

## **PLANNING AND INFRASTRUCTURE BILL**

### **Memorandum from the Ministry of Housing, Communities and Local Government to the Delegated Powers and Regulatory Reform Committee (on moving to the House of Lords)**

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## A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Planning and Infrastructure Bill (“the Bill”). The Bill was introduced in the House of Commons on 11 March 2025 and transferred to the House of Lords after having completed its Commons stages on 10 June 2025. This memorandum identifies the provisions of the Bill that delegate legislative power. In each case this memorandum the power has been taken, the justification for taking the power and the procedure selected.
2. Two supplementary memoranda were published in relation to amendment made during Committee in the House of Commons<sup>1</sup>. This memorandum consolidates those supplementary memoranda and the original memorandum<sup>2</sup>.

## B. PURPOSE AND EFFECT OF THE BILL

3. The Bill will speed up and streamline the delivery of new homes and critical infrastructure, supporting delivery of the government’s Plan for Change milestones of building 1.5 million safe and decent homes in England and fast-tracking 150 planning decisions on major economic infrastructure projects by the end of this Parliament. It will also support delivery of the government’s Clean Power 2030 target by ensuring that key clean energy projects are built as quickly as possible. The Bill has five overarching objectives:
4. **Delivering a faster and more certain consenting process for critical infrastructure:** A failure to build enough critical infrastructure, in particular Nationally Significant Infrastructure Projects (NSIPs), is constraining economic growth and undermining our energy security. Upgrading the country’s major economic infrastructure – including our electricity networks and clean energy sources, roads,

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<sup>1</sup> [Supp DPM](#) and [Supp del powers memo](#)

<sup>2</sup> [DelPowersMemo.pdf](#)

public transport links and water supplies – is essential to delivering basic services and growing the economy. The Bill will make it quicker and easier to deliver critical infrastructure projects including through streamlining NSIP consultation requirements, ensuring National Policy Statements are kept up to date, and reducing opportunities for judicial review. These changes will support the government's Clean Power Action Plan by accelerating the planning process for energy infrastructure and ensuring local communities benefit through the creation of a bill discount scheme for people living closest to new electricity transmission infrastructure.

5. **Introducing a more strategic approach to nature recovery:** when it comes to development and the environment, we know we can do better than the status quo, which too often sees both sustainable housebuilding and nature recovery stall. Instead of environmental protections being seen as a barrier to growth, we want to unlock a win-win for the economy and for nature. The Bill will introduce a new Nature Restoration Fund that will unlock and accelerate development while going beyond simply offsetting harm to unlock the positive impact development can have in driving nature recovery.
6. **Improving certainty and decision-making in the planning system:** decisions about what to build and where should be shaped by local communities and reflect the views of local residents. However, in exercising local democratic oversight, it is vital that planning committees operate as effectively as possible. The Bill will ensure that they play their proper role in scrutinising development without obstructing it, whilst maximising the use of experienced professional planners. At the same time our reforms to planning fees will ensure that local planning authorities have the resources they need to deliver an efficient service.
7. **Unlocking land and securing public value for large scale investment:** the government is determined to enable more effective land assembly by public sector bodies, speed up site delivery, and deliver housing, infrastructure, amenity, and transport benefits in the public interest. To unlock more sites for development, the Bill

will ensure that compensation paid to landowners through the compulsory purchase order process is fair but not excessive, and that development corporations can operate effectively.

8. **Introducing effective new mechanisms for cross-boundary strategic planning:**

We cannot meet housing need without planning for growth on a larger than local scale. The Bill will implement strategic planning at a sub-regional level through the production of Spatial Development Strategies to facilitate effective cross-boundary working to address development and infrastructure needs.

### **Summary of Powers**

9. The Bill contains a number of delegated powers including new powers to make secondary legislation, amendments of existing powers to make secondary legislation, powers to issue statutory guidance and powers to issue directions. These powers will give effect to the new or amended regimes by providing secondary policy details, and in some cases give a degree of flexibility where required to keep the provisions up to date with the changing nature of technology (particularly in the energy space).

10. Powers in this Bill include:

a. In Part 1, Chapter 1 (Nationally Significant Infrastructure Projects), a direction-making power allows the Secretary of State to decide that an individual project no longer requires development consent under the Planning Act 2008, and that development is to be given consent under another legislative regime.

b. In Part 1, Chapter 2 (Electricity Infrastructure), powers for the Secretary of State or Ofgem to modify conditions of electricity licences will facilitate an efficient process for managing connections to the transmission and distribution systems. Powers to make secondary legislation will provide a secondary level of procedural detail in respect of consenting to the construction of generating

stations and overhead lines in Scotland. Where the Bill provides that Ofgem must establish a scheme to encourage the development and use of long duration electricity storage, a power to make secondary legislation will allow the definition of 'long duration electricity storage installation' to respond to changing electricity markets and technologies. Powers to make secondary legislation will also implement the scheme to provide benefits to recipients closest to new electricity transmission network infrastructure.

- c. In Part 1, Chapter 3 (Transport Infrastructure), powers to make secondary legislation will permit public authorities to charge fees for services provided in relation to schemes and orders under both the Highways Act 1980 and Transport and Works Act 1992. Powers to make Transport and Works orders are also amended to disapply various heritage regimes and provide for deemed consent under marine licences. A power for the Secretary of State to determine fees for applications for harbour orders is being replaced with a power to make provision for fees in regulations.
- d. In Part 2, Chapter 1 (Planning Decisions), powers to make secondary legislation to enable local planning authorities to set fees for planning applications, give full effect to proposals to mandate training for planning committee members and implement a national scheme of delegation for planning decisions.
- e. In Part 2, Chapter 2 (Spatial Development Strategies), powers to make secondary legislation give full effect to the provisions in this chapter requiring strategic planning authorities to produce and maintain spatial development strategies. These powers will provide a secondary level of detail on top of what the Bill already provides for. This chapter also contains a number of powers for the Secretary of State to issue directions to strategic planning authorities in order to intervene on the production and adoptions of spatial development strategies.

- f. In Part 3 (Development and Nature Recovery), powers to make secondary legislation to implement environmental delivery plans including power to provide for a nature restoration levy. This part also contains powers to designate another person to exercise the functions of Natural England in relation to environmental delivery plans.
- g. In Part 4 (Development Corporations), amendments to existing powers to designate development corporations and their sites help to strengthen confidence as to the remit and objectives of development corporations. Powers to direct transport authorities to comply with statutory duties and, in the event of a failure to comply, make secondary legislation to transfer transport functions, are a cascade of interventions to ensure that deliverability of new towns.
- h. In Part 5 (Compulsory Purchase), powers to make directions which allow hope value to be removed from the assessment of compensation are extended. This part also contains powers to appoint inspectors to act as confirming authority. This part also contains a power to amend the list of notices and order, non-compliance with which results in an exclusion from entitlement to home loss payments, an item of compensation for compulsory acquisition.

### **Henry VIII Powers**

11. The Bill contains seven Henry VIII powers:

- a. Clause 18 (consents for generating stations and overhead lines: applications) contains a power to amend new paragraph 2A of Schedule 8 to the EA 1989. The government considers that the contents of this paragraph is a secondary level of detail to the principal policy and could have been left to secondary legislation. This power is subject to the affirmative procedure.

- b. Clause 25 (long duration electricity storage) contains a power to make limited amendments to the definition of 'long duration electricity storage installation', either to amend the generating capacity or generating time thresholds. This power is subject to the negative procedure as the power is only capable of making amendments of a minor character.
- c. Clause 45 (power to make consequential amendments) gives the Secretary of State the power to make, through regulations, amendments that are consequential on clauses 34 to 44 of the Bill. This includes the power to make amendments to primary legislation. Clauses 34 to 44 make a number of amendments to the Transport and Works Act 1992 and further consequential amendments to primary legislation. This power is considered essential to maintain the proper functioning of the provisions and ensure that they work as intended. The affirmative procedure applies to regulations containing amendments to primary legislation, otherwise the negative procedure applies.
- d. Clause 52 (spatial development strategies), which inserts section 12U into the Planning and Compulsory Purchase Act 2004 provides the Secretary of State with the power to make amendments that are consequential on the provisions relating to spatial development strategies. A power is needed to avoid any legal uncertainty or legal lacunas after the Act comes into force. The power is subject to the affirmative procedure.
- e. Clause 86 (power to designate person to exercise functions under Part 3) gives the Secretary of State the power to designate another person to exercise the functions of Natural England in relation to Part 3 of the Bill. This power includes the ability to make consequential amendments to primary legislation that are consequential on the designation of a new environmental delivery body. It is sensible to take this power to ensure that such designation can work within the existing legislation. The power is subject to the affirmative procedure.



- f. Clause 89 (amendments relating to Part 3) provides that the Secretary of State may by regulations make amendments that are consequential on Part 3 of the Bill. This includes the power to make amendments to primary legislation. Part 3 of the Bill works by virtue of the fact that it allows an environmental delivery plan to disapply various requirements in legislation (both secondary and primary) where the implementation of that plan will contribute to an overall better outcome. This power to make consequential amendments is considered essential to maintain the proper functioning of the provisions and ensure that they work as intended. The power is subject to the affirmative procedure.
- g. Clause 103 (home loss payments: exclusions) contains a power to amend the list of notices and orders, non-compliance with which results in an exclusion from home loss payments. This power is subject to the negative procedure as the power is only capable of making amendments of a minor character.

## **Abbreviations**

12. This Memorandum contains the following abbreviations:

<b>Legislation</b>	
“the ALA 1981”	means Acquisition of Land Act 1981
“the EA 1989”	means the Electricity Act 1989
“the HA 1980”	means the Highways Act 1980
“the LCA 1961”	means the Land Compensation Act 1961
“the NTA 1981”	means the New Towns Act 1981
“the PA 2008”	means the Planning Act 2008
“the PCPA 2004”	means the Planning and Compulsory Purchase Act 2004
“the TCPA 1990”	means the Town and Country Planning Act 1990
“the TWA 1992”	means the Transport and Works Act 1992

<b>Other</b>	
“CPO”	means a compulsory purchase order
“LPA”	means a Local Planning Authority
“MMO”	means the Marine Management Organisation
“TWA order”	means a Transport and Works Act order (and order made under the TWA 1992)

### **C. DELEGATED POWERS**

13. The following section of the memorandum describes the powers being conferred by the Bill, explains both their purpose and why the matter is to be left to delegated legislation rather than included in the Bill, and specifies what parliamentary procedure (if any) is provided for each power. It deals with the provisions in the order in which they appear in the Bill.

#### **Part 1, Chapter 1 – Nationally Significant Infrastructure Projects**

##### **Clause 3: Power to disapply requirement for development consent – new section 35ZB of the PA 2008**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

##### **Context and Purpose**

14. Nationally Significant Infrastructure Projects (“NSIPs”) are major infrastructure developments that are granted planning consent in the form of a Development Consent Order through consenting regime established in the PA 2008. The Planning Inspectorate acts on behalf of the Secretary of State by accepting applications, appointing an Examining Authority to carry out examinations, and making a report and recommendations to the relevant Secretary of State for decisions.

15. The PA 2008 sets out what types of development are to be considered NSIPs (see section 14(1) and (3) with further provision in sections 15 to 30A).
16. Clause 3 (power to disapply requirement for development consent) introduces a power for the Secretary of State to direct that development consent is not required for development that is specified in a direction. The effect of the direction will be that responsibility for consenting the specified development can be transferred to an alternative consenting authority (e.g. the local authority in the case of the TCPA 1990 regime).
17. This power will address the constraints in the current legislation which does not provide any flexibility for the SoS to decide if development would be better consented outside of the NSIP regime, for example under the TCPA. This rigidity can delay the consenting of development that could otherwise be more appropriately and proportionately consented under other consenting regimes.
18. Examples of development that might be more appropriately and proportionately consented under other consenting regimes will depend on the specific planning issues but might include solar projects close to the threshold in s15(2)(c) where the developer has engaged with the local authority, enabling the project to be considered under the TCPA 1990 in a more proportionate timeframe. It may also include a highways project that is over the relevant limits in s.22(3) and (4) but where planning impacts are minor and there is a limited need for additional consents, which could be considered under the HA 1980.
19. The aim with this power is to achieve a fully proportionate, outcomes-based system and allow constrained resources in the NSIP system to be deployed where deemed necessary, without undermining the NSIP regime.

#### Justification for taking the power

20. While Part 3 of the PA 2008 makes provision for which projects are to be treated as NSIPs and therefore require development consent, there are existing powers that have been delegated to the Secretary of State:
  - a. Section 14(3) of the PA 2008 provides that the Secretary of State may, by order, amend the definition of NSIP to add new types of projects or vary or remove existing projects;
  - b. Section 35 of the PA 2008 provides that the Secretary of State may give a direction for certain development (which doesn't fall within the definition of an NSIP) to be treated as requiring development consent under the Act.
21. The need for a discretionary and ad hoc direction-making power to opt-out development on a case-by-case basis, rather than using the power in section 14(3) to amend the definition/description of an NSIP is crucial for maintaining flexibility and responsiveness in the planning system. By deciding each case based on its individual circumstances, there will be no change to the definition of an NSIP in Part 3 of the PA 2008.
22. The intention is not to undermine the integrity of the NSIP consenting system. This approach allows for tailored decisions that consider the unique circumstances and impacts, ensuring that the consenting of certain development may be transferred to other bodies (e.g. local planning authorities) where appropriate. For instance, where the project may not need compulsory acquisition, or is development warranting expedited or special consideration.
23. The ability to opt out of the Development Consent Order consenting process would provide a tool to address potentially unforeseen circumstances in the future. In addition, it will enable the NSIP regime to adapt to technological change (which can move faster than the ability to legislate), where changes to technology result in more projects being caught than originally intended. This flexibility will also ensure that consenting aligns with national priorities as these evolve.

24. The government considers that the power is subject to suitable safeguards. For directions where a request is needed, that request must identify the alternative consenting regime that the development would become subject to and explain why it is appropriate for that regime to apply rather than the NSIP regime. Alternative consenting regimes are provided for in other Acts of parliament and will operate in a manner that is compatible with the Aarhus Convention and the European Convention on Human Rights. Examples may include the TCPA 1990, HA 1980, TWA 1992 and the Harbours Act 1964.
25. The Secretary of State will be required to publish the direction, and for those directions where a request has been received, must give reasons for a decision to give, or not give, a direction to the person who made the request.

