funding such a deal will be met from Departmental budgets up until 2025.

- The power to charge council tax on long term empty dwellings and dwellings occupied periodically in England. Local authorities will benefit from this power by being able to charge increased council tax of up to 100%. This income will not be ringfenced.

- The requirement to consult on changes to street names will have financial costs for local authorities to run the consultation, should they choose to change street names.

- Changes to the provision, processing and requirements of planning data will have financial costs for local authorities. The transition to digital transformation they enable will, in the long run, reduce costs for local authorities through increased efficiencies. Funding is agreed with His Majesty’s Treasury for the transition to digital planning in local authorities.

- The changes to the planning system will all have familiarisation costs for local authorities. The measures which drive such costs include changes to the development of local plans, neighborhood plans and strategic plans or spatial development strategies, changes to heritage, enforcement and planning permissions, and the new system of environmental outcomes reporting. These costs will all be balanced by efficiency savings and are affordable and accounted for within Departmental budgets and arrangements. Any skills or capability building needed to successfully implement these changes is accounted for in the agreement reached with His Majesty’s Treasury.

- There are some additional expectations on the Planning Inspectorate. These include the changes to local plan examination, and the Commissioner model. The Planning Inspectorate's funding, as agreed with His Majesty's Treasury, accounts for this.

- The infrastructure levy is the introduction of a local tax. The money will be set and raised by the local authority and used to fund affordable housing and infrastructure. There will be familiarisation costs in adopting this new system, but overall it should lead to at least as much income as in the existing arrangements.

- The creation of new development corporations will have financial implications for the department if introduced, and for local authorities should they seek to designate a development corporation.

- There are a number of powers that are made available to local authorities through the Bill these include powers for local authorities to use compulsory purchase orders and to run rental auctions of high street properties. These will have financial implications to the purchasing or letting body if used. They will both also have financial implications for the owners of land or property on which the power is being exercised. Changes to the fees for pavement licensing will reduce costs to applicants, and in turn reduce income for this service to local authorities.

1929 Unless stated, all of these measures are affordable and accounted for within existing Departmental budgets and arrangements, due to either their permissive nature, or funding arrangements that are in place with His Majesty's Treasury. Planning measures with costs attached will be supported in their delivery through the settlement reached at the 2021 Spending Review, which provides an additional £65 million of investment up to 2025. An impact assessment for the Bill will be published in due course, which will provide details on the specific costs and benefits of measures which are in scope of being Impact Assessed.

Parliamentary approval for financial costs or for charges imposed

1930 The Bill required and received a money resolution because it gives rise to charges on the public revenue. The money resolution covered -

a. expenditure incurred by a Minister of the Crown or other public authority by virtue of the Bill (for example, expenditure incurred by the Secretary of State and other public authorities for the purposes of the new system of environmental outcome reporting under Part 5), and

b. increases in the sums payable by virtue of any other Act where the increase is attributable to the Bill (for example, increases in the revenue support grant provided to local authorities under the Local Government Finance Act 1988 by virtue of Part 2 (local democracy), 3 (planning) or 4 (infrastructure levy), and additional grants, loans or guarantee payments made by the Secretary of State in relation to development corporations by virtue of Part 6).

1931 The Bill also required and received a ways and means resolution because it authorises new taxation and other similar charges on the people. The ways and means resolution covered –

a. the imposition of the infrastructure levy under Part 4, receipts of which may in certain circumstances be paid into the Consolidated Fund and used for the general benefit, and

b. the charging of fees or other charges and the making of payments into the Consolidated Fund and National Loans Fund (for example, clause 129(2)(a) provides a power to charge fees or other charges in relation to environmental outcomes reporting).

Compatibility with the European Convention on Human Rights

1932 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of the Act).

1933 In the opinion of Baroness Scott of Bybrook, the Parliamentary Under Secretary of State for Faith and Communities the provisions of the Bill are compatible with the Convention rights and he has made a statement to that effect.

