

## Levelling Up and Regeneration Bill

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

#### **A. INTRODUCTION**

This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Levelling Up and Regeneration Bill (“the Bill”). It supplements the memorandum that was submitted and published on 20 December 2022 when the Bill was introduced to the House of Lords, and the memorandum that was submitted to the DPRRC on 24 February 2023 and published on 27 February 2023. This memorandum addresses powers contained in the government amendments tabled at Committee stage on 13 March 2023.

#### **B. SUMMARY OF THE BILL**

The DPRRC is referred to the memorandum published on 20 December 2022 for the summary of the Bill. The amendments being tabled at Committee stage do not add any further Parts to the Bill. The consequential amendments on compulsory purchase add one further Schedule to the Bill, to be inserted after Schedule 15.

#### **C. DELEGATED POWERS**

The amendments tabled at Committee stage on 13 March 2023 introduce a limited number of substantive clauses to the Bill creating new, or amending existing, delegated powers. These are:

- a. powers to make provision concerning compensation paid in connection with Compulsory Purchase Orders;
- b. a power in relation to consequential amendments on compulsory purchase to amend a reference to the Historic Environment (Wales) Act in this Bill by regulations;
- c. a power to make regulations requiring the provision of certain information relating to ownership and control of land;
- d. powers concerning certain procedures in the Countryside and Rights of Way Act 2000 relating to Open Access Mapping
- e. powers to create a new building safety regulator and associated governance.

The proposed amendment enabling the creation of a new regulator for building safety contains a Henry VIII power. The power may only be exercised using the affirmative procedure and is subject to a sunset clause. The proposed amendment concerning compulsory purchase compensation also contains a limited Henry VIII power in that the power to make regulations as to the procedure etc for claiming additional compensation (where the acquiring authority does not fulfil commitments made when acquiring relevant land) allows modification and disapplication of two provisions of

primary legislation (section 29 of the Tribunals, Courts and Enforcement Act 2007 and section 4 of the Land Compensation Act 1961) in relation to claims for additional compensation. It is a power to modify or disapply only (rather than textually amend or repeal) and is narrow and technical. Where appropriate, the department is committed to carrying out consultation prior to exercise of the powers. Further details are provided in the relevant sections below, but in all cases the power and associated procedure is considered necessary and appropriate.

## D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

**Compulsory Purchase: Amendment to be inserted after Clause 175 gives confirming authorities (the Secretary of State or Welsh Ministers for compulsory purchase orders falling to be confirmed in Wales) the power to direct that amended compensation assessment provisions apply to a particular compulsory purchase order**

*Powers conferred on: the Secretary of State or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*

*Powers exercised by: Direction*

*Parliamentary Procedure: None*

### Context and Purpose

- 1) Clause(1)(c) of this amendment inserts new section 15(A) into the Acquisition of Land Act 1981 (and equivalent provisions into the New Towns Act 1981 for orders made under that Act's procedures instead) giving confirming authorities (which will be the Secretary of State or Welsh Ministers for compulsory purchase orders ("CPOs") falling to be confirmed for Wales) the power to direct that, in respect of a particular CPO they are confirming, new compensation assessment provisions are to apply instead of the provisions set out in section 14 of the Land Compensation Act 1961 which would apply otherwise. They will do so by confirming the order with the direction included in accordance with new section 15A(9)(a) of the Acquisition of Land Act, new paragraph 5A(8)(a) of Schedule 4 to the New Towns Act 1981 (as inserted by clause (3)(a)) or new paragraph 5A(8) of Schedule 5 to the New Towns Act 1981 (as inserted by clause(3)(b)).
- 2) This power is only available where the CPO is made by certain acquiring authorities exercising specific compulsory purchase powers, either under section 10 of the New Towns Act 1981 or as listed in new Schedule 2A to the Acquisition of Land Act 1981 for CPOs made using the procedures set out in that Act, as inserted by this amendment. These powers enable compulsory purchase orders to be made for the purposes of providing housing/planning (the acquiring authority must state the number of affordable housing units), education facilities or health facilities. It will also be available only where the confirming authority is satisfied it is justified in the public interest, and after it has considered any objections from affected parties.
- 3) The effect of such a direction is that when assessing the value of land for compensation purposes, it is to be assumed that no planning permission would be granted for development on the relevant land (i.e. no account would be taken of the prospect of planning permission or the certainty of planning permission being granted for appropriate alternative development either on the relevant valuation date or in the future). Account may still be taken of planning permission that has already been granted.