Justification for the procedure

26. The government considers that it is appropriate for this power to be exercised by way of a direction. The decision not to legislate for each project or development is to protect the integrity of the PA 2008 consenting system. This direction-making power will be the exception rather than the rule but will provide a tool for the SoS to enable development to be consented by alternative consenting authorities in appropriate and proportionate circumstances. Where the direction relates to an individual project, it will apply only for the lifetime of that project and will not change the consenting process more generally. This power will enable the regime to adapt to policy evolution and technological advancements on a shorter-term basis, whilst changes to legislation are being considered over the longer-term. It will enable more timely decision-making to enable developers to prepare proposals, strategies and make investment decisions.
27. The power in section 35 of the PA 2008 for the Secretary of State to give directions for development to come into the NSIP regime is subject to a similar procedure.

**Clause 3: Power for the Secretary of State to make regulations regarding the time by which a decision whether to disapply the requirement for development consent must be made**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

28. The power for the Secretary of State to disapply the requirement for development consent by direction (addressed in the entry above) is designed to enhance the flexibility and efficiency of the infrastructure consenting process. Clause 3 provides the power for the Secretary of State to make regulations to provide time limits for making decisions about whether to make these directions following a qualifying request. This is to ensure that decisions are made in a timely manner while allowing for flexibility in complex cases. The regulations may also make provision for, and in connection with, the provision of information in order to make decisions.

**Justification for taking the power**

29. The matter is left to delegated legislation to ensure that the statutory timescales for decision-making on requests can be adjusted as needed. This flexibility is crucial because if the statutory timescales are too short, this may lead departments to prioritise their other duties (given the power to make directions is discretionary) and may mean that the power is not exercised to its full potential. Delegated legislation allows for timely and effective decision-making without the need for frequent amendments to primary legislation. This approach accommodates the complexities associated with the new and untested redirection power, ensuring that decisions are made efficiently and appropriately.
30. Furthermore, the time required to make decisions on redirection requests and the volume of such requests remain uncertain, placing considerable strain on consenting teams. Redirection is a completely new measure and is likely to be utilized in various

ways. This could range from projects needing clarity about the applicable regime and being near the threshold for NSIP, to high-priority development that would typically require a Development Consent Order but may now follow a separate, less burdensome regime for approval.

31. The Government will need to carefully consider and weigh its options, ensuring transparency in its judgments. Input from various departments is essential to establish appropriate deadlines, as projects from different sectors may have varying levels of complexity, necessitating different decision-making times. Consenting departments would also need to seek agreement from alternative consenting bodies, adding another layer of complexity to the process.
32. If the timescale is too short, the Government may lack the necessary time to make well-informed decisions. Given that this is a new and untested power, it is crucial to maintain flexible timescales to effectively determine the statutory deadlines. This flexibility ensures that the Government can adapt to the evolving nature of redirection requests and make decisions that are both timely and well-considered.

#### Justification for the procedure

33. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters or process and procedure.

### **Clause 5: Amendments to section 46 of the Planning Act 2008 making provision for further information that applicants must provide to the Secretary of State and host local authorities to be prescribed by regulations**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

34. Section 46 of the Planning Act 2008, as amended this clause requires applicants to supply certain information to the Secretary of State where they propose to make an application for development consent. Such information must also be provided to the local authority for the area that the development relates to.
35. New subsections (1), (1A) and (1B) of section 46 require that the following information must be provided (found in subsection (1C)):
- a. the applicant's name and address
  - b. a statement that the applicant intends to apply for an order granting development consent,
  - c. a statement about why development consent is required for the proposed development (specifying the relevant provision of Part 3 of the Planning Act 2008),
  - d. a summary of the proposed application, specifying the location or route of the proposed development.
36. Subsections (1)(b), (1A)(b) and (1B)(b) provides the power for the Secretary of State to prescribe in regulations further information that must be provided when notifying the Secretary of State and host local authorities (or the Marine Management Organisation if applicable) of a proposal to make an application.

Justification for taking the power

37. As the changes to the Planning Act 2008 made by this Bill are implemented, applicants may volunteer other information about proposed applications when notifying the Secretary of State. Similar evidence has been seen in relation to changes in consultation practice where applicants now undertake engagement with communities and consultees ahead of statutory consultation. Where this information would be useful for the Secretary of State or local authorities to be aware of, and such information should be possible for applicants to provide, we would want the flexibility to be able to require all applicants to provide it.



#### Justification for the procedure

38. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

#### **Clause 10: amendment to section 53 of the Planning Act 2008 to include a power to prescribe matters to be contained in a notice to the owners and/or occupiers of land**

Power conferred on: *Secretary of State*

Power exercised by: *Regulations made by statutory instrument*

Parliamentary Procedure: *Negative procedure*

#### Context and Purpose

39. This clause amends section 53 of the Planning Act 2008 to remove the requirement for an applicant/ proposed applicant for development consent to obtain written authorisation from the Secretary of State to enter land for the purpose of surveying it. Section 53(4)(b), as amended by clause 10, provides that a person may not demand admission to land unless they have given at least 14 days' notice to every owner or occupier of the land.
40. This clause amends the notice provision to provide that such notice must include information prescribed by regulations.

#### Justification for taking the power

41. Section 53 of the Planning Act 2008 contains the requirement for notice to be given of an intention to enter land, and the power to make regulations relates only to the information that this notice should contain. These are procedural matters and secondary level of detail that the government considers are appropriate for secondary legislation.

42. The intention is to use this power to require notices to be more prescriptive about how the applicant intends to exercise its powers for entry and the rationale for needing to do so. For example, the requirements are likely to include the need for notices to contain details of the surveys that they plan to carry out and why these are necessary. It is also possible that once the changes to section 53 come into force and the powers have been used in practice, the government may wish to add further requirements in respect of what these notices contain. This power enables this to happen through regulations rather than primary legislation, given that such changes may be required more often than Parliament can be expected to legislate for by way of primary legislation.

#### Justification for the procedure

43. The government considers that the negative procedure would give Parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

### **Part 1, Chapter 2 – Electricity Infrastructure: Connections to the electricity transmission and distribution systems**

#### **Clause 13: Power for a relevant authority to modify conditions of electricity licences**

*Power conferred on:* Secretary of State and Gas and Electrical Markets Authority (Ofgem)

*Power exercised by:* Code and licence modification document

*Parliamentary Procedure:* None

#### Context and Purpose

44. Under the current framework, modifying electricity licence conditions, codes and associated agreements is time consuming, with modifications taking anywhere from months to years. The common governance route begins with the modification being raised by the signatories of that code/agreement, before it is refined in working group consultations. NESO then submits code modification proposals to Ofgem (which

might include several options). Ofgem will then decide on the proposal before the change is implemented. Ofgem can only approve or reject a modification proposal, it cannot amend it.

- 45. Clause 13 (connections to the electricity network: modification of licences etc.) aims to streamline this process by granting the Secretary of State and Ofgem the power to modify electricity licences and associated documents or agreements, in order to facilitate an efficient process for managing connections to the transmission system or the distribution system. Clause 13 also provides that the Secretary of State has the discretion to direct Ofgem to use this power.
- 46. This is a time-limited power and will only be available for 3 years after the provisions come into force.
- 47. The relevant authority may exercise this power only for the purpose of improving the process for managing connections to the transmission or distribution system and pursuant to their duties under s.3A of the Electricity Act 1989. The scope for making modifications, and the procedural requirements relating to modifications such as requirements for publicity, consultation and transparency about how representations have been taken into account are set out in clauses 14 (scope of modification power) and 15 (procedure relating to modifications).

#### Justification for taking the power

- 48. The government considers that it is appropriate to confer this power on the Secretary of State and Ofgem to support proposed reforms to the connections process and allow changes to codes or licences to be made in a manner that improves the process for managing connections to the distribution system. The codes and licences governing the electricity market are expected to undergo future development alongside the reform of code governance and it is not possible to determine the changes that would be required to support these reforms. The complexity and

technical nature of potential modifications would also be at a level of detail that would not be appropriate for primary or secondary legislation.

49. The power is narrowly focused on facilitating an efficient process for managing connections to the transmission system or the distribution system and is limited to 3 years to ensure it is used for its intended purpose.
50. Granting the power to the Secretary of State and Ofgem ensures that practical modifications can be made as efficiently as possible. Ofgem provide specific knowledge related to codes and licences, whereas the Secretary of State can ensure the modifications align with broader energy policy.
51. There is precedent for this type of power in section 169 of the Energy Act 2023 which permits a relevant authority to modify electricity licences in preparation for, or as a consequence of, the designation of a person as the independent system operator and planner (being NESO). That power was similarly subject to a 3-year time limit.

#### Justification for the procedure

52. Before making a modification, the Secretary of State or Ofgem ('the relevant authority') must publish a notice about the proposed modification and consult the holder of the licence and other interested persons and bodies. This will help to ensure that those with an interest are engaged on potential modifications. If the relevant authority then decides to make the modification, it must publish a notice about the decision. The government considers that this is a sufficient level of scrutiny for this power.

#### **Clause 16: Power to direct modifications to connections agreement**

*Power conferred on:* Secretary of State or Gas and Electrical Markets Authority (Ofgem)

*Power exercised by:* Direction

*Parliamentary Procedure:* None

### Context and Purpose

53. To give effect to the code and licence changes introduced by way of the TM04+ reforms or clause 9, connection agreements entered into by the NESO and electricity distributors may need to be amended in order to improve the process for managing connections. The agreements which may require modification are:
- a. at a transmission level (where contracts are held between NESO and connecting parties) those documents entered in accordance with the code's terms;
  - b. at a distribution level (where agreements are held between DNOs and connecting parties) the resulting bilateral agreements.
54. The power in clause 16 (directions to modify connection agreements) allows the Secretary of State or GEMA (the relevant authority) to direct NESO and the electricity distributors to modify such agreements.
55. The power in clause 16 can be used at any time within 3 years of Royal Assent, without prior exercise of the power conferred by clause 13. The exercise of the power is limited to three years after the section comes into force.. The power is restricted to the purpose of improving the process for managing connections to the transmission system or the distribution system.

### Justification for taking the power

56. The government considers that it is appropriate to confer this power on the Secretary of State and Ofgem to support proposed reforms to the connections process and allow changes to connection agreements to be made in order to give effect to changes to codes or licences made under clause 13.
57. This power is intended to ensure that the power to amend codes and licences has effect on the existing connections queue by enabling the modification of connections agreements where necessary. Modifications made to connections agreements include those which make a person a party to an agreement or discharge a party from

their obligations under an agreement. Given the size of the existing queue, ensuring that agreements already entered into may be varied is necessary to achieve the government's objective of improving the management of the connections queue.

58. It is also considered necessary to have a mechanism to direct the modification of connections agreements in the event that connection reforms are realised wholly or mainly through the usual processes for modifying codes and licences without the use of the power in clause 13. In this situation, whilst clause 13 will not be necessary to provide the modifications, there is nevertheless a necessity to ensure the modifications made are reflected in the relevant contracts. The clause 16 power, if needed, can be used in a broader range of circumstances, so as to ensure the timely delivery of an efficient and strategically aligned connections process.
59. The power is narrowly focused on improving the process for managing connections to the transmission system or the distribution system and is limited to 3 years to ensure it is used for its intended purpose.
60. Granting the power to the Secretary of State and to Ofgem ensures that the use of the power can be made as efficiently as possible. Ofgem provide specific knowledge related to codes and licences, whereas the Secretary of State can ensure directions align with broader energy policy.

#### Justification for the procedure

61. Before giving a direction under clause 16, the Secretary of State or Ofgem must publish a notice about the proposed direction and consult the holder of the licence and such other persons as are considered appropriate other interested persons and bodies. In addition, the power can only be exercised for the purpose of improving the process for managing connections to the transmission system or the distribution system. On this basis, the government considers that there are sufficient safeguards on the use of this power, which include a three year time limit on the exercise of the power.

## **Clause 17 : Designation of strategic plans**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative Procedure*

### **Context and Purpose**

62. Clause 17 (managing connections to the network: strategic plans etc.) inserts new section 165A into the Energy Act 2023 that requires the Independent System Operator and Planner (ISOP also referred to as the National Energy System Operator (NESO)) to have regard to designated strategic plans. This clause also allows plans to be designated for the purposes of sections 16 and 17 of the EA 1989, which require electricity distributors to have regard to such plans.
63. Requiring NESO and network companies to prioritise connections for projects that are in accordance with government strategic plans will ensure better alignment with long term policy objectives such as the transition to clean power by 2030 and the Secretary of State's legal duty to achieve the Net Zero target by 2050. In the first instance, it is the government's intention to use this power to designate the Clean Power 2030 Action Plan (published in 2024) and the Strategic Spatial Energy Plan (to be published in 2026).
64. This clause establishes a clear duty to have regard to the plans and documents while also allowing for flexibility where departure from the plans is considered necessary by NESO or electricity distributors. In the developing energy sector this flexibility facilitates the incorporation of technological advancements and locational considerations to achieve strategic plans.

### **Justification for taking the power**

65. The use of delegated powers to designate plans is considered appropriate in circumstances where the purpose of the duty to have regard to designated plans

would be defeated if designations could only be achieved through further primary legislation. Given the extent of connections reform and the length of timelines for decarbonising the grid and electrifying sectors, future energy strategies will likely be required. This measure provides a mechanism to accommodate the needs of a rapidly evolving energy sector.

66. There is a precedent for powers to be taken regarding the designation of matters that NESO must have regard to. For example, existing section 165 of the Energy Act 2023 requires NESO to have regard to the strategy and policy statement designated under section 131(1) of that Act.

#### Justification for the procedure

67. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

### **Part 1, Chapter 2 – Electricity Infrastructure: Consents for electricity infrastructure in Scotland**

#### **Clause 18(2): power to make provision about applications made to the Scottish Ministers for consent - new paragraph 1A of Schedule 8 to the EA 1989**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure for instruments made by the Secretary of State (see section 106(2) EA 1989) and by Scottish Ministers (see section 106(3) EA 1989)*

#### Context and Purpose

68. Under the EA 1989, the consent of Scottish Ministers is needed for the construction, extension and operation of generating stations (section 36) and the installation of



overhead lines (section 37) in Scotland. Paragraph 1 of Schedule 8 to that Act provides that these consents are to be sought by way of an application in writing.