Compatibility with section 20 of the Environment Act

1934 Baroness Scott of Bybrook, the Parliamentary Under Secretary of State for Faith and Communities, is of the view that the Bill as introduced into the House of Lords does contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021 and he has signed the statement that the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

Related documents

1935 The following document is relevant to the Bill and can be read at the stated location:

- Levelling Up the United Kingdom White Paper, February 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052706/Levelling_Up_WP_HRES.pdf

Annex A – Territorial extent and application in the United Kingdom

1936 The information provided in this Annex is the view of the UK Government. The Bill forms part of the law of England and Wales only, with the exception of:

- Part 1 (Levelling Up Missions) which extends UK-wide.
- Part 3 (Planning) Chapter 1 (Planning Data) which extends UK-wide.
- Part 3 (Planning) Chapter 6 (Other Provision) Clauses 118, 119 and 120 (NSIP related clauses) which extend to England and Wales, and in limited circumstances to Scotland.
- Part 3 (Planning) Chapter 6 (Other Provision) Clause 123 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which extends UK-wide.
- Part 5 (Community Land Auctions) which extends UK-wide.
- Part 6 (Environmental Outcomes Reports) which extends UK-wide.
- Part 12 (Miscellaneous) clause 213 (Review of governance etc of RICS) which extends UK-wide.
- Part 12 (Miscellaneous) clause 214 (Marine Licensing) which extends UK-wide.
- Part 13 (General) which extends UK-wide.

1937 The Bill applies to England only, except for:

- Part 1 (Levelling Up Missions) which applies UK-wide.
- Part 3 (Planning) Chapter 1 (Planning Data) which applies UK-wide.
- Part 3 (Planning) Chapter 6 (Other Provision) Clauses 118, 119, 120 (NSIP related clauses) which apply to England and Wales, and in some circumstances to Scotland
- Part 3 (Planning) Chapter 6 (Other Provision) Clause 122 (Regulations and Orders Under the Planning Acts) which applies to England and Wales.
- Part 3 (Planning) Chapter 6 (Other Provision) Clause 123 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which applies UK-wide
- Part 6 (Environmental Outcomes Reports) which applies UK-wide.
- Part 9 (Compulsory Purchase) which applies to England and Wales.
- Part 11 (Information About Interests and Dealings in land) which applies to England and Wales.
- Part 12 (Miscellaneous) clause 213 (Review of governance etc of RICS) which applies UK-wide.

- Part 12 (Miscellaneous) clause 214 (Marine Licensing) which can apply only where the Secretary of State is the appropriate licensing authority. Specifically, this is in the inshore and offshore regions in England, and the offshore region only in Northern Ireland (and in the UK marine licensing area for certain reserved or excepeted matters)
- Part 13 (General) applies UK-wide.
- Schedule 15 (Compulsory Purchase corresponding provision for purchases by Ministers) which applies to England and Wales.

Provision	England	Wales		Scotland		Northern Ireland	
	Extend to E & W and apply to England?	Extend to E & W and apply to Wales?	Legislative Consent Motion process engaged?	Extend and apply to Scotland?	Legislative Consent Motion process engaged?	Extend and apply to Northern Ireland?	Legislative Consent Motion process engaged?
Part 1: (Levelling-Up Missions) Clauses 1-6	Yes	Yes	No	Yes	No	Yes	No
Part 2 (Local Democracy and Devolution) Chapter 1 (Combined County Authorities) Clauses 7- 55	Yes	No	No	No	No	No	No
Part 2 (Local Democracy and Devolution) Chapter 2: (Other Provision) Clauses 56 – 77	Yes	No	No	No	No	No	No
Part 3 (Planning) Chapter 1 (Planning Data) Clauses 78 to 84	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Part 3 (Planning) Chapter 2 (Development Plans etc) Clauses 85 to 94	Yes	No	No	No	No	No	No
Part 3 (Planning) Chapter 3 (Heritage)							