### Justification for delegation

- 4) This delegation enables an independent assessment of the necessity and public interest justification for any direction to be made on a case-by-case basis, pursuant to a specified procedure.
- 5) It is appropriate that a decision to make a direction of this kind is only taken after consideration of the particular purpose and nature of the public interest underpinning the CPO in question and any objections from affected parties made in response. This will involve preparation by the acquiring authority (or development corporation, for CPOs made under the New Towns Act 1981) of detailed evidence relating to its particular scheme, which the confirming authority will need to consider carefully in each case.
- 6) Confirming authorities are already empowered by sections 13-13C Acquisition of Land Act 1981 (or paragraphs 3-4 of Schedule 4 and paragraphs 3 of Schedule 5 to the New Towns Act 1981 for CPOs made under that Act) to determine whether or not to confirm a CPO made by an acquiring authority or development corporation. Extending that power to also include the power to determine whether or not to confirm a compensation direction is consistent with the scheme of delegation under the Acquisition of Land Act 1981/New Towns Act 1981. It also enables an appropriate independent compatibility assessment to be carried out, in light of the particular facts on the ground, for the purpose of compliance with the European Convention on Human Rights.

### Justification for procedure selected

- 7) The confirming authority's power to confirm a direction will not be subject to further Parliamentary scrutiny. This is consistent with its ability to confirm a CPO, under the appropriate statutory procedure in the Acquisition of Land Act 1981 or New Towns Act 1981, without further scrutiny. This is considered proportionate because any given direction will only apply to land falling within the particular CPO so would not warrant specific Parliamentary scrutiny.

**Compulsory Purchase: Amendment to be inserted after Clause 175 gives the Secretary of State or Welsh Ministers (for compulsory purchase orders falling to be confirmed in Wales) the power to make regulations defining what constitutes "affordable housing" for the purpose of directions relating to compulsory purchase compensation**

*Powers conferred on: the Secretary of State or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*  
*Powers exercised by: Regulations made by statutory instrument*  
*Parliamentary Procedure: Negative procedure*

### Context and Purpose

- 8) Clause (1)(c) of this amendment inserts new section 15A into the Acquisition of Land Act 1981 (and subsections 3(a) and (b) make equivalent provision for orders made instead under procedures set out in the New Towns 1981 by inserting new provisions into Schedules 4 and 5) in relation to directions which a confirming authority may authorise for alternative compensation assessment provisions to apply to certain types of compulsory purchase orders (“CPOs”).
- 9) These are CPOs made under existing powers relating to housing/planning, education facilities and health facilities. The measure includes a condition where housing/planning-related powers are being used, that the acquiring authority’s or development’s corporations intentions as to what will be done with the relevant land must include the provision of affordable housing units (new section 15A(5) of the Acquisition of Land Act 1981 (and new paragraphs 5A(4) of Schedule 4 and 5A(4) of Schedule 5 to the New Towns Act 1981)
- 10) New section 15A(11) of the Acquisition of Land Act (and new paragraphs 5A(10) of Schedule 4 and 5A(10) of Schedule 5 to the New Towns Act 1981) define “unit of affordable housing” for this purpose as that constructed or adapted for use as a single dwelling and to be used as either social housing within the meaning of Part 2 of the 174 Housing and Regeneration Act 2008, and or any other description of housing that regulations may specify.
- 11) This follows the definition of “affordable housing” used for infrastructure levy purposes as introduced by Schedule 11 to this Bill by insertion of new section 204A(4) into the Planning Act 2008.

#### Justification for delegation

- 12) This power is included as new forms of affordable housing may be promoted by Government without primary legislation being passed. For example, in 2021, Government introduced the concept of ‘First Homes’ – a new type of affordable housing, which does not fall within the definition of ‘social housing’ in Part 2 of the Housing and Regeneration Act 2008 – via written ministerial statement.
- 13) If in future Government promotes a new type of affordable housing without introducing primary legislation, which it would be appropriate to consider as affordable housing for the development and provision of which a compensation-related direction may be made, it will be necessary to make provision in regulations defining the new type of affordable housing as ‘affordable housing’ for these purposes.