69. Clause 18(2) (consents for generating stations and overhead lines: applications) inserts new paragraph 1A into Schedule 8 to provide that regulations may make provision about steps a person must take before making an application (“pre-application requirements”), the information that must be included in an application (“information requirements”), an acceptance stage during which Scottish Ministers assess compliance with relevant requirement, fees relating to applications<sup>3</sup> and pre-application services, and requests by Scottish Ministers for additional information.
70. The government’s intention with this power is to make the consenting process more efficient. Having a consistent set of pre-application requirements that need to be undertaken will ensure that applications are of a higher quality when they are submitted, which will make the consenting process quicker. Engaging in meaningful pre-application consultation with communities, landowners, local planning authorities and advisory bodies, enables collection of critical project delivery information such as appropriate location, design and technology specifications. Significant changes to projects are frequently made at pre-application stage due to local feedback. If this information is not gathered and responded to at an early stage, this can result in withdrawals of applications or lengthy delays in processing applications.
71. Information requirements for the applications themselves will also improve the quality of applications. These requirements could include (this list is for illustration and is not exhaustive):
  - a. detailed plans showing the location of all infrastructure;
  - b. a statement setting out pre-application engagement with interested parties and how their input has been reflected in the application;
  - c. a statement on the alternative approaches considered;

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<sup>3</sup> This is not a new power and replicates an existing power that is conferred by paragraph 1(3) of Schedule 8 to the EA 1989.

- d. a statement of benefits and needs;
  - e. a statement of all components of the proposal requiring consent.
72. The EA 1989 sets only minimal information requirements for applications. As a result, a significant number of applications for consent are submitted with substandard and inadequate information. This hampers the efficiency of the consenting system as significant time and resource is used to gather necessary information from applicants. Prescribing information requirements will address this issue and speed up the efficiency of the consenting process.
73. Even with future regulations setting out minimum information requirements for applications, there may be situations where additional information is necessary to assist Scottish Ministers when making their decision on acceptance. Similarly, it is possible that matters raised after the application is submitted, for example by statutory consultees, may require additional information to be provided to the Scottish Ministers by the applicant. Regulations in relation to these requests will ensure that this additional information is provided as efficiently as possible.

#### Justification for taking the power

74. The process for applying for consents under sections 36 and 37 of the EA 1989 is well-established and this power does not change the fundamental principles set out in primary legislation. The power concerns matters of process and procedure, both in respect of steps to be taken before an application can be made and in relation to the application itself. This is secondary policy detail to give effect to the changes made by the Act, which the government considers is more appropriate for secondary legislation.
75. In respect of pre-application requirements, the primary legislation sets out steps that may be the subject of regulations; these include notifying prescribed persons of the proposed application, publicising the proposed application and carrying out a consultation.

76. Pre-application requirements and other procedural matters relating to applications may need to be changed in the future at a pace which would be hindered if primary legislation were needed to enact changes. Changes may be needed to ensure that the pre-application and other application procedures are running effectively in practice and to adapt to changes in the regulatory environment which are likely to occur more rapidly than is feasible to change through primary legislation.
77. The power can also make provision in respect of fees that are to be paid to the Scottish Minister in relation to pre-application functions. The government considers that it is appropriate that applicants are charged fees to pay for resourcing these functions. The consent of parliament is sought in relation to those principles, but the detail of how those fees are calculated is rightly left to secondary legislation. The Scottish government will need to calculate what resource is required for these functions and this will change over time as costs change. There is precedent in the EA 1989 for similar fees to be set in secondary legislation (see section 36C(2)(b) EA 1989 which creates a power for regulations to make provision about fees for variations of section 36 consents).
78. The government considers that it would not be possible to use this power to set fees above a cost-recovery level without express power to do so.
79. The power to make regulations is delegated to both the Secretary of State and to Scottish Ministers as, although the EA 1989 concerns reserved matters, Scottish Ministers have authority to decide applications under section 36 and 37.

#### Justification for the procedure

80. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters or process and procedure.

**Clause 18(4): power to make provision amending or setting out further detail about the procedure following objections from a relevant planning authority – new paragraph 2A(12) of Schedule 8 to the EA 1989**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Affirmative procedure for instruments made by the Secretary of State (see paragraph 2A(13) of Schedule 8 to the EA 1989) and by Scottish Ministers (see paragraph 2A(14) of Schedule 8 to the EA 1989)*

**Context and Purpose**

81. Where an application for consent under sections 36 or 37 is made, notice must be served on the relevant planning authority. Where that authority objects to the application, paragraph 2 of Schedule 8 to the EA 1989 currently requires the Secretary of State to cause a public inquiry to be held.
82. Clause 18(3) (consents for generating stations and overhead lines: applications) makes amendments to paragraph 2 to remove the requirement for a public inquiry to be held where the relevant planning authority objects to an application made to Scottish Ministers. Instead, these amendments provide that a ‘reporter’ must be appointed to decide on and carry out a procedure for examining the objection. Scottish Ministers can only then make a determination on the application having considered the objection and the reporter’s final report.
83. Clause 18(4) also inserts new paragraph 2A that sets out the procedure to be followed by the reporter once they are appointed. The reporter will have to decide on an appropriate examination procedure for the application in question and there is an exhaustive list of the types of examination procedure that can be followed.
84. New paragraph 2A makes provision for the publication of the proposed examination procedure, and the notification of the same to interested parties (defined in the legislation) as well as requiring reporters to invite representations and consider

representations made before confirming the final procedure. It also makes provision as to how the final procedure is to be published and that, after the procedure has concluded, the reporter must prepare and send a report setting out recommendations to the Scottish Ministers.

85. Regulations may make provision amending or setting out further detail about the procedure set out in new paragraph 2A of Schedule 8 to the EA 1989.

#### Justification for taking the power

86. The power concerns matters of process and procedure, in respect of how a reporter will make decisions about an appropriate examination procedure to consider objections from relevant planning authorities. This is secondary policy detail to give effect to the changes made by the Act, which the government considers is appropriate to make it amenable to amendments by secondary legislation.
87. The power to amend provisions of primary legislation is limited to new paragraph 2A of Schedule 8 to the EA 1989. In the government's view, the contents of this paragraph are a secondary level of detail to the principal policy and so could have been left to secondary legislation. They have been included in the primary legislation in order that the provisions can come into force two months after Royal Assent and are not delayed by the need to make secondary legislation and allow time for it to come into force.

#### Justification for the procedure

88. The general rule is that Henry VIII powers should be subject to the affirmative procedure and the government considers that to be appropriate in this case.

#### **Clause 18(5): power to specify time limits – new paragraph 7B of Schedule 8 to the EA 1989**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure for instruments made by the Secretary of State (see section 106(2) EA 1989) and by Scottish Ministers (see section 106(3) EA 1989)*

### Context and Purpose

89. This power is intended to enable the reformed EA 1989 process for section 36 and section 37 applications in Scotland to be more efficient and predictable. While the Scottish government has oversight of the consenting process, its powers to manage the pace of the process are incomplete and inconsistent. The power will enable time limits to be set for key stages of the process, with the capacity to set out what the consequences of any such limit not being met will be.
90. Regulations can be made to specify the time limit within which certain steps in the consenting process must be taken. These include time limits on:
- a. a person to comply with the requirements of regulations made under paragraph 1A of Schedule 8 to the EA 1989,
  - b. a person to respond to a pre-application consultation,
  - c. a person who is notified of an application in accordance with an enactment to provide their opinion or advice on the application,
  - d. a relevant planning authority to object to an application under paragraph 2(2A) of Schedule 8,
  - e. a reporter to take any steps required under paragraph 2A of Schedule 8,
  - f. the Scottish Minister to decide an application.
91. These regulations may set out the consequence if these time limits are missed.

### Justification for taking the power

92. The power concerns a discrete matter and is tightly constrained to specifying a time limit on actions that may or must be taken in relation to an application to Scottish Ministers under section 36 or 37 of the EA 1989. This is secondary policy detail to

give effect to the changes made by the Act, which the government consider is appropriate to make it amenable to amendment by secondary legislation.

#### Justification for the procedure

93. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations due to the discrete issue covered by these regulations.

#### **Clause 19: power to make provision about applications for variations of consent for overhead lines - new section 37A EA 1989**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure for instruments made by the Secretary of State (see section 106(2) EA 1989) and by Scottish Ministers (see section 106(3) EA 1989)*

#### Context and Purpose

94. A variation is a change to a consent that may be requested after consent is granted. Variations are a common occurrence in consenting for large-scale infrastructure projects, as they are long-term projects during which conditions and technology often change.
95. Under the EA 1989, Scottish Ministers have powers to vary consents given under both section 36 and section 37. Under section 36C(2), regulations can prescribe a process for the person who benefits from the consent to apply for a variation of their section 36 consent, but there is no prescribed procedure for the variation of section 37 consents. This reflects the era in which the legislation was written, when large-scale network projects necessitating variations were much less common.
96. In 2023, the duration for consenting network projects in Scotland was an average of 28 months for projects where an EIA was required. Since the Scottish government

does not have a prescribed statutory procedure to process applications for the variation of existing section 37 consents, applicants needing changes face a choice between starting a new application process, which substantially lengthens their project timeframe, or continuing with less-than-ideal designs that affect their delivery capability.

97. Such restrictions hinder the Scottish government's capacity to maintain an effective consenting system, as resources must be diverted to re-processing applications instead of being efficiently managed through variation processes.
98. Clause 19 (variation of consents etc.) inserts new section 37A into the EA 1989 which makes provision for a person who has the benefit of a section 37 consent to make an application to the Scottish Ministers for this consent to be varied. Variations can be made by Scottish Ministers where the proposed variation appears to them to be appropriate, having regard to the reasons for seeking the variation, the variations proposed, and any objections.
99. Regulations may make provision about:
  - a. The making and withdrawal of applications;
  - b. Fees;
  - c. Publicity and consultation requirements;
  - d. Rights to make representations;
  - e. Public inquiries; and
  - f. Consideration of applications.
100. Regulations can also provide for any statutory provision that applies to the grant of a section 37 consent to apply with modifications to the variation of a consent.

#### Justification for taking the power

101. The power concerns matters of process and procedure, in respect of how persons who benefit from a section 37 consent can apply for a variation of that consent. This



is secondary policy detail to give effect to the changes made by the Act, which the government considers is more appropriate for secondary legislation.

102. These powers mirror those available in respect of section 36 consents as set out in section 36C of the EA 1989. The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013 were made under this power and it is anticipated that regulations made under this new power will be similar to those provisions.

#### Justification for the procedure

103. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

#### **Clause 19: power to make provision about the variation of consents – new section 37B(4) EA 1989**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure for instruments made by the Secretary of State (see section 106(2) EA 1989) and by Scottish Ministers (see section 106(3) EA 1989)*

#### Context and Purpose

104. Clause 19 (variation of consents etc.) will insert new section 37B into the EA 1989 to make provision for Scottish Ministers to vary a section 36 or 37 consent where consider they ought to act because of a change in circumstances relating to the environment, or because of technological changes. The agreement of the consent holder is required before a variation can be made.

105. There is a power to make regulations about the variation of consents under new section 37B, including provision about: the procedure for getting agreement, publicity, notification and consultation requirements and rights to make representations.

Justification for taking the power

106. The circumstances in which Scottish Ministers can vary a section 36 or 37 consent is set out in the primary legislation. The power concerns matters of process and procedure, in respect of how such variations can take place. This is secondary policy detail to give effect to the changes made by the Act, which the government considers is more appropriate for secondary legislation.

Justification for the procedure

107. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

**Clause 19: power to make provision about the process for the correction of errors in decision documents – new section 37C(4) EA 1989**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure for instruments made by the Secretary of State (see section 106(2) EA 1989) and by Scottish Ministers (see section 106(3) EA 1989)*

Context and Purpose

108. Clause 19 (variation of consents etc.) will insert new section 37C into the EA 1989 to make provision for Scottish Ministers to be able to correct errors in decision documents recording consents or variations of consents. A ‘correctable error’ is defined in primary legislation as an error that is in a part of the document which records the decision but is not part of the statement of reasons for the decision.

109. Regulations can make provision about the process for the correction of errors under new section 37C, including making written requests for corrections, notification requirements and the right to make representations.

Justification for taking the power

110. The circumstances in which Scottish Ministers can correct errors is set out in the primary legislation. The power concerns matters of process and procedure, in respect of how such variations can take place. This is secondary policy detail to give effect to the changes made by the Bill, which the government considers is more appropriate for secondary legislation.

Justification for the procedure

111. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

**Clause 21: power to make provision about fees in relation to applications for necessary wayleaves – new paragraph 6A of Schedule 4 to the EA 1989**

*Power conferred on: Scottish Ministers*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure (see section 106(3) EA 1989)*

Context and Purpose

112. Necessary wayleaves are statutory rights that allow electricity license holders to install and access their electricity lines and associated infrastructure on land owned by another.
113. In England and Wales, the Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013 make provision for fees to be charged for processing applications for necessary wayleaves. These fees fund the resourcing required to process these applications in an efficient manner.

114. The Scottish government does not currently have the power to charge such fees and are expecting to experience an increase in such applications in the next few years. In recent years the Scottish government has received around 40 applications for necessary wayleaves each year. However, Transmission Operators advise that over 1000 such applications could be made in 2025 alone. Such an increase in application numbers is likely to have an impact on financial and staffing pressures, which would create additional burdens on already constrained services.
115. Clause 21 (applications for necessary wayleaves: fees) will provide the power for regulations to make provision about the fees to be paid to Scottish Ministers in relation to applications to grant necessary wayleaves.

Justification for taking the power

116. This power puts Scotland on par with England and Wales where powers already exist to charge fees in respect of these types of applications – see section 188 of the Energy Act 2004. It is also common for fees to be charged for the processing of applications for consents, and for the detail of these fees (the level, etc.) to be set out in secondary legislation.
117. The power concerns a discrete matter and is tightly constrained. This is secondary policy detail, which the government considers to be appropriate for amendment using secondary legislation.

Justification for the procedure

118. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations due to the discrete issue covered by these regulations.

**Clause 24: Power to amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017**

*Power conferred on: Secretary of State and Scottish Ministers concurrently*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure (see section 106(3) EA 1989)*

### Context and Purpose

119. As part of the consenting process for electricity infrastructure in Scotland under sections 36, 36C and 37 EA 1989, Scottish Ministers are required by the Electricity Works ((Environmental Impact Assessment) (Scotland) Regulations 2017 (the “EIA Regulations”) to assess the likely significant environmental effects arising from a proposed EIA development. Before the UK left the European Union, Scottish Ministers and UK government ministers had concurrent powers under the European Communities Act 1972 (the “ECA”) to implement relevant EU directives by making regulations for electricity works EIAs. However, although the EIA Regulations remained in force after the ECA was repealed, the result is that neither government has powers to amend them.
120. The policy objective is to grant Scottish Ministers and the Secretary of State (concurrently) a narrow regulation-making power that enables them to amend the existing EIA Regulations in so far as such amendments would work towards enabling the achievement of the broader objective of the other reforms being taken forward. This will allow the electricity works EIA process to be adjusted to work in tandem with the proposed reforms to the consenting process. The changes proposed include those that are directly consequential to the reforms to Scottish consenting proposed in this bill, as well as those that are not directly consequential but are key to achieving the broader objective of speeding up electricity infrastructure consenting in Scotland.

### Justification for taking the power

121. This power will enable the UK government and the Scottish government to make technical and procedural changes to the electricity works EIA process in Scotland, which are appropriate to address in secondary legislation. This is not a new power as the electricity works EIA process in Scotland is already set out in secondary

legislation which had previously been made under powers in the ECA. The power sought will therefore fill the gap left by the repeal of the ECA and will allow the electricity works EIA process to be adjusted to align with wider reforms on Scottish consenting.

122. The power has also been constrained so that it may only be exercised to amend existing EIA Regulations for the purposes specified in the clause, as well as for consequential amendments. This will ensure that it is only used in so far as it is necessary to amend procedural requirements for the assessment of EIA developments.

123. The power concerns specific amendments of a procedural nature and is tightly constrained. This is secondary policy detail, which the government considers is appropriate to be able to amend using secondary legislation.

#### Justification for the procedure

124. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations due to the limited and procedural nature of the issues covered by these regulations.

## **Part 1, Chapter 2 – Electricity Infrastructure: Long Duration Electricity Storage**

### **Clause 25: Establishing the cap and floor scheme for Long Duration Electricity Storage (“LDES”)**

*Power conferred on: Gas and Electricity Markets Authority (GEMA)*

*Power exercised by: modifications to standard supply licence conditions and NESO licence*

*Parliamentary Procedure: None*

#### Context and Purpose

125. Clause 25(1) requires the Gas and Electricity Markets Authority (GEMA) to establish and operate a scheme for the purposes of encouraging the development and use of long duration electricity storage. The scheme, described in subsections (2) to (6), will provide for cap and floor payments. The purpose of a cap and floor scheme (“LDES scheme”) is to unlock investment from private investors, providing them with a guaranteed minimum gross margin (the floor) to provide debt repayment security and a regulated limit of maximum gross margin (the cap) to enable consumers to share in high returns in compensation for providing debt security.
126. The clause must be read together with subsections (2) to (8) which specify the eligibility requirements and how the ‘cap’ and ‘floor’ are set.

#### Justification for taking the power

127. The scheme does not confer a delegated power to legislate but rather a duty on Ofgem to establish the LDES scheme. Ofgem already has the power to establish the scheme by modifying standard licence conditions in electricity generation licences and its licence with the National Energy System Operator (NESO) under section 11A of the EA 1989 as well as publishing documents that accompany the licence (subsection (8)). However, this scheme might be regarded as having an equivalent effect to such a power. It is therefore included in this memorandum for completeness.
128. The Government considers that Ofgem, as the industry regulator, has the expertise and experience to establish the LDES scheme. It has already done so in relation to the cap and floor scheme for electricity interconnectors. Most of the regulation on electricity is contained in Ofgem’s licence conditions rather than in legislation. Therefore, the provision for the LDES scheme through standard licence conditions, rather than a statutory instrument, is consistent with the approach generally taken to the regulation of electricity.

#### Justification for the procedure

129. In line with existing precedent, there are no parliamentary procedures in respect of the use of powers by Ofgem. It is noted that the exercise by Ofgem of its general powers to modify electricity licences under section 11A of the EA 1989 is not subject to Parliamentary scrutiny.
130. Ofgem's powers to modify licences are subject to safeguards. Section 11A of the EA 1989 provides that before making any modifications, Ofgem must give notice of the proposed licence changes and allow at least 28 days to make representations. A decision notice will be published, and a 56-day "standstill" period will follow. This "standstill" period includes the time in which the Competition and Markets Authority may grant permission for an appeal to be raised (up to 20 working days beginning with the first working day after the day on which the decision notice is published). If there is no appeal, the licence change comes into effect 56 days after the decision notice is published.

**Clause 25: power to make regulations to amend the definition of "long duration electricity storage installation"**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

131. Clause 25(1) requires the Gas and Electricity Markets Authority (GEMA) to establish and operate a scheme for the purposes of encouraging the development and use of long duration electricity storage.
132. The Authority carries out its functions through the Office of Gas and Electricity Markets ("Ofgem") which is an independent regulator with defined powers, functions and duties. Ofgem will implement the scheme by standard licence conditions in generation licences (subsections (3) and (6)) and (4)) and its licence with the National Energy System Operator (NESO). The "cap" and the "floor" may be funded by NESO



through electricity network charges as set out in Article 18(1) of the assimilated Electricity Regulation (EU) 2019/943 (subsection (7)).

133. Subsection (9) gives a power to the Secretary of State to make regulations to amend the definition of long duration electricity storage installation thresholds, either to amend: (a) generating capacity; or (b) generating time.

#### Justification for taking the power

134. The power allows for secondary legislation to be used to make very limited amendments to primary legislation. As set out above, the power could only be exercised to make two types of changes. The government envisages this power being used to reflect changes in the electricity market and LDES technologies.
135. The government believes that this power is justified as it may be necessary to amend the definition of ‘long duration electricity storage installation’ to allow for flexibility to respond to changing electricity markets and LDES technologies.

#### Justification for the procedure

136. The government’s starting assumption is that Henry VIII powers should be subject to the affirmative procedure unless, having regard to the substance of the power, there is a good justification for a different level of scrutiny (e.g. because the power is only capable of making amendments of a minor character). The government considers the negative procedure to be appropriate in this case as only two minor changes can be made with respect to either (a) generating capacity; or (b) generating time.

### **Part 1, Chapter 2 – Electricity Infrastructure: Consumer Benefits**

#### **Clause 26: Power to make regulations for consumer benefits in connection with proximity to new transmission infrastructure**

*Power conferred on: Secretary of State*

*Power exercised by: regulations made by statutory instrument*

*Parliamentary Procedure: Affirmative procedure for instruments that make provisions within section 38A(4)(h), section 38C(1)(b) or section 38D(3), if the provision creates or amends an offence or amends the punishment of an offence. All other uses of the power will be subject to the negative procedure.*

### Context and Purpose

137. Clause 26 (benefits for homes near electricity transmission projects) inserts new sections 38A to 38D into the EA 1989 to allow the Secretary of State to establish by regulations a scheme under which eligible persons are entitled to financial benefits from electricity suppliers. The purpose of the scheme is to recognise the role communities are playing in living close to new or upgraded transmission network infrastructure. As we transition to Clean Power 2030 and Net Zero by 2050, the government believes that those asked to host energy infrastructure should feel a tangible benefit from the critical role their areas play in building a clean, secure and low-cost electricity system.
138. These measures establish the various elements of the scheme including the form which the benefit should take, that eligibility for a benefit is to be identified by reference to a property's proximity to new or upgraded transmission infrastructure and the types of infrastructure works that will give rise to a benefit. The delegated power enables the Secretary of State to set out in regulations the elements required for the scheme to function including provisions to enable the regulations to further determine the eligibility criteria for a benefit, to require the benefits be passed onto the intended benefit recipient and the enforcement of the requirements under the scheme. It is intended that materials will be published so that parliament understands the government's intentions during passage of Bill.

### Justification for taking the power

139. The government believes that it is appropriate to set out the detail of the proposed scheme in regulations, including the level of benefit, eligibility for the scheme and how the scheme should be run due to the intricate and technical detail that is required

for such a scheme to function. There is precedent for technical schemes related to the energy system to be set out in regulations, for example, the Energy Bills Support Scheme<sup>4</sup> or the Warm Homes Discount<sup>5</sup>.

140. It is considered that the detail of the types of functions of any person who is administering the scheme is appropriately set out in regulations. It is also necessary to ensure that it is possible to enable changes to how the scheme operates should it become apparent that the scheme is not operating as effectively as possible, following monitoring and evaluation of the scheme. This ability to react to monitoring and evaluation of the scheme is particularly necessary to ensure that changes can be made which advantages recipients of the benefits, but also those needed for the protection of electricity bill payers who will ultimately fund the scheme.
141. In addition to enabling the delivery of the benefit through electricity bills, it is also the government's aim to deliver the benefit to eligible recipients who do not have a direct relationship with their electricity supplier, and therefore cannot receive the discount automatically via their bills. This includes people who are residents where there is a commercial meter, who pay their energy bill to an intermediary who then pays the supplier. Each type of household has different delivery needs, for example some may be less able to apply for themselves so a pass-through mechanism may be required. Equally, for situations where a landlord on a domestic electricity contract receives the benefit, but the tenant(s) on an all-inclusive arrangement are the eligible recipients, a pass-through mechanism is required to mandate the passing on of benefit to the eligible recipient and ensure the benefit reaches the intended recipients. Different delivery routes will be required for different types of recipients to maximise uptake. Due to the complexities around making this mechanism suitable for different types of recipients, flexibility is required to make bespoke provision as needed.

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<sup>4</sup> S.I. 2022/1100

<sup>5</sup> S.I. 2022/772

142. There will need to be mechanisms in the scheme for the resolution of disputes between various stakeholders, as well as compliance & enforcement action to be taken where an obligated party has failed to meet their legal duty. Because of the granular level of detail required for such procedures, the government considers that these matters are appropriately reserved for regulations. This is in line with the approach taken by similar schemes.

#### Justification for the procedure

143. The government considers that the negative procedure is appropriate for regulations made under these powers which set out matters of administrative or technical nature. However, there are some elements related to the scheme where the government considers greater parliamentary scrutiny is required and these elements have been made subject to the draft affirmative procedure, namely where regulations impose legal obligations on persons to pass on the benefits, make provision for the imposition of monetary penalties for the purposes of enforcement of the scheme, create or amend an offence, or amend the punishment of an offence, in relation to the unauthorised disclosure of information connected with the scheme.

### **Part 1, Chapter 2 – Electricity Infrastructure: Electricity generation on forestry land**

#### **Clause 28: Use of forestry estate for renewable electricity**

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

144. Clause 28 (use of forestry estate for renewable electricity) inserts section 3A in the Forestry Act 1967 which gives powers to the appropriate forestry authority to undertake various activities across forestry land (this term is used to refer to the Public Forest Estate in England and the Welsh Government Woodland Estate in Wales) in connection with renewable electricity projects. This includes the power to

use and permit the use of forestry land for the generation, transmission, storage and supply of electricity from renewable sources.

145. Section 3A(5) restricts the exercise of the powers of the appropriate forestry authority by giving the Secretary of State (in relation to England) and Welsh Ministers (in relation to Wales) the power to create regulations requiring the authority to first obtain their consent (which may be subject to conditions). The regulations may also make provision about the process for seeking, giving or refusing consent.

Justification for taking the power

146. In the context of England, the intention is for the Secretary of State to exercise the power to make regulations to ensure that consent is required in the case of projects that are 'significant'. It is considered appropriate that the largest and most important projects are put to the Secretary of State (as landowner of the public forest estate) for approval. The Secretary of State may have differing priorities to the Forestry Commission (the appropriate forestry authority for England), or preferences for the use of the land that would not be taken into account by the planning system.
147. The intention is that the regulations would not typically apply to smaller projects unless there is a particular reason why, despite their size, they might be significant (for example, because they will take place on a protected site). It is not the government's intention for the requirement for consent to be a barrier to the accelerated and streamlined deployment of electricity-generating technologies at scales below what most people would consider to be significant.
148. It should be noted that the Secretary of State already has a wide power to direct the Forestry Commission under the Forestry Act 1967. It is expected that the making of regulations in relation to consent for significant projects will help provide certainty regarding the Secretary of State's expected degree of involvement in renewable electricity projects on the public forest estate.

149. To not have adverse impacts on the commercial viability of the Forestry Commission's offer to developers, the government intends in regulations to provide that the Secretary of State will be deemed to have consented to the activities where 60 days have passed from the giving of the notice, or 90 days where the Secretary of State considers an extension to be necessary. Depending on how this works in practice, the government may wish to shorten the length of time to increase commercial viability, or lengthen it, to give more time for ministerial decisions to be made. Having the ability to change this using secondary legislation would be advantageous.
150. The detail of which projects will be considered by the government to be significant (and will therefore require consent) will be left to regulations to define. The government considers that having the ability to amend relevant thresholds more often than primary legislation would allow is desirable as technological advancements mean that the footprint and impact of a development capable of generating a certain number of megawatts could quickly change. For example, the government has previously consulted as to whether technological advancements mean that the thresholds at which projects can be considered nationally significant by the NSIP regime should be changed.
151. It is possible that the consent procedure will eventually prove to be an unnecessary safeguard, and so the government would like to retain the option of removing it altogether (by revoking any regulations made). We understand that decision making around renewable energy sites on the public forest estate in Scotland is entirely entrusted to the Scottish forestry authority.

#### Justification for the procedure

152. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations. Furthermore, the exercise of the power to make regulations would only

serve to add a more predictable process for safeguarding the development of renewable electricity on the public forest estate.

## **Part 1, Chapter 3 – Transport Infrastructure: Amendments to the Highways Act 1980**

### **Clause 29: power to make regulations permitting public authorities to charge fees for services (new s281B(1) HA 1980)**

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative*

#### **Context and Purpose**

153. Stakeholder engagement has identified resourcing and expertise issues for Local Planning Authorities and Statutory Bodies when dealing with HA 1980 schemes and orders.
154. As a result, stakeholders in wider infrastructure consenting regimes have reported issues with statutory consultees and local authorities failing to engage effectively, resulting in delays and inconsistent, untimely, or low-quality advice.
155. Cost recovery mechanisms can help address these challenges by aligning parties' expectations about the scope, timing, and quality of input, promoting more timely, proportionate, and high-quality engagement. Furthermore, by helping to ensure that Local Planning Authorities and Statutory Bodies are sufficiently resourced through a cost recovery mechanism, the 'front-loading' of advice/input earlier in the planning process can be achieved, which has been evidenced to lead to the faster delivery of projects.
156. There is currently no statutory provision to allow statutory bodies and local authorities to recover the costs that they incur providing services during the planning process within the HA 1980.

157. Cost recovery for statutory consultees is, however, already established in the Nationally Significant Infrastructure Projects (NSIP) regime, established by Section 54A of the PA 2008, whereby a power is conferred onto the Secretary of State to make regulations related to the charging of fees for services provided during applications.
158. As such, this power similarly seeks to enable and formalise a process for specified statutory bodies and local authorities to charge on a cost recovery basis for any service that they provide at the pre-application, public inquiry and post-consent stages of applications for statutory orders under the HA 1980.

Justification for taking the power

159. The use of a delegated power is necessary to ensure flexibility to alter the public bodies that could charge for their services. If bodies were specified in primary legislation, the flexibility to quickly update the list as and when a new statutory body is created or changed name would be lost (e.g., in the past 10 years National Highways has changed name twice. If National Highways was specified as a body that could charge in primary legislation and it changed its name afterwards, it would lose that ability to charge unless the primary legislation was updated, despite offering the same services and having the same costs).
160. A delegated power also allows for flexibility of fees to take into account external factors such as inflation. If they were stipulated in primary legislation, the ability to adjust the fee would be lost. This would limit the ability of the bodies that can cost recover to charge for the full amount of costs they incur, thereby limiting the effectiveness of the measure long term. The flexibility may also allow for services to be charged for at different stages of the consenting process, if they are identified in future as being a bottleneck to the consenting process.



161. The use of a delegated power for cost recovery for statutory bodies in planning for infrastructure projects has precedent. Section 54A of the PA 2008 allows the Secretary of State to make provision for, by regulations, the charging of fees on a cost recovery basis, which replicates the intent sought by this measure for the HA 1980 consenting regime.

Justification for the procedure

162. Aligning with the procedure enabling the power in Section 54A of the PA 2008, the negative procedure is considered to provide the appropriate level of scrutiny. This is further justified given that only public bodies (i.e., the Strategic Highways Authority, Local Highways Authorities and Welsh government) would be subject to the charging of fees.

**Clause 29: Power for the Secretary of State to issue guidance relating to fees under HA 1980 (new s281B(4) HA 1980)**

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Guidance*

*Parliamentary Procedure: None*

Context and Purpose

163. This provision confers a duty on relevant authorities to have consideration to any guidance issued by the Secretary of State and Welsh Ministers in connections with the exercise of functions by the authority pursuant to any regulations made under section 281B.

Justification for taking the power

164. It is important that the Secretary of State can be confident any duties created by regulations made pursuant to the HA 1980 Cost Recovery provisions are being exercised correctly and in accordance with government Guidance, which may be subject to change. This power to issue guidance would enable the government to

encourage best practice in a way which would be difficult to do just through regulations.

165. The need for guidance to supplement the introduction of a fee charging provision is commonplace and reflected, for example, in section 54A of the PA 2008, thereby placing the HA 1980 cost recovery powers on an equal footing.

Justification for the procedure

166. Although relevant authorities will be required to have regard to such guidance, they will not be bound to comply with it. The government therefore is of the view that this guidance does not require parliamentary scrutiny.

**Clause 32: Changes to procedure for certain orders and scheme under the HA 1980 (amendment to section 325 HA 1980)**

*Power conferred on: N/A*

*Power exercised by: Orders and Schemes*

*Parliamentary Procedure: N/A, this clause removes the requirement that orders and schemes under sections 10 and 16 are made by statutory instrument*

Context and Purpose

167. There has historically been a distinction between orders under section 10 of the HA 1980 which enable the designation (or removal of designation) of a trunk road, and powers under section 16 to make or confirm a scheme relating to special roads. The requirement that these be undertaken by Statutory Instrument makes the exercise of these powers significantly more onerous than other orders and schemes under the Act with no appreciable legal or practical benefit.
168. Alongside this there is currently a lack of clarity in relation to the process of making (as distinct from confirming) Orders under section 10. Provision to enable strategic highway authorities to instigate the making of these orders and to ensure they are able to carry out all steps of the process have therefore been included.

169. It remains the case that all orders under section 10 cannot come into force unless made by (in the case of an order instigated by the Secretary of State) or confirmed by the Secretary of State (in the case of an order instigated by a strategic highway authority).

#### Justification for taking the power

170. This will align these provisions with other procedures under the Act and allow for more efficient processing of such orders and schemes. There is no legal reason for the requirement that these are made by SI (nil procedure) other than that they are then published under section 2 of the Statutory Instruments Act 1946. It is now possible to ensure that the public can be made aware of the making of these orders through other means. Provision has been included for all orders and schemes made under Schedule 1 to the Highways Act 1980 to either be published in full (or a summary of material changes since publication in draft), to be published on the internet once made. This secures the position in relation to the orders being amended and extends that provision to the other orders leading to a general improvement for all relevant orders and schemes.

#### Justification for the procedure

171. These orders and schemes, although made by statutory instrument, were not subject to a parliamentary procedure.

### **Part 1, Chapter 3 – Transport Infrastructure: Amendments to the Transport and Works Act 1992**

#### **Clause 34: Replacement of model clauses with guidance (new section 8 TWA 1992)**

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Guidance

*Parliamentary Procedure:* None

### Context and Purpose

172. This provision removes the power for the Secretary of State (with the consent of Welsh Ministers) to produce an order through a statutory instrument to which no parliamentary procedure applies, setting out model clauses for incorporation in draft TWA orders. The amendments to section 8 expressly allow the Secretary of State or Welsh Ministers to issue guidance to applicants for TWA orders, which may include guidance about the preparation of draft orders and model provisions considered suitable for inclusion in draft orders.
173. When determining an application for a TWA order to which the guidance applies, the Secretary of State and Welsh Ministers must have regard to any departures from the guidance and any reasons given for such departures.

### Justification for taking the power

174. The rationale for including model clauses in an order was to guarantee them publicity. It is considered that given the changes in the ways that people access documents and the relatively small number of applicants for TWA orders, that the necessary publicity can now be achieved most efficiently and effectively through guidance, which also provides additional flexibility when revisions to guidance are required.

### Justification for the procedure

175. The provision of model clauses through a statutory instrument to which no parliamentary procedure applies meant that there was no parliamentary scrutiny of either the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 or its 1992 predecessor. Accordingly, no reduction of Parliamentary scrutiny would be caused by replacing model clauses orders with guidance.

### **Clause 38: Power to make rules in relation to the deadline for decisions (new section 13(7) TWA 1992)**

*Power conferred on:* Secretary of State

*Power exercised by:* Rules made by statutory instrument

## *Parliamentary Procedure: Negative procedure*

### Context and Purpose

176. This clause will provide the Secretary of State with the power to make rules which will introduce statutory deadlines by which applications for TWA orders must be determined, or earlier steps required by section 13(4), 13B or 13C (relating to orders authorising works or other projects to which the Environmental Impact Assessment regime applies) be taken. The rules may also provide for the applicable deadlines to be extended or reduced by the Secretary of State or Welsh Ministers on a case-by-case basis and enable the postponement of a deadline where a fee payable in connection with the application has not been paid.

### Justification for taking the power

177. A power to introduce statutory deadlines will allow applicants for TWA orders and those with an interest in such applications to be confident that applications will be dealt with expeditiously. Given the smaller scale of developments promoted under the TWA 1992, the approach under section 107 of the PA 2008 requiring a decision to extend or reduce deadlines to be accompanied by a ministerial statement setting out the new deadline, was not considered proportionate, with the flexibility to vary deadlines on a case-by-case basis considered more appropriate.
178. Enabling the postponement of a deadline where a fee payable in connection with a TWA application has not been paid will ensure that fees are paid promptly and that the costs of determining applications are met by applicants.

### Justification for the procedure

179. Existing rule-making powers under the TWA 1992, which include the power to set deadlines applying to applicants for TWA orders, interested parties and inspectors, are subject to the negative procedure. The new power would not be significantly

different to those existing powers and so maintaining the use of the negative procedure is considered appropriate.

180. The power to postpone a deadline until a connected fee has been paid is preceded in comparable provision in the PA 2008 regime, where regulation 9(5) of the Infrastructure Planning (Fees) Regulations 2010, to which the negative procedure applied, permits the Secretary of State to extend the deadline by which a report must be issued by the Planning Inspectorate until the fee concerned is paid.

**Clause 40: Power to make regulations permitting public authorities to charge fees for services (new section 23A(1) TWA 1992)**

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative procedure

**Context and Purpose**

181. This clause will amend the TWA 1992 to provide the Secretary of State or Welsh Ministers with the power to make regulations which will enable public authorities, limited to certain statutory consultees prescribed by regulations, to charge fees for services provided in connection with applications for orders under the TWA 1992 or any other matter prescribed in regulations as relating to such an order. Only an applicant for an order under the TWA 1992 or any other prescribed matter may be charged a fee.
182. The power will enable regulations for and in connection with the charging of fees, including, when a fee may be charged, the amount which may be charged, what may be taken into account in calculating a charge, who is liable to pay a fee, when fees can be recovered and the effect of failing to pay fees.

**Justification for taking the power**

183. Local Planning Authorities currently have to reach bespoke planning performance agreements addressing charges for discretionary services with applications for TWA orders. The negotiations for these agreements can take significant time and delay prospective applications.
184. In contract, section 54A of the PA 2008 permits the Secretary of State to make negative procedure regulations for and in connection with the charging of fees by prescribed public authorities in relation to the provision of relevant services. This has been done through the Infrastructure Planning (Fees) (Amendment) Regulations 2024 (which amends the Infrastructure Planning (Fees) Regulations 2010).
185. When statutory deadlines for TWA orders are introduced, it is expected that pressure on statutory bodies and local planning authorities to respond in connection with applications will increase, creating increased demand that will need to be resourced appropriately. Permitting these bodies to charge for services in connection with TWA applications, as they may already in respect of applications under the PA2008 for Development Consent Orders, would apply the same service funding principles to those bodies as apply to many services provided by government bodies.

Justification for the procedure

186. Regulations made under this delegated power will be subject to the negative procedure. We consider that this procedure is precedented as it applies to regulations under section 54A of the PA 2008 and provides the appropriate level of parliamentary scrutiny for procedural provisions of this nature.

**Clause 40: Issue guidance relating to fees under TWA 1992 (new section 23A(4) TWA 1992)**

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Guidance

*Parliamentary Procedure:* None

### Context and Purpose

187. This provision confers a duty on prescribed public bodies to have consideration to any guidance issued by the Secretary of State or Welsh Ministers in connection with the exercise of functions by that body pursuant to any regulations made under section 23A of the TWA 1992.

### Justification for taking the power

188. It is important that the Secretary of State and Welsh Ministers can be confident any duties created by regulations made pursuant to the TWA 1992 cost recovery provisions are being exercised correctly and in accordance with government Guidance, which may be subject to change. This power to issue guidance would enable the government to encourage best practice in a way which would be difficult to do just through regulations.
189. The need for guidance to supplement the introduction of a fee charging provision is commonplace and reflected, for example, in section 54A of the PA 2008, thereby placing the TWA 1992 cost recovery powers on an equal footing.

### Justification for the procedure

190. Although prescribed public bodies will be required to have regard to such guidance, they will not be bound to comply with it. The government therefore is of the view that this guidance does not require parliamentary scrutiny.

## **Clause 41: Disapplication of heritage regimes (new section 17 TWA 1992)**

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Order made by statutory instrument

*Parliamentary Procedure:* None

### Context and Purpose



191. This clause will enable TWA orders to disapply the need to obtain authorisations under relevant heritage regimes, rather than an applicant having to apply separately to each relevant consenting authority:
- a. In respect of TWA orders applying to England: scheduled monument consent under section 2(3) or 3 of the Ancient Monuments and Archaeological Areas Act 1979 and listed building consent under section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
  - b. In respect of TWA orders applying to Wales: scheduled monument authorisation, listed building consent and conservation area consent for demolition and under sections 12 or 13, 89 and 162 of the Historic Environment (Wales) Act 2023.
192. The requirement to notify the relevant local authority under section 35 of the Ancient Monuments and Archaeological Areas Act 1979 prior to undertaking operations on land in an area of archaeological importance could also be waived by a TWA order.

Justification for taking the power

193. With these amendments a TWA order would become more of a 'one stop shop' encompassing the majority of approvals required to deliver a TWA project. This will create certainty for promoters and consent granting bodies, reducing timescales and costs.
194. The disapplication approach differs from the approach under section 33(1) of the PA2008, whereby all of the identified heritage authorisations are disapplied automatically for all applications. Instead, the clause will enable TWA orders to disapply the identified heritage authorisations on a case-by-case basis. Existing enforcement powers under the heritage regimes will continue to be available to the relevant enforcement authorities.

195. Rules made using existing delegated powers under the TWA 1992 will require applicants for TWA orders to consult with the relevant consenting authorities before making an application.

Justification for the procedure

196. The procedure proposed would maintain that currently applying to TWA orders. It would also be the same as the procedure applying to Development Consent Orders under sections 117 and 232 of the PA 2008.

**Clause 42: Deemed consent under marine licences (new section 19 TWA 1992)**

*Power conferred on:* Secretary of State and Welsh Ministers

*Power exercised by:* Order made by statutory instrument

*Parliamentary Procedure:* None

Context and Purpose

197. This clause will enable TWA orders for development within the UK marine area to provide for a deemed marine licence, rather than an applicant having to apply separately to the MMO for a licence.

Justification for taking the power

198. With these amendments a TWA order would become more of a 'one stop shop' encompassing the majority of approvals required to deliver a TWA project. This will create certainty for promoters and consent granting bodies, reducing timescales and costs.
199. Deemed marine licences are already provided for in the PA 2008 regime, by section 149A of that Act. Rules made using existing delegated powers under the TWA 1992 will require applicants for TWA orders to consult with the MMO before making an application.

200. Breaches of marine licences would continue to be dealt with by the MMO using its powers under Chapter 3 of Part 4 of the Marine and Coastal Access Act 2009.

Justification for the procedure

201. The procedure proposed would maintain that currently applying to TWA orders. It would also be the same as the procedure applying to Development Consent Orders under the PA 2008.

**Clause 45: Power to make consequential amendments**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Affirmative procedure where provision is made to amend primary legislation, otherwise the negative procedure*

Context and Purpose

202. This clause is to enable the Secretary of State to use delegated legislation to make such provision as is appropriate in consequence of clauses 34 to 44 of the Bill. Such provision may include incidental, supplemental, transitional or saving provision, and amendments, repeals, revocations or other modifications of any provision of primary or subordinate legislation. This power is exercisable in relation to England and Wales.

Justification for taking the power

203. The Bill includes many of the consequential amendments of primary legislation that will be needed as a result of the substantive provision being made by the Bill, although it is possible that some further consequential amendments of primary legislation may need to be made. Taking a power to make such amendment by regulations is a well preceded means of ensuring that this can be achieved. The power is narrow in its scope – any amendment must be consequential on provision that is included in the Bill, and which therefore has already been scrutinised by Parliament.

204. In addition, consequential amendments of subordinate legislation may be needed.

#### Justification for the procedure

205. Where the regulation making power is to be used to amend, repeal or revoke primary legislation, the affirmative procedure is considered appropriate. This is in accordance with normal practice. In other cases, it was considered that the negative procedure is appropriate. Clause 45 deals with changes which need to be made in consequence of the substantive provisions in the Bill. The policies behind the substantive provisions will already have been debated and approved.

### **Part 1, Chapter 3 – Transport Infrastructure: Harbours**

#### **Clause 46: Fees for applications for harbour orders – new paragraph 9A of Schedule 3 to the Harbours Act 1964**

*Power conferred on: Secretary of State, Welsh Ministers and Scottish Ministers*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure for instruments made by the Secretary of State, Welsh Ministers and Scottish Ministers*

#### Context and Purpose

206. Schedule 3 to the Harbours Act 1964 provides for the procedure for making harbour revision orders and harbour empowerment orders which are both a form of delegated legislation. These orders can either amend existing harbour legislation, or introduce new harbour legislation, for the purposes of improving, maintaining or managing a harbour including authorising works.

207. Paragraph 7(1) of Schedule 3 currently provides that an application for a harbour revision or empowerment order must be accompanied by such fee as the Secretary of State may determine. Paragraph 9 of that Schedule prevents the Secretary of State from considering an application unless the applicant has paid this fee. In relation to

Wales (except for reserved trust ports and harbours not wholly in Wales), this function has been transferred to the Welsh Ministers. In relation to Scotland, this function has been transferred to the Scottish Ministers.

208. In relation to England and reserved trust ports in Wales, the functions of the Secretary of State in relation to harbour orders have been delegated to the MMO. In practice it is difficult for the Secretary of State (or the MMO) to predict, in advance of accepting an application, how much work will be involved as there is considerable variation between applications. Under the existing power to determine fees, the Secretary of State has set flat fees for different categories of application. The fees historically set by the Secretary of State have proved to be a fraction of the actual cost of processing most applications, and there is a backlog of harbour order applications mostly due to lack of funding and resourcing within the MMO.
209. The Bill seeks to replace this power to determine a fee with a power to make provision in regulations for a fee or fees to be payable by an applicant for a harbour revision or empowerment order. These regulations may:
- a. Provide for the amount of the fee to be determined by a method laid down in regulations;
  - b. Empower or require the Secretary of State (or Welsh or Scottish Ministers) not to take steps in relation to the application if the fee is not paid on time;
  - c. provide for the payment of a deposit on account of a fee that will or may become payable;
  - d. Make incidental or supplemental provision;
  - e. Make different provision for different purposes (for example, have different methods for determining fees for different categories of applications).

#### Justification for taking the power

210. This power does not change the position that fees are to be paid in relation to applications for harbour revision orders or harbour empowerment orders. It removes the existing 'power to determine' (with no parliamentary scrutiny) with a power to

make regulations. This will afford parliament (and the devolved legislatures where regulations are made by Welsh or Scottish Ministers) an opportunity to scrutinise the details of the regulations and the method by which the amount of fees will be determined.

211. The power concerns the discrete matter of application fees and is tightly constrained. This is secondary policy detail which the government consider is appropriate to be able to amend using secondary legislation.

#### Justification for the procedure

212. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations due to the discrete issue covered by these regulations.

## **Part 2, Chapter 1 – Planning Decisions**

### **Clause 48: Power for local planning authorities to set fees for planning applications etc.**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Affirmative procedure (s.303(8) TCPA 1990)*

#### Context and Purpose

213. Section 303 of the TCPA 1990 allows the Secretary of State to make provision in regulations for the payment of a fee or charge to be paid to LPAs or to persons exercising planning functions (i.e. functions belonging to the Mayor of London or a specified person) in respect of planning functions (e.g. processing planning applications). The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 are made under this power and make provision for fees and charges which apply to every LPA in

England. Fees are set in relation to categories of development and differ depending on the scale of development.

214. Clause 48 will amend section 303 TCPA 1990 to allow the Secretary of State to sub-delegate the ability to set fees for planning applications to LPAs and any other persons exercising relevant planning functions. This would allow them to set their own fees to reflect the actual costs incurred in dealing with applications and other relevant planning functions.
215. The regulations must include provision regarding: the criteria to be applied when setting fees; consultation; publication of information; obligations to notify the Secretary of State and reviews of fees.
216. Following the proposed reforms to the National Planning Policy Framework and the planning system consultation<sup>6</sup>, the government has confirmed its intention to proceed with a local variation model. This would involve the Secretary of State setting a national fee for categories of planning applications (as is done currently) with LPAs and persons exercising relevant planning functions being able to vary these fees where they consider the nationally set fee does not meet their actual costs.

#### Justification for taking the power

217. The existing power to set fees for planning functions is exercised by the Secretary of State in respect of every LPA and any other person exercising relevant planning functions in England. In practice, these nationally set fees do not always meet an LPA's actual costs of providing these services. It is considered sensible to sub-delegate this power to individual LPAs and persons exercising relevant planning functions as it enables them to set fees that more accurately reflect their costs in carrying out relevant planning functions. The government considers that the power to sub-delegate the setting of fees to LPAs is justified to achieve the aim of reflecting

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<sup>6</sup> [Proposed reforms to the National Planning Policy Framework and other changes to the planning system - GOV.UK](#)

actual costs more accurately and notes that LPAs already set fees in respect of other statutory duties such as building control, licensing, filming and parking.

218. Regulations made under this power must make provision for LPAs and any other persons exercising relevant planning functions to consult on proposals to set or change fees. It is anticipated that regulations will make provision for the Secretary of State to be notified of any proposals. The entry below sets out a further power included in this Bill for the Secretary of State to make directions where they consider that fees set by an LPA or persons exercising relevant planning functions are inappropriate. This will help provide an important safeguard in respect of the power.
219. Subsection (3) further amends section 303 to provide that, where an LPA or persons exercising relevant planning functions sets its own fees, it must aim to ensure that it does not exceed the cost of carrying out the function in respect of which it is imposed. Subsection (3) also provides that income from such fees must be applied towards the carrying out of relevant planning functions.

#### Justification for the procedure

220. The existing power to set fees is subject to the affirmative procedure and the government does not intend to change this.

#### **Clause 48 (3): Power for Secretary of State to make regulations to prescribe further functions that income can be applied towards**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

221. Clause 48(3) inserts new section 303(8D) into the TCPA 1990 to specify what LPAs and any other person exercising relevant planning functions in England can spend planning fee income on (new subsections 303(8D)(a) to (d)). New subsection



303(8D)(e) provides that regulations may make provision for planning fees to be applied towards other relevant planning functions (by expanding the functions in new section 303(8D)(a) to (d)). The purpose of the clause is to ensure that income from planning fees is only spent on relevant planning functions and not on other matters.

#### Justification for taking the power

222. These regulations would allow for the inclusion of additional functions within the list of relevant planning functions that planning fee income can be applied towards. This power is necessary because, once the Bill has passed, it may be necessary to add further functions to ensure that fees set or charged can be used for their intended purpose.
223. The power does not change the position on the setting of fees, as set out in the primary legislation, and is narrowly focused on functions that LPAs and any other person exercising relevant planning functions in England can apply their planning fee income towards. It is appropriate for provision to be made through regulations rather than primary legislation to enable fee setting to keep up with planning functions without taking up parliamentary time unnecessarily, and to enable changes to be implemented more swiftly than primary legislation would allow.

#### Justification for the procedure

224. The government considers that the negative procedure would give Parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

#### **Clause 48(6) : Power for Secretary of State to make directions in relation to fees set by local planning authorities**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

### Context and Purpose

225. Clause 48(6) inserts new section 303ZZA into the TCPA 1990. Where an LPA or any other person exercising relevant planning functions has set or has proposed to set its own fees (using a power delegated to them by regulations) the Secretary of State may direct the LPA or persons exercising relevant planning functions to review or change the level of the fees, if the Secretary of State considers they are inappropriate.
226. The power to make a direction can only be exercised where the Secretary of State considers the fees are inappropriate (i.e. either disproportionately high or low). In practice the government anticipates that, before a direction is made, officials would first review any planning fees set by an LPA or any other persons exercising relevant planning functions. This review could be triggered either before a local fee schedule comes into effect, following notification by the LPA or any other person exercising relevant planning functions, or after it has come into effect following routine audit or it could be triggered by a complaint received by the government. If any locally-set fees are found to be potentially inappropriate, the Secretary of State would contact the LPA or any other person exercising relevant planning functions to understand the rationale behind the set rates. This may include requesting additional evidence to justify the fee levels.
227. Once in receipt of this information, the Secretary of State would decide whether the fees are inappropriate and decide whether to issue a direction to review the fees. The LPA or any other person exercising relevant planning functions would be required to undertake the review and notify the Secretary of State of its decision within a reasonable time period (we consider this could be within 28 days from the day when a request to review was issued). During the review period, the locally-set fee levels (or if not yet in force, the national default fee or other fees as specified by the Secretary of State) would remain in place to ensure that the LPA or any other person exercising relevant planning functions continues to receive income for processing planning applications.

228. If a direction for review is issued by the Secretary of State and the LPA or any other person exercising relevant planning functions does not carry out the review within a reasonable time period, or if following the review the Secretary of State remains of the view that the local fees are set at an inappropriate level, the Secretary of State could direct the LPA or any other person exercising relevant planning functions to amend any locally-set planning fee to a fee determined by the Secretary of State.

#### Justification for taking the power

229. Retaining an ability for the Secretary of State to intervene ensures that central government maintains a degree of oversight on planning fees set across England and can respond promptly where action is needed. The delegation of fee-setting powers to LPAs and any other person exercising relevant planning functions is an important tool to deliver planning fees that more closely reflect the actual cost of carrying out relevant planning functions and help to properly fund them. The power to direct helps mitigate the risk that LPAs and any other person exercising relevant planning functions would exercise their power to set fees at an inappropriate level, as this might otherwise disincentivise development and fail to deliver the government's aims.

#### Justification for the procedure

230. When a direction is made, it will be important that such action can be taken swiftly to address circumstances where planning fees have been set at inappropriate levels. Requiring parliamentary scrutiny each time would prevent expedited action.

### **Clause 48(6): Power for regulations to make procedural provision in relation to the power to make directions**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure (s.333(3) TCPA 1990)*

#### Context and Purpose

231. Clause 48(6) provides that regulations may make provision in relation to directions made by the Secretary of State under the above power. This can include provision about the time by which any direction must be complied with, the fees that are to apply while a charging authority reviews its fees, and repayment of fees paid (where an authority reduces its fee)

Justification for taking the power

232. The entry above set out the government's view as to how the power to issue a direction should be exercised. These regulations would allow procedural provision to be made in relation to directions made by the Secretary of State to ensure an orderly state of affairs while a fee is being reviewed by an LPA or any other person exercising relevant planning functions.

Justification for the procedure

233. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

**Clause 49: New section 303ZZB of the Town and Country Planning Act to make provision for a surcharge on planning fees**

Power conferred on: *Secretary of State*

Power exercised by: *Regulation made by statutory instrument*

Parliamentary Procedure: *Affirmative resolution*

Context and Purpose

234. This clause inserts new section 303ZZB into the Town and Country Planning Act 1990. It provides the power for the Secretary of State to make provision in regulations for a surcharge to be imposed on planning fees. The surcharge will be paid by the person collecting the fee (e.g. a local planning authority) to the Secretary of State in a manner and time prescribed by regulations. Outside of regulations, the proceeds

will be earmarked for distribution to bodies that provide advice in the planning application process, including by way of consultation responses ('relevant persons').

235. Where the surcharge is imposed it must be set by reference to the costs (or likely costs) incurred by relevant persons. However, the level of surcharge may be set in excess of those costs (i.e. in departure from the standard cost recovery basis).
236. The aim of the power is to introduce a sustainable funding mechanism for statutory consultees and other bodies inputting into the planning application process. Bodies such as the Environment Agency, Natural England and the Planning Advisory Service, provide essential advice on planning applications, on a statutory and non-statutory footing, but are currently under-resourced and without a consistent mechanism to recover costs for their services.

#### Justification for taking the power

237. It is customary and convenient that fees are set in secondary legislation rather than on the face of the statute, principally because fees are subject to periodic change in response to movement in the policy and operational context in which they are imposed.
238. In particular, the flexibility afforded by this power is necessary to meet the changing demands on funding in managing an effective planning application process (e.g. the costs of providing a service, or the objects and extent of funding), and ensuring the charging base remains appropriate. That flexibility includes the express provision for departure from the standard cost recovery basis. This provides scope for crosssubsidy, enabling the reallocation of resources to areas as considered expedient. For example, a planning application fee might go to funding areas not directly related to the application but contributing to an effective overall planning application process. That might include, for example, the development of digital tools that assist engagement in the process, or the promulgation of standing advice.

239. Departure from standard cost recovery is a natural consequence of the adoption of the indirect funding model as opposed to a direct conferral of charging powers on 7 relevant bodies. This choice was driven by: (1) it being more straightforward to implement in operational terms<sup>7</sup>, and (2) the control it affords over funding by the Secretary of State as a means by which to incentivise performance.
240. Lastly, the timing and manner in which the surcharge will be paid to the Secretary of State will depend on what is being charged, so will fall for consideration at the time of setting the surcharge in regulations.

#### Justification for the procedure

241. Given the potential financial implications for developers and the importance of maintaining transparency in the planning system, the affirmative resolution procedure is appropriate to ensure that the introduction of the surcharge is carefully considered and supported by Parliament

### **Clause 50: Mandatory Training for Planning Committee Members and Mayors**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative Procedure (s.333(3) TCPA 1990)*

#### Context and Purpose

242. Clause 50 (training for local planning authorities in England) inserts new sections 319ZZA and 319ZZB into the TCPA 1990 which allows the Secretary of State to make regulations requiring LPAs in England to provide mandatory training to its planning committee members, and to persons exercising mayoral planning functions (i.e. functions belonging to the Mayor of London or a mayor of a combined authority or combined county authority). The Secretary of State has the discretion to specify the

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<sup>7</sup> Indirect funding will not burden the relevant bodies in terms of additional process within the statutory deadline for consultation responses. A direct charging approach would require billing and payment to be completed within that period, militating against the overall drive to rationalise the consultation process and improve performance.

relevant training course, the training provider, and impose requirements for record keeping.

243. Unless they hold a certificate of completion, planning committee members are prohibited from any involvement in decision making on behalf of the LPA, and persons are prohibited from exercising mayoral planning functions.

244. This measure intends to standardise the procedure of training, and improve the quality, and use of decision making functions by planning committee members and persons who exercise mayoral planning functions.

#### Justification for taking the power

245. Under the current framework, planning committee members have the authority to make planning application decisions on behalf of the LPA under section 101(1) of the Local Government Act 1972. There is existing non-mandatory training offered by LPA officers and the Planning Advisory Service for LPA members, but the lack of requirement and monitoring results in inconsistencies of knowledge relating to planning law and practice amongst planning committee members. This can impact a members' ability to apply the relevant law, when acting on behalf of the LPA. A significant number of committee decisions (where they depart from officer's advice) are overturned on appeal.

246. The power to require planning committee members to complete training creates consistency in training and ensures that key areas of law that are relevant to a planning committee member's decision making functions are understood to an adequate standard.

247. The Mayor of London and mayors of combined authorities and combined county authorities may exercise mayoral planning functions themselves or authorise others to exercise them on their behalf. The power to require any person exercising mayoral planning functions to complete training creates consistency in training and ensures

that key areas of law that are relevant to a decision making function are understood to an adequate standard.

#### Justification for the procedure

248. The government considers that the negative procedure is appropriate for this power as it is a limited power and its function is narrow.

#### **Clause 51: Power to require functions to be discharged by committee or officer**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative Procedure (s.333(3) TCPA 1990)*

#### Context and Purpose

249. Currently local authorities have a wide discretion to delegate decisions to officers under section 101 of the Local Government Act 1972 and these arrangements are set out in local schemes of delegation. For planning decisions, this can vary considerably from authority to authority creating uncertainty for applicants. Additionally, it is not always clear what criteria will be considered in deciding what applications will be considered by a planning committee.
250. Clause 51 (delegation of planning decisions in England) inserts new section 319ZZC into the TCPA 1990 which allows the Secretary of State to make regulations requiring a relevant local planning authority to make arrangements for certain planning functions to be discharged by a committee, sub-committee or an officer of the authority. Prior to exercising this power, the Secretary of State must consult such persons as considered appropriate.

#### Justification for taking the power

251. A national scheme of delegation is likely to be complex and technical. This is secondary policy detail to give effect to the changes made by the Act, which the government consider is appropriate to be able to amend using secondary legislation



to adapt the scheme in light of practical experience. The delegated power is subject to the safeguard that any changes to the regulations will be subject to consultation.

#### Justification for the procedure

252. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations as it reflects the technical nature of the planning regime.

#### **Clause 51: Power to regulate the size and composition of committees**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative Procedure (s.333(3) TCPA 1990)*

#### Context and Purpose

253. Currently, a local authority can determine the size of its planning committee and in some cases, can be considerable (over 20+ members) which does not often lead to effective debate and good quality decision making. Best practice suggests that a smaller number is optimal. The aim of this power is to ensure that planning committees work as effectively as possible.

254. Clause 51 (delegation of planning decisions in England) inserts new section 319ZZD into the TCPA 1990 which allows the Secretary of State to prescribe requirements relating to the size and composition of a committee or sub-committee discharging planning functions. Prior to exercising this power, the Secretary of State must consult such persons as considered appropriate. A committee or sub-committee exercising planning functions will continue to be politically balanced, complying with section 15 of the Housing Act 1989.

#### Justification for taking the power

255. The power concerns a discrete matter and is tightly constrained. This is secondary policy detail to give effect to the changes made by the Act, which the government consider is appropriate to be able to amend using secondary legislation.

Justification for the procedure

256. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations due to the discrete issue covered by these regulations.

**Clause 51: Power to issue guidance about the discharge of prescribed relevant planning functions**

*Power conferred on: Secretary of State*

*Power exercised by: Guidance*

*Parliamentary Procedure: None*

Context and Purpose

257. This provision confers a duty on a relevant LPA to have regard to any guidance issued by the Secretary of State to assist such LPAs in applying a national scheme of delegation and establishing the size and composition of planning committee.

Justification for taking the power

258. This power to issue guidance is intended to complement the powers to make regulations set out above. The regulations may allow some flexibility around which applications are referred to planning committees or the size and composition of committees depending on local circumstances. The guidance will allow the Secretary of State to provide practical examples and advice to LPAs in exercising any discretion allowed for in the regulations. This would enable the government to encourage best practice which may differ in certain circumstances in different areas.

Justification for the procedure

259. The guidance will consist of advice for LPAs on their implementation of requirements set out in regulations. Although LPAs will be required to have regard to it, they will not be bound to comply with it. The government therefore is of the view that this guidance does not require parliamentary scrutiny.

## **Part 2, Chapter 2 – Spatial Development Strategies**

### **Clause 52: Power to make regulations to establish a strategic planning board (new section 12B, 12C and 12T PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### **Context and Purpose**

260. Part 2, Chapter 2 of the Bill makes provision for strategic planning authorities to prepare a document known as a spatial development strategy. This strategy will, among other things, set out a statement of the authority's policies in relation to the development and use of land in their area which are of strategic importance to that area. Once adopted, a spatial development strategy will form part of the development plan which local planning authorities must determine planning applications in accordance with (unless material considerations indicate otherwise).
261. New section 12B(2) PCPA 2004 makes provision for the establishment by regulations of a strategic planning board to exercise the functions under Chapter 2 of Part 2 on behalf of two or more principal authorities. The Secretary of State may only make these regulations where they consider that it is desirable for a spatial development strategy to relate to an area consisting of the areas of the constituent authorities and has consulted those authorities, any local planning authority for an area that is wholly or partly within, or adjoins, the area of any of those authorities, and the person responsible for preparing a spatial development strategy for an area that adjoins the area of any of those authorities.

262. New section 12C PCPA 2004 makes further provision about regulations that establish strategic planning boards. In particular, these regulations can make provision about the composition of a strategic planning board and its procedures. The Secretary of State may revoke regulations establishing a strategic planning board.

263. New section 12T PCPA 2004 provides that the Secretary of State can make regulations containing supplementary, incidental, transitional, transitory or saving provision for the purposes of strategic planning board regulations.

Justification for taking the power

264. This power is necessary to enable the Secretary of State to establish individual strategic planning boards where it is thought desirable to do so. Delegation of this power to secondary legislation is consistent with the establishment of joint committees who prepare and adopt joint local plans (see section 29(2) of the PCPA 2004 and new section 15J of that Act as inserted by Schedule 7 to the LURA).

Justification for the procedure

265. These regulations will be made in relation to individual authorities who have been consulted on the proposal. The regulations themselves will otherwise deal with detailed operational matters that the government considers do not merit enhanced parliamentary scrutiny, such as the composition of a board and provisions as to its procedures. The government considers that the negative procedure would give parliament the right level of scrutiny for this power.

**Clause 52: power for the Secretary of State to direct a principal authority not to take steps regarding a spatial development strategy (new section 12B(5) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

### Context and Purpose

266. New section 12B(5) PCPA 2004 provides that, where the Secretary of State is considering whether to, or has decided to, establish a strategic planning board, she may direct a principal authority that is to be a constituent authority of the board not to take steps in relation to their own spatial development strategy. The purpose of this power is to give the Secretary of State space to consider whether to establish a strategic planning board without worrying that a constituent authority might adopt its own strategy before a board is established.

### Justification for taking the power

267. This power provides the Secretary of State with the ability to intervene in the production of a spatial development strategy where they are considering whether to establish a strategic planning board.

268. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that the Secretary of State maintains oversight of the spatial development strategy process, can act swiftly and respond to individual local circumstances, and that full and effective plan coverage is delivered.

### Justification for the procedure

269. Where directions are made using this power, it will be important that such action can be undertaken swiftly. The purpose of the power is to prevent irreversible action being taken in respect of a spatial development strategy before the Secretary of State has had an opportunity to establish a strategic planning board. Requiring parliamentary scrutiny each time a direction is made could prevent swift action being taken.

### **Clause 52: power for the Secretary of State to make regulations to prescribe further matters that a spatial development strategy may, must, or must not deal with (new section 12D PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

Context and Purpose

270. New section 12D PCPA 2004 makes provision about the content of a spatial development strategy. Subsection (1) provides that it must include a statement of the policies of the authority in relation to the development and use of land in its area. These policies must be of strategic importance to that area. A reasoned justification for these policies must also be included (subsection (2)) as well as the period for which it is to have effect (subsection (3)).
271. Subsection (4) provides that a strategy may specify or describe infrastructure that the authorities consider to be necessary or expedient for the purposes of supporting or facilitating development; mitigating, or adapting to, climate change; or promoting or improving the economic, social or environmental well-being of the joint strategy area.
272. Subsection (5) provides that a spatial development strategy may specify or describe an amount or distribution of housing, including an amount of distribution of affordable housing, the provision of which the strategic planning authority considers to be of strategic importance.
273. Subsection (7) provides that the Secretary of State may prescribe further matters the spatial development strategy may, or must, deal with. Furthermore, subsection (8) sets out that provision can be made in regulations as to such diagrams, illustrations or other descriptive or explanatory matter relating to its contents that a spatial development strategy must contain.
274. Subsection (13) also provides that regulations may prescribe the form of a spatial development strategy and documents that must accompany it.
275. Subsection (14) provides that regulations may add to the definition of affordable housing as referred to in subsection (5).

#### Justification for taking the power

276. The primary legislation sets out the general principles in respect of what the content of a spatial development strategy should, or should not, be. The government believes it is appropriate that, in addition to these general principles, the Secretary of State be afforded the power to provide further detail in secondary legislation.
277. It is likely that as this new system for universal coverage of spatial development strategies becomes established, the Secretary of State may wish to prescribe new matters that these strategies should deal with. This could be to reflect changes in national planning policy or reflect changes in what is considered a strategic issue. It is also conceivable that these could vary in different geographical areas, which would not be covered by the general principles set out in the Bill.
278. Delegation of a power of this type is consistent with the planning regime more widely where many procedural requirements are dealt with in secondary legislation. There is an equivalent power to this one in section 334(7) and 343(1)(a) of the GLAA 1999 and section 15AA(6) and (7) PCPA 2004 (as inserted by Schedule 7 to the LURA, which are to be repealed by this Bill).
279. Delegations of a power to prescribe the form of a spatial development strategy and the documents that must accompany it is also consistent with section 343 of the GLAA 1999 and section 15LE(2)(a) and (b) PCPA 2004 (as inserted by Schedule 7 to the LURA).

#### Justification for the procedure

280. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with secondary level of detail as to the contents of an SDS in addition to the provision made by new section 12D PCPA 2004.

**Clause 52: power for the Secretary of State to make regulations to prescribe matters regarding a spatial development strategy timetable (new section 12E(3) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

281. New section 12E PCPA 2004 provides that a strategic planning authority must prepare and maintain a spatial development strategy timetable, specifying the timetable for the preparation of the strategy.
282. Subsection (3) gives the Secretary of State the power to prescribe in regulations the form and content of a spatial development strategy timetable and further matters that the timetable must deal with.

**Justification for taking the power**

283. New section 12E PCPA 2004 sets out the information that spatial development strategy timetables will be expected to include. The form and content of the spatial development strategy timetable are detailed administrative matters that are appropriate for secondary legislation. It is also possible that in future once the Bill has passed, the government may wish to add further requirements for spatial development strategy timetables, where such information would be helpful to relevant stakeholders. This power enables this to happen through regulations rather than primary legislation, given that such changes may be required more often than parliament can be expected to legislate for by way of primary legislation.

**Justification for the procedure**

284. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.



**Clause 52: power for the Secretary of State make regulations to prescribe the period for submitting a draft spatial development strategy timetable to the Secretary of State (new section 12F(1) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

285. New section 12F requires a strategic planning authority to submit its draft spatial development strategy timetable to the Secretary of State before it can bring it into effect. This is to afford the Secretary of State an opportunity to consider whether to direct the authority to make amendments to the draft timetable.

286. Subsection (1) provides that the timetable must be submitted within a period to be determined by regulations.

**Justification for taking the power**

287. The power concerns a matter of process and procedure, in respect of when a strategic planning authority must submit its draft spatial development strategy timetable to the Secretary of State. This is secondary policy detail to give effect to the changes made by the Bill, which the government considers is more appropriate for secondary legislation.

**Justification for the procedure**

288. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

**Clause 52: power for the Secretary of State to direct a strategic planning authority to amend a draft spatial development strategy timetable (new section 12F(2) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

289. Once a draft spatial development strategy timetable has been submitted, the Secretary of State may direct the strategic planning authority to make specified amendments to it. If no direction is given within a period of four weeks, the authority may bring the timetable into effect.

**Justification for taking the power**

290. This power forms part of the overall package of tools available to the Secretary of State to intervene in spatial development strategies. The government considers that the power is justified on the basis that being able to direct individual strategic planning authorities to prepare and bring into effect timetables, taking into account local circumstances as appropriate, is vital to achieving the overall aspiration of delivering universal coverage of spatial development strategies across England as soon as possible. Decisions to intervene will need to be taken on a case-by-case basis in response to the inaction of any particular authority once the Bill has been passed, and it will not be feasible to bring each decision before parliament.

**Justification for the procedure**

291. Where directions are made in relation to a specific draft timetable, it may be important that such action can be undertaken swiftly to adequately address any issues that have arisen. It would not be practicable for parliament to consider whether an individual draft timetable should be amended.

**Clause 52: power for the Secretary of State to direct a strategic planning authority to bring a spatial development strategy timetable into effect (new section 12F(5) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

292. Where a direction to amend a draft spatial development strategy timetable is given to a strategic planning authority under new section 15F(2) PCPA 2004, that authority must comply with it and submit a revised draft to the Secretary of State within the period specified in that direction (subsection (4)).

293. Where the strategic planning authority fails to comply with the direction, the Secretary of State may prepare a timetable and direct the strategic planning authority to bring it into effect.

**Justification for taking the power**

294. This power forms part of the overall package of tools available to the Secretary of State to intervene in spatial development strategies. The government considers that the power is justified on the basis that being able to direct individual strategic planning authorities to prepare and bring into effect timetables, taking into account local circumstances as appropriate, is vital to achieving the overall aspiration of delivering England-wide coverage of spatial development strategies as soon as possible. Decisions to intervene will need to be taken on a case-by-case basis in response to the inaction of any particular authority once the Bill has been passed, and it will not be feasible to bring each decision before parliament.

**Justification for the procedure**

295. Where directions are made in relation to a specific draft timetable, it may be important that such action can be undertaken swiftly to adequately address any issues that

have arisen. It would not be practicable for parliament to consider whether an individual draft timetable should be amended.

**Clause 52: power for the Secretary of State to make regulations regarding revision of a spatial development strategy timetable (new section 12F(9) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

296. New section 12F(9) PCPA 2004 provides that the Secretary of State can make provision in regulations as to when a strategic planning authority must revise a spatial development strategy timetable. Regulations may confer a power to direct that a timetable is to be revised.

**Justification for taking the power**

297. As noted above, the spatial development strategy timetable is important in setting out to the local community and other interested stakeholders when key milestones in plan making will be reached. It is important that these timetables are kept up to date.

298. This power enables the Secretary of State to set out the circumstances when a timetable will need updating and to direct a strategic planning authority to revise a timetable where one already exists. This is secondary policy detail to give effect to the changes made by the Bill, which the government considers is more appropriate for secondary legislation. It is likely these requirements would need to be updated relatively frequently, taking account of experience of the new planning system after the Bill has passed.

**Justification for the procedure**

299. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

**Clause 52: power for the Secretary of State to make regulations to prescribe other matters that a strategic planning authority must have regard to (new section 12G(2)(d) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

300. New section 12G(2)(d) PCPA 2004 provides that the Secretary of State may prescribe any other matters, additional to those already listed within section 12G(2), to which a strategic planning authority must have regard when preparing its spatial development strategy.

**Justification for taking the power**

301. It is foreseeable that following the passing of the Bill, additional matters will be identified that strategic planning authorities should have regard to. This could for instance be a result of policies implemented in other government departments. It is therefore important for the government to have the ability to amend the list of matters swiftly, without waiting for parliamentary time for primary legislation.

**Justification for the procedure**

302. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

**Clause 52: Power for the Secretary of State to make regulations to prescribe persons who must be notified that a draft spatial development strategy has been published (new section 12H(2)(g) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

303. New section 12H(1) to (2) PCPA 2004 sets out the persons that strategic planning authorities are required to notify that the draft spatial development strategy has been published. Subsection (2)(g) makes provision for other persons to be prescribed in regulations made by the Secretary of State.

**Justification for taking the power**

304. New section 12H PCPA 2005 currently provides that strategic planning authorities must notify the following bodies that the draft spatial development strategy has been published: other local authorities within or adjoining the strategy area, local planning authorities within or adjoining the strategy area, any person responsible for preparing a spatial development strategy for an area that adjoins the strategy area and is affected by the strategy and the Secretary of State. Strategic planning authorities are also required to notify other persons that they consider appropriate. The list in legislation could be considered a “core” list that is unlikely to be expanded with the onus remaining on authorities to choose whom they send copies.
305. New forms of authority or public bodies may be established in the future so this list may need expanding. Given that much of the public participation will be done electronically we do not anticipate that any further requirements that may be imposed by regulations in future will be burdensome on participating authorities.

**Justification for the procedure**

306. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

**Clause 52: power for the Secretary of State to make regulations to prescribe the form and manner of representations and the period for making representations (new section 12H(7) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

307. New section 12H PCPA 2004 provides that representations must be invited when a draft spatial development strategy is published or made available for inspection under that section. This is the basis on which interested parties and members of the public will be consulted on the draft strategy.

308. Subsection (7) provides that representations must be made in the form and manner prescribed by regulations. They must also be made within the period prescribed by regulations.

**Justification for taking the power**

309. These are matters of procedure that are appropriate to deal with in secondary legislation.

**Justification for the procedure**

310. The government considers that the negative procedure would give parliament the right level of scrutiny for this power as these regulations concern matters of procedure.

**Clause 52: power for the Secretary of State to direct that no examination in public will be held (new section 12I(1) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

#### Context and Purpose

311. New section 12I PCPA 2004 sets out the requirement for a spatial development strategy to be subject to an examination in public before it can be adopted. Subsection (1) gives the Secretary of State the power to direct that an examination does not need to take place.

#### Justification for taking the power

312. Examination is an important part of the process because it enables public participation and for proposed spatial development strategies to be independently tested before they are made operative. However, in the rare case where a proposed spatial development strategy is essentially a minor update of an existing one, it may not be necessary to undergo full examination. What constitutes a minor update is subjective and a matter for the Secretary of State. This power ensures that the Secretary of State can decide whether examination is needed in a particular case and that minor updates of a spatial development strategy do not go through an unnecessary examination.

#### Justification for the procedure

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

#### **Clause 52: Power for the Secretary of State to direct a spatial development strategy to be withdrawn (new section 12J(3) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*



### Context and Purpose

314. New section 12J PCPA 2004 makes provision about the withdrawal of a draft spatial development strategy. Subsection (1) provides that a strategic planning authority may withdraw a draft at any time before arrangements are made for its examination. After this point, the strategic planning authority is able to withdraw the strategy if the examiner recommends doing so and the Secretary of State has not directed that it is not withdrawn. The Secretary of State may also direct withdrawal (subsection (3)).

### Justification for taking the power

315. The government considers this power to be vital to achieving the overall aspiration of delivering full coverage of spatial development strategies across England. This power means that strategic planning authorities cannot themselves withdraw a spatial development strategy once it has been submitted for examination in public unless the examiner recommends that they do so. This will help to avoid unnecessary delay in the adoption and implementation of spatial development strategies, whilst ensuring that there is not a complete prohibition on withdrawal which may be appropriate in specific cases. It is anticipated that the Secretary of State's power to direct a withdrawal would be likely to be used on rare occasions – for example, where a spatial development strategy was found to be inconsistent with national policy or to be negatively impacting upon other areas, outside of the strategy area.
316. Once a spatial development strategy has been submitted for independent examination, decisions on whether to allow the strategy to be withdrawn will need to be taken on a case-by-case basis, and it will not be feasible to bring each decision before parliament.

### Justification for the procedure

317. It would not be practicable for parliament to consider whether an individual spatial development strategy requires withdrawal.

**Clause 52: power for the Secretary of State to direct a strategic planning authority to adopt a spatial development strategy with certain modifications (new section 12K(5) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

318. Before a strategic planning authority can adopt a spatial development strategy, it must submit it to the Secretary of State. This provides the Secretary of State with an opportunity to consider whether to direct the strategic planning authority to make modifications to the strategy for the purpose of avoiding:
- a. any inconsistency with current national policies, or
  - b. any detriment to the interests of an area outside the strategy area.

**Justification for taking the power**

319. To ensure that spatial development strategies are consistent with national policy and are not detrimental to the interests of adjoining areas, adjudication over this may be necessary prior to a strategy being adopted. As local plans are required to be in general conformity with a spatial development strategy that is operative in the relevant area, it is important that the content of a spatial development strategy does not create tension between a local plan and national policy. The power of the Secretary of State to make directions on the adoption of a spatial development strategy is constrained by there being only two criteria for making such a direction.
320. Furthermore subsection (6) provides that if a direction is not given within 6 weeks, or such longer period as may be specified in a direction given within that 6-week period, the strategic planning authority can proceed with adopting the strategy. This ensures that the adoption of strategies is not unduly delayed.

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

Justification for the procedure

322. It would not be practicable for parliament to consider whether an individual spatial development strategy is consistent with national policy and/or detrimental to the interests of adjoining areas. It is appropriate that is a matter for the Secretary of State to decide.

**Clause 52: power for the Secretary of State to direct a strategic planning authority to review a spatial development strategy (new section 12M(5) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

Context and Purpose

323. New section 12M PCPA 2004 makes provision about the review and monitoring of operative spatial development strategies. Subsection (2) places a duty on strategic planning authorities to keep matters that are relevant to the strategy under review, and subsection (4) provides that a review of a spatial development strategy must take place from time to time.

324. In addition to this, the Secretary of State has a power under subsection (5) to direct a strategic planning authority to review all or specified parts of its spatial development strategy.

Justification for taking the power

325. Once a strategic planning authority has adopted a spatial development strategy, it will be important that it is kept up to date. This is partly because the spatial development strategy will be a consideration in the determination of planning applications, but more significantly any local plan within the strategic area must be in

general conformity with the strategy. If the spatial development strategy has become out of date, this could have adverse implications for local plans.

326. As a key component of spatial development strategies is that they are consistent with national policy, they may also need reviewing to reflect any changes in national policy.
327. Although strategic planning authorities have a duty to keep an operative spatial development strategy under review, should they fail to comply with this duty it may be necessary for the Secretary of State to direct a review.
328. As spatial development strategies can set key requirements for local plans, notably housing requirements, there is a strong incentive for participating authorities to review their strategies. For example, the London Plan spatial development strategy has been regularly reviewed and updated since the first London Plan was published in 2004. The power for the Secretary of State to direct review is therefore likely to be little used.
329. Delegation of this direction power is consistent with the similar power available for the London Plan in section 340(2) of the GLAA 1999.

#### Justification for the procedure

330. It would not be practicable for parliament to consider whether an individual spatial development strategy should be reviewed. It is appropriate that is a matter for the Secretary of State to decide.

#### **Clause 52: Power for the Secretary of State to prescribe information that each strategic planning authority must make available to the public and/or provide to the Secretary of State (new section 12M(7) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

331. New section 12M(7) PCPA 2004 provides that the Secretary of State may prescribe information relating to the implementation of policies in an operative spatial development strategy that strategic planning authorities must make available to the public and/or provide to the Secretary of State.
332. The Secretary of State has the power to prescribe the form that the prescribed information must be in (for example, that the information should be produced electronically), and the manner in which it must be made available or provided.

### Justification for taking the power

333. Once a strategic planning authority has adopted a spatial development strategy, it will be important that it is monitored and that information about the implementation of the policies within the strategy is made available to relevant stakeholders. It is considered appropriate to prescribe this information in secondary legislation as it is likely that the information required will need to be updated relatively frequently, taking account of experience of the new planning system after the Bill has passed.
334. Further, the ability to prescribe the form and manner in which information must be made available or provided is important to ensure that the information is made available in a standardised way that enables all interested stakeholders to freely and easily access such data. Delegation is consistent with this approach and also with the fact that the way in which the information should be made available may change over time, for instance due to changes in digital technology.

### Justification for the procedure

335. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

**Clause 52: power for the Secretary of State to direct strategic planning authority to alter a spatial development strategy (new section 12N(3) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

336. New section 12N makes provision for the alteration of an operative spatial development strategy. Strategic planning authorities can prepare alterations to its strategy at any time, and new sections 12G to 12L apply to the preparation and adoption of those alterations.
337. Subsection (3) give the Secretary of State the power to direct a strategic planning authority to alter its spatial development strategy.

**Justification for taking the power**

338. This power complements the power of the Secretary of State to direct a review of a spatial development strategy, as detailed above. If there are changes in national policy or strategy is out of date, it may be necessary to alter certain policies. This power is only likely to be used if the strategic planning authority has been unable (for whatever reason) to update their strategy themselves. For example, if following a review the authority decides not to make alterations that the Secretary of State deems necessary to ensure consistency with national policy.
339. Delegation of this direction power is consistent with the similar power available for the London Plan in section 341(2) of the GLAA 1999.

**Justification for the procedure**

340. It would not be practicable for parliament to consider whether an individual spatial development strategy should be altered. It is appropriate that is a matter for the Secretary of State to decide.

**Clause 52: power for the Secretary of State to make regulations regarding alteration of a spatial development strategy (new section 12N(4) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

341. New section 12N(4) PCPA 2004 provides that the Secretary of State can make provision in regulations as to when a strategic planning authority must alter a spatial development strategy.

**Justification for taking the power**

342. It is important that strategies are kept up to date. Any local plan within the strategy area must be in general conformity with the spatial development strategy. If the strategy has become out of date, this could have adverse implications for local plans. Strategies also need to be consistent with national policy, so may also need revising to reflect any changes in national policy. This power enables the Secretary of State to set out when, and the circumstances in which, a strategy will need altered. This is secondary policy detail to give effect to the changes made by the Act, which the government considers is more appropriate for secondary legislation. It is likely these requirements would need to be updated relatively frequently, taking account of experience of the new planning system after the Bill has passed.

**Justification for the procedure**

343. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

**Clause 52: power for the Secretary of State to direct a strategic planning authority to replace a spatial development strategy (new section 12O(3) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

#### Context and Purpose

344. New section 12O PCPA 2004 makes provision for the replacement of an operative spatial development strategy. Strategic planning authorities can prepare a replacement spatial development strategy at any time. Subsection (3) gives the Secretary of State the power to direct a strategic planning authority to replace its spatial development strategy.

#### Justification for taking the power

345. This power complements the power of the Secretary of State to direct a review of a spatial development strategy, as detailed above. If there are changes in national policy or a strategy is out of date, it may be necessary to replace the strategy. This power is only likely to be used if the strategic planning authority has been unable (for whatever reason) to replace its strategy itself, e.g., if following a review, the authority decides not to replace a strategy that the Secretary of State has deemed inconsistent with national policy.
346. Delegation of this direction power is consistent with the similar power available for the London Plan in section 341(2) of the GLAA 1999.

#### Justification for the procedure

347. It would not be practicable for parliament to consider whether an individual spatial development strategy should be replaced. It is appropriate that is a matter for the Secretary of State to decide.

### **Clause 52: power for the Secretary of State to make regulations regarding replacement of a spatial development strategy (new section 12O(4) PCPA 2004)**

*Power conferred on: Secretary of State*



*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

348. New section 12O(4) PCPA 2004 provides that the Secretary of State can make provision in regulations as to when a strategic planning authority must replace its spatial development strategy.

#### Justification for taking the power

349. As noted above, it is important that strategies are kept up