Clause 95 to 98	Yes	No	No	No	No	No	No
Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) Clause 99 to clause 106	Yes	No	No	No	No	No	No
Part 3 (Planning) Chapter 5 (Enforcement of Planning Controls) Clause 107 to 113	Yes	No	No	No	No	No	No
Part 3 (Planning) Chapter 6 (Other Provision)							
Clause 114	Yes	No	No	No	No	No	No
Clause 115	Yes	No	No	No	No	No	No
Clause 116	Yes	No	No	No	No	No	No
Clause 117	Yes	No	No	No	No	No	No
Clause 118	Yes	Yes	No	Yes	No	Yes	No
Clause 119	Yes	Yes	No	Yes	No	Yes	No
Clause 120	Yes	Yes	No	Yes	No	Yes	No
Clause 121	Yes	No	No	No	No	No	No
Clause 122	Yes	Yes	Yes	No	No	No	No
Clause 123	Yes	Yes	No	Yes	No	Yes	No
Part 4 (Infrastructure Levy) Clause 124 to 126	Yes	No	No	No	No	No	No
Part 5 (Community Land Auctions) Clause 127 to 137	Yes	No	No	No	No	No	No

Part 6 (Environmental Outcomes Reports) Clause 138 to clause 152	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Part 7 (Nutrients Pollution Standards) Clause 153 to 155	Yes	No	No	No	No	No	No
Part 8 (Development Corporations) Clauses 156 to 164	Yes	No	No	No	No	No	No
Part 9 (Compulsory Purchases) Clauses 165 to 175	Yes	Yes	No	No	No	No	No
Part 10 (Letting by local authorities of vacant high street premises) Clause 176 to clause 203	Yes	No	No	No	No	No	No
Part 11 (Information about interests and dealings in land) (Clause 204 to 209)	Yes	Yes	No	No	No	No	No
Part 12 (Miscellaneous) Clause 210 Clause 211 Clause 212 Clause 213 Clause 214	Yes Yes Yes Yes Yes	No No No Yes Yes	No No No Yes No	No No No Yes Yes	No No No Yes No	No No No Yes Yes	No No No No No
Part 13 (General) Clause 215 to 223	Yes	Yes	No	Yes	No	Yes	No

Schedule 1	Yes	No	No	No	No	No	No
Schedule 2	Yes	No	No	No	No	No	No
Schedule 3	Yes	No	No	No	No	No	No
Schedule 4	Yes	No	No	No	No	No	No
Schedule 5	Yes	No	No	No	No	No	No
Schedule 6	Yes	No	No	No	No	No	No
Schedule 7	Yes	No	No	No	No	No	No
Schedule 8	Yes	No	No	No	No	No	No
Schedule 9	Yes	No	No	No	No	No	No
Schedule 10	Yes	No	No	No	No	No	No
Schedule 11	Yes	No	No	No	No	No	No
Schedule 12	Yes	No	No	No	No	No	No
Schedule 13	Yes	No	No	No	No	No	No
Schedule 14	Yes	No	No	No	No	No	No
Schedule 15	Yes	Yes	No	No	No	No	No
Schedule 16	Yes	No	No	No	No	No	No
Schedule 17	Yes	No	No	No	No	No	No
Schedule 18	Yes	No	No	No	No	No	No

Minor and Consequential Effects

1938 The following provisions that apply in England have effect outside England, all of which are, in the view of the UK Government, minor or consequential:

- Part 3 (Planning) Chapter 2 (Development plans) (clause 85-87) and (Local Plans) (clause 90) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.
- Part 3 (Planning) Chapter 3 (Heritage) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.
- Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) Clause 97 (Crown Development) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

- Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) Clause 100 (Completion Notices) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.
- Part 3 (Planning) Chapter 5 (Enforcement of Planning Controls) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.
- Part 4 (Infrastructure Levy) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.
- Part 8 (Development Corporations) applies to England and Wales, but solely to preserve the legal positions for Wales and has no practical effect.

Subject matter and legislative competence of devolved legislatures

1939 Part 1 of the Bill (Levelling Up Missions) extends and applies UK-wide and imposes duties on a Minister of the Crown to make statements of levelling up missions which focus on reducing geographical inequalities across the UK and then to report on progress of those missions and to review the statements. There are duties on the Minister to lay statements and reports before Parliament and to publish them. Since these duties apply to inequalities across the UK as a whole this does not relate to the legislative competence of the Northern Ireland Assembly, the Scottish Parliament or Senedd Cymru.