#### Justification for procedure selected

- 14) This power enables regulations to be made for particular limited and specific circumstances i.e. relating to a condition limiting the extent to which a direction for alternative compensation provisions for particular CPOs may be sought.
- 15) We consider that the negative procedure affords an appropriate level of Parliamentary scrutiny.

**Compulsory Purchase: Amendment to be inserted after Clause 175 gives confirming authorities (the Secretary of State or Welsh Ministers for compulsory purchase orders falling to be confirmed in Wales) the power to direct the payment of additional compensation by acquiring authorities**

*Powers conferred on: Secretary of State or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*

*Powers exercised by: Direction*

*Parliamentary Procedure: None*

### Context and Purpose

- 16) Clause (1)(c) of this amendment inserts new section 15A into the Acquisition of Land Act 1981 (and subsections 3(a) and (b) make equivalent provision for orders made instead under procedures set out in the New Towns 1981 by inserting new provisions into Schedules 4 and 5) enabling confirming authorities to direct that alternative compensation provision under the Land Compensation Act 1961 may apply in respect of a particular compulsory purchase order (“CPO”), where they are satisfied that doing so is justified in the public interest. The effect of such a direction is that land interest holders may receive lower compensation payments than if no direction had been made.
- 17) The Department considers that, should the development that follows the confirmation of the CPO not be completed in accordance with statements made by the acquiring authority for the purpose of satisfying the confirming authority that an alternative compensation direction was in the public interest, then additional compensation should be made available to land interest holders who have lost out.
- 18) Clause (2)(c) therefore includes a power for confirming authorities (the Secretary of State or Welsh Ministers for CPOs falling to be confirmed in Wales) to make a direction, on application, for additional compensation by insertion of new paragraph 1(2) of Schedule 2A to the Land Compensation Act 1961.
- 19) The effect of an additional compensation direction is that land interest holders who received less compensation as a result of the original alternative compensation direction may claim an additional compensation payment from the acquiring authority based on the difference between the compensation they originally received and the compensation they would have received had the original direction not been made.
- 20) Provision for those eligible to apply for an additional compensation direction and to make a claim, when they may do so, and the procedure for making such claims, is further set out in new Schedule 2A.

### Justification for delegation

- 21) This power enables the confirming authority to consider on a scheme-by-scheme basis whether the development has been built substantially in accordance with statements made by the acquiring authority for the purpose of satisfying the confirming authority that the original direction was justified in the public interest.
- 22) It allows consideration of what has actually been built in light of the particular facts that lead to the original direction being made and, where appropriate, allows specified additional compensation to be claimed by specified parties.

#### Justification for procedure selected

- 23) The confirming authority's power to make an additional compensation direction will not be subject to further Parliamentary scrutiny. This is consistent with the confirming authority's existing ability to confirm a CPO, under the appropriate statutory procedure in the Acquisition of Land Act 1981 or New Towns Act 1981, without further scrutiny, and with the procedure proposed for the confirmation of an alternative compensation direction.
- 24) This is considered proportionate because any given direction will only apply to land interest holders whose land was subject to a CPO including an alternative compensation direction where the development has not been built out in accordance with original proposals. This would not warrant specific Parliamentary scrutiny.

**Compulsory Purchase: Amendment to be inserted after Clause 175 gives the Secretary of State (and Welsh Ministers for compulsory purchase orders falling to be confirmed in Wales) the power to provide for additional qualifying losses to be prescribed in regulations and to make provisions relating to the payment of additional compensation by acquiring authorities**

*Powers conferred on: the Secretary of State or Welsh Ministers in relation to compulsory purchase orders as fall to be made or confirmed by Welsh Ministers*  
*Powers exercised by: Regulations made by statutory instrument*  
*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

- 25) Clause (2)(c) of this amendment inserts new Schedule 2A into the Land Compensation Act 1961. Paragraph 1 enables a confirming authority to make directions for additional compensation after certain points in time where it considers its expectations as to the use of the acquired land have not been met.
- 26) The effect of an additional compensation direction is that land interest holders who received less compensation as a result of the original alternative compensation direction may claim an additional compensation payment from the acquiring authority based on the difference between the compensation they originally received and the compensation they would have received had the original direction not been made.

- 27) Paragraph 6(1) of Schedule 2A enables the relevant authority (the Secretary of State for England and Welsh Ministers for Wales) to make regulations prescribing qualifying losses which eligible persons (as defined) may claim in addition to additional compensation claimable under paragraph 1. Qualifying losses are defined as those shown to have been suffered by eligible persons as a result of receiving only the original compensation. Regulations may set limits on what constitutes a qualifying loss for these purposes.
- 28) Paragraph 7(1) gives the Secretary of State (and Welsh Ministers for CPOs falling to be confirmed in Wales) the power to make regulations as to: the procedure by which defined eligible persons may apply for such a direction or make a claim for additional compensation; actions that acquiring and confirming authorities need to take to publicise and give notice of directions made; how the additional compensation is to be paid and; the application of interest to additional compensation payments.
- 29) Subparagraph (3) enables regulations to modify or disapply section 29 of the Tribunals, Courts and Enforcement Act 2007 and to apply (with or without modifications) section 4 of the Land Compensation Act 1961. It is a power to modify or disapply only (rather than textually amend or repeal) and is narrow and technical in scope.

#### Justification for delegation

- 30) The power in paragraph 6(1) controls matters of procedural detail in contrast to the pillars of the policy which are established in the primary legislation. It enables procedural details about the making of additional compensation directions and the process of submitting and meeting additional compensation payment claims to be set out in regulations.
- 31) This delegation allows for the requirements to be updated regularly so that procedures operate optimally.
- 32) The Land Compensation Act 1961, section 4A, already gives the Secretary of State, and Welsh Ministers for compulsory acquisition of land in Wales, the power to make regulations as to the notice provisions applicable relating to compulsory purchase compensation cost offers (per section 4). Delegation of procedural matters of the kind described in paragraph 6(1) is consistent with the existing level of delegation under the Land Compensation Act 1961.

#### Justification for procedure selected

- 33) Regulations made under this delegated power will be subject to the negative procedure. The Department considers that this is commensurate with the level of Parliament scrutiny appropriate for procedural details of this kind.

**Land Transparency: Amendment to be inserted before Clause 204 for the Secretary of State to make Regulations to require provision of certain classes of information**



*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Affirmative procedure*

### Context and Purpose

- 34) The Bill is being amended to insert a new clause before existing clause 204 to provide a power for Secretary of State to make regulations requiring the provision of information that is within the scope of a permitted purpose (see below).
- 35) The permitted purposes in the new clause are: (i) the beneficial ownership purpose; (ii) the contractual control purpose; and (iii) the national security purpose (as to each see below).
- 36) The beneficial ownership purpose is set out in a new clause to be inserted before existing clause 204. Information is within the scope of the beneficial ownership purpose if appears to the Secretary of State that it would be useful for the purpose of: (a) identifying persons who are beneficial owners of land in England and Wales; or (b) understanding the relationship of those persons with the land that they beneficially own.
- 37) A person beneficially owns land where land is owned by a body corporate or partnership and the person is, in relation to that body corporate or partnership, a beneficial owner within the meaning given by regulation 5 of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“**the Money Laundering Regulations**”).
- 38) A person also beneficially owns land where the land is owned as part of: (i) a trust, foundation or similar legal arrangement; or (ii) the estate of a deceased person in the course of administration and the person is (in relation to that trust, foundation, arrangement or estate) a beneficial owner within the meaning given by regulation 6 of the Money Laundering Regulations
- 39) The contractual control purpose is set out in a new clause to be inserted before existing clause 204.
- 40) Information is within the scope of the contractual control purpose if it appears to Secretary of State that it would be useful for the purpose of understanding: “relevant contractual rights” (including the identity of the persons holding them and the circumstances in which they were created or acquired).
- 41) “Relevant contractual rights” are rights that: (a) arise under a contract (which includes a deed without consideration, such as a gift); (b) relate to the development, use or disposal of land in England and Wales; and (c) are held for the purpose of an undertaking (which includes a business, charity or similar endeavour and the exercise of functions of a public nature).

- 42) The national security purpose is set out in a new clause to be inserted before existing clause 204.
- 43) Information is within the scope of the national security purpose if it appears to the Secretary of State that:
- a) requiring its provision would be justified in the interest of national security;
  - b) that a threat to national security arises in connection with the location of the relevant land or anything situated or done on it; and
  - c) the information would be useful for
    - i) Identifying the persons who own relevant interests in land, have relevant rights concerning land or have the ability (or are in the position that may involve the ability) to control or influence (directly or indirectly) the owner of a relevant interest in land or a person with a relevant right concerning land, in the exercise of that right; or
    - ii) understanding the relationship of those persons with land.
- 44) Under the national security purpose, the requirement to provide information must be triggered by giving of a notice and the regulations may make provisions deeming notice to have been given at a certain time and in certain circumstances. Also, regulations for the national security purpose may only make provision for the retention, sharing and publication of such information in accordance with clause 207(1) where this appears to the Secretary of State to be justified in the interests of “national security”.
- 45) “Control or influence” includes control or influence by reason of interests or rights in or under a company, partnership, trust, foundation or similar legal structure or arrangement.
- 46) “Relevant interest in land” and “Relevant right concerning land” are defined in Clause 209.
- 47) The information that may (if it falls within the scope of a permitted purpose) be required includes “transactional information” about instruments, contracts or other arrangements:
- a) creating, altering, extinguishing, evidencing or transferring relevant interests in land; or
  - b) conferring, amending, assigning, terminating or otherwise modifying relevant rights concerning land.
- 48) “Transactional information” means:
- a) details of the parties to a transaction;
  - b) details of persons on whose behalf or for whose benefit the parties to a transaction are or were acting;
  - c) details of the terms of a transaction;
  - d) details of persons providing professional services in relation to a transaction;
  - e) details of the source of any money paid or other consideration given in connection with a transaction;

f) copies of documents giving or evidencing a transaction.

- 49) The proposed amendments will amend the territorial extent of Part 11 (and so the territorial extent in which the power may be exercised) so that it applies to England and Wales, Scotland and Northern Ireland.
- 50) So far as regulations extend to England and Wales, regulations can be made for the beneficial ownership purpose, the contractual control purpose and the national security purpose.
- 51) So far as regulations are to extend to Scotland or Northern Ireland, regulations can be made for the national security purpose only.
- 52) Regulations may provide for or make provision about the application of regulations to persons outside, or information held outside, the United Kingdom.
- 53) Regulations may relate to things done or arising before the coming into force of the land transparency provisions.
- 54) Where the amended power retains provisions which were detailed in the original DPM (for example provisions detailing the persons to whom such information should be provided, how it can be shared and published etc) we have not set out those provisions in this supplementary DPM although they apply equally to the updated power.

#### Justification for delegation

- 55) The beneficial ownership purpose recognises that it can be difficult and time-consuming to identify the 'beneficial owners' of land and property. The Government's intention is to ensure that all legal owners of land should be required to declare if there are any beneficial owners beyond themselves. The intention is not to require information already in the public domain to be provided multiple times, but to provide references to existing information where necessary and appropriate. This should make it easier to link land owned by corporate or other entities to those entities, to fill gaps which are not targeted by other registers, and to act as a deterrent from attempting to hide ownership of land behind complex structures. This is a technically complex area of policy and regulations are required to set out the granular details following further engagement with the sector including when such information should be provided.
- 56) The contractual control purpose is to improve the transparency of contractual arrangements to control land to meet the 2017 housing white paper commitment. It is currently expensive and time-consuming to identify land burdened by these agreements. It is also difficult to ascertain the exact contractual details. Publishing information about any contractual details could have a wide range of impacts – it is right to set out the detail about what will be retained, shared and published in subsequent regulations to allow us to explore the impact through further engagement with the sector, and to set out specific safeguards against any unintended consequences.

57) The national security purpose would provide for a power that can be used across government to require information useful for the protection of critical national infrastructure and sensitive sites. It is important to set out a clear process for its use and provide in detail what might be expected of recipients of a notice. Part 11 will provide the legislative basis for this power, but the precise operation of this power will be set out in the regulations – subject to the affirmative procedure – as a more appropriate place for these details. As with beneficial ownership, there is also a need for some flexibility in the information to be required through a notice due to the nature of this purpose, given the potential for relevant individuals to develop new practices to avoid this scrutiny.

#### Justification for the procedure

58) The Government considers that it is appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to make regulations concerning these measures.

**Open Access Mapping in England: Amendment to be inserted after Clause 214 for the Secretary of State to make Regulations to require Natural England, once it has conducted a first review of the open access maps issued under the Countryside and Rights of Way Act 2000 (CROW), to carry out subsequent reviews in respect of such matters and circumstances as may be prescribed. This is in place of a more onerous current requirement**

*Powers conferred on: the Secretary of State*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

59) Currently there is a requirement, after the first full review of the open access maps in England, for further reviews of the maps to be undertaken by Natural England every 20 years. Currently Natural England are required to review all maps even when they know that there are no errors or omissions. The amendment instead provides scope to introduce a selective continuous review regime covering only the matters and circumstances prescribed in regulations which would be made at that time. This will avoid the cost and delay arising from such subsequent reviews, while allowing key changes to the maps to be made in a more timely fashion than would otherwise be possible.

#### Justification for delegation

60) The detailed parameters for subsequent reviews will need to be developed in the light of experience of conducting the first mapping review, once that has been completed. There will be consultation with key national stakeholders following the

first review as to the matters and circumstances that should be prescribed by regulations for this purpose.

Justification for procedure selected

61) The negative procedure is appropriate as the power will only be used to tailor the procedure for reviewing these maps to make it proportionate to need.

**Open Access Mapping in England: Amendment to be inserted after Clause 214 for the Secretary of State to make Regulations to make provision with respect to the procedure to be followed on a review of the CROW open access maps, and the manner in which representations about such a review may be made**

*Powers conferred on: the Secretary of State*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

Context and Purpose

62) This amendment to CROW subsection 11(2)(k) in effect shifts existing regulation-making provisions on these topics to a different paragraph of the subsection. This is being done for entirely technical reasons connected with differences of approach to such reviews between England and Wales.

Justification for delegation

63) No new powers are being created by this amendment. The existing powers are necessary to ensure that a fair and consultative process can be undertaken in order to ensure the best review outcomes.

Justification for procedure selected

64) The negative procedure is appropriate as this is an existing power, and procedural in character.

**Objections to any additions to the CROW open country map: Amendment to be inserted after Clause 214 for the Secretary of State to make Regulations to provide a right of objection against any new mapping of open country for CROW purposes**

*Powers conferred on: the Secretary of State*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

- 65) This power would enable regulations to set out a procedure by which the owner or occupier of any land added by Natural England to the reviewed maps of open country (mountain, moor, heath or down) could object to this, and have their objection independently determined. For this purpose, regulations would draw on (and adapt as necessary) relevant procedures from Schedule 1A to the National Parks and Access to the Countryside Act 1949, which sets out the objection arrangements for the analogous Coastal Access programme.

### Justification for delegation

- 66) Objection procedures are lengthy and technical and this approach of regulations drawing on existing statutory procedures so far as practicable avoids creating a further detailed objections schedule in primary legislation. Schedule 1A cannot be directly applied to open access mapping because of substantive differences in how the two regimes must operate.

### Justification for procedure selected

- 67) The negative procedure is appropriate as the power will be used to set out an objection process based so far as practicable on an existing statutory model.

**Boundary discretion in relation to CROW open country map: Amendment to be inserted after Clause 214 for the Secretary of State to make Regulations to provide for Natural England to be able to determine that the boundary of a mapped area of open country (mountain, moor, heath or down) is to coincide with a particular physical feature**

*Powers conferred on: the Secretary of State*

*Powers exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

- 68) The boundary discretion to which this amendment relates was originally available under CROW section 4(5)(b) in relation to the original open country mapping exercise which took place some twenty years ago. Having such a discretion during the review process is important to making sense of the reviewed maps on the ground, by ensuring that they clearly relate to visible features within the landscape. The original section 4(5)(b) discretion no longer applies as the Maps have been already been produced in conclusive form, and a regime is required to review changes and deal with objections and representations needs to be reapplied by regulations if the boundary discretion is to be available under the mapping review process.

### Justification for delegation

69) This is not a newly devised power but one that was available under the original mapping process but which is not available since the original map has been produced in conclusive form, and regulations are needed to enable changes to be made on a review of the maps. The wording of the amendment closely reflects the original wording of the power.

### Justification for procedure selected

70) The negative procedure is appropriate as the power merely replicates one originally available under CROW.

## **The Building Safety Regulator: Amendment to be inserted after Clause 214 for the Secretary of State to make Regulations in relation to the replacement of the Health and Safety Executive as the Building Safety Regulator**

Powers conferred on: Secretary of State

Powers exercised by: Regulations made by statutory instrument (Henry VIII power)

Parliamentary Procedure: Affirmative procedure

### Context and Purpose

71) The Building Safety Act 2022 included measures establishing the Building Safety Regulator within the Health and Safety Executive (HSE). As the Regulator's operational maturity grows, the Government is considering the requirement to provide stronger stewardship across the wider built environment, addressing issues such as housing standards and the inter-generational impact of new buildings. This will require significant longer-term reform, and potential consolidation of building-related functions currently spread across multiple regulators and arms-length bodies. While the Building Safety Regulator already has some duties across the built environment which go beyond a core safety remit, further consolidation within HSE to bring additional non-life-safety duties within scope would be both unwieldy and increasingly misaligned with HSE's wider responsibilities.

72) This clause enables the Secretary of State to make provision by regulations for a body ("the new regulator") to replace the Health and Safety Executive as the building safety regulator under the Building Safety Act 2022.

73) Subsection (3) provides that regulations under this section may confer new functions on or modify existing functions of the new regulator, to establish, or modify the constitutional arrangements of the new regulator, to establish or modify the funding

arrangements of the new regulator, to confer a power on the Secretary of State to give directions to the new regulator, and any further consequential provision required.

74) Subsection (4) makes provision for regulations to amend, repeal or revoke any provision made under an Act.

75) Subsection (5) provides a 'sunset' requiring that no regulations may be made once 24 months have elapsed from the publication of the final report of the Grenfell Tower Inquiry. Subsection 5(b) allows that sunset to be extended once by further affirmative regulations.

76) Subsection (6) further defines 'constitutional arrangements' in relation to the new regulator to include the following matters; name and status, chair, members and staff, powers of employment, remuneration, allowances and pensions for members and staff; governing procedures and arrangements including the role of membership of committees and sub-committees, reports and accounts including audit and to include provision for and the extent of funding arrangements by a Minister of the Crown.

#### Justification for delegation

77) The intention is to amend the Building Safety Act 2022 to make sure that the powers are in place to remove the Building Safety Regulator from the Health and Safety Executive in the future. Over the next year there will be a review of the regulatory landscape to establish a road map for consolidation.

78) We consider it appropriate to act now, to ensure that we are ready to respond to the anticipated Grenfell Tower Inquiry final report expected later this year. As with the Phase 1 report there are likely to be extensive recommendations from the Inquiry panel for the department (and others) and a degree of criticism of the past building regulation regime and government's oversight of that. The department's regret on lack of building safety oversight is well documented in its Inquiry evidence, the Inquiry submissions and has been widely reported in the media over a long period of time. We understand that the direction of travel now is for the department to be able to act quickly where required to, on all aspects of building safety. Having the flexibility to act without needing further legislation to bring the regulator within the view of the DLUHC SoS and to allow the regulator to have a narrower focus than the wider remit of HSE, is prudent and more efficient in that regard.

#### Justification for procedure selected

79) It is appropriate that the regulation-making power under this section should be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this Secretary of State power to make regulations providing for the new arrangements. It is also considered appropriate to limit the powers using the 'sunset' clause at subsection 5 to ensure that they are available to respond appropriately to the Grenfell Tower Inquiry, but do not continue to provide such powers for longer than needed.



**The Building Safety Regulator: Amendment to be inserted after Clause 214 for the Secretary of State to make Regulations in relation to Transfer schemes in connection with regulations under section above (*power to replace Health and Safety Executive as building safety regulator*)**

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

Context and Purpose

80) This clause provides the Secretary of State with a power to make schemes for the transfer of property, rights or liabilities to the new regulator from the Health and Safety Executive to the new or existing body.

Justification for delegation

81) See the justification at paragraph 77 above. This power is required to ensure that the delegated powers in this clause can be exercised effectively, ensuring that all property, rights and liabilities of the building safety regulator can be transferred from the Health and Safety Executive to the new regulator. It is anticipated that these regulations would be used alongside the power at clause described above.

Justification for procedure selected

82) We consider it appropriate that the regulation-making power under this section should also be subject to the affirmative resolution procedure, to ensure that adequate Parliamentary scrutiny is afforded to the exercise of this power by the Secretary of State to make regulations providing for the transfer.