1940 Part 2 (Local Democracy and Devolution) makes provision for new and existing local government structures in England, local authorities' capital finance and council tax, which relate to devolved matters. In particular, local government (including local government finance) is a devolved matter – it's not specified as reserved in Schedule 5 to the Scotland Act 1998 or Schedule 7A to the Government of Wales Act 2006, and is neither reserved under Schedule 3 to the Northern Ireland Act 1998, save for the division of local government districts into areas and the determination of the names of those areas and the number of councillors at paragraph 41A, or excepted under Schedule 2 to that Act. Local taxes to fund local authority expenditure are an exception to the fiscal, economic and monetary policy reservation by virtue of Schedule 7A, Part 2, Section A1 of the Government of Wales Act 2006 and Schedule 5, Part 2, Section A1 of the Scotland Act 1998. Local government finance is not an excepted or reserved matter in Schedule 2 or 3 of the Northern Ireland Act 1998.

1941 Part 3 (Planning) mainly relates to devolved matters. In particular, town and country planning matters are within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru, being matters which are: (i) not excepted or reserved matters within Schedules 2 or 3 of the Northern Ireland Act 1998, (ii) not reserved matters within Schedule 5 of the Scotland Act 1998, (iii) not reserved matters within Schedule 7A to the Government of Wales Act 2006, and (iv) not otherwise outside the legislative competence of any of those three devolved legislatures.

1942 Part 4 (Infrastructure Levy) relates to devolved matters. Such planning matters are within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

1943 Part 5 (Community Land Auctions) relates to devolved matters. Such planning matters are within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

1944 Part 6 (Environmental Outcomes Reports) includes devolved matters within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

1945 Part 7 (Nutrient Pollution Standards) relates to water supply and sewerage, and the water industry and pollution, as well as nature conservation. Such matters are within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

1946 Part 8 (development corporations) mainly relates to devolved matters within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

1947 Part 9 (compulsory purchase) which sets out amendments to the Town and Country Planning Act 1990, to the Acquisition of Land Act 1981 in order to make general reforms and improvements to the process of making compulsory purchase orders and to the Land Compensation Act 1961. Other than the amendment to the Town and Country Planning Act 1990, which extends to England and Wales and applies to England only, the matters provided for here are not within the legislative competence of Senedd Cymru, (paragraph 3(4) of Schedule 7B to the Government of Wales Act 2006 and paragraph 185 of section M3 of Schedule 7A) except to the extent that clauses 165-175 and Schedule 15 amend the powers to make regulations under the Acquisition of Land Act 1981 and so affect the executive competence of Welsh Ministers.

1948 Part 10 (Letting by Local Authorities of vacant high street premises) relates to devolved matters within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

1949 Part 11 (Information about interests and dealings in land) relates to matters not within the legislative competence of Senedd Cymru. These matters are reserved under the Government of Wales Act 2006

1950 Part 12 (Miscellaneous) mainly relates to devolved matters, including provision enabling the Secretary of State to periodically appoint an independent person to review the governance and effectiveness of the Royal Institution of Chartered Surveyors, which is a matter regarding the regulation of surveyors. This matter is not specified as reserved in Schedule 5 to the Scotland Act 1998 or Schedule 7A to the Government of Wales Act 2006; neither is it reserved under Schedule 3 to the Northern Ireland Act 1998 or excepted under Schedule 2 to that Act.

1951 Part 12 (Miscellaneous) clause 214 (Marine Licensing) amends Part 4 of the Marine and Coastal Access Act 2009 (Marine Licensing) and relates to functions of the Secretary of State as appropriate marine licensing authority in England and the English inshore and offshore regions, the Northern Ireland offshore region and in respect of certain reserved or excepted matters and matters not within the legislative competence of the devolved legislatures.

1952 Part 13 (General) includes devolved matters within the legislative competence of the Northern Ireland Assembly, the Scottish Parliament and Senedd Cymru.

LEVELLING-UP AND REGENERATION BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Levelling-up and Regeneration Bill Bill as brought from the House of Commons on 19 December 2022 (HL Bill 84).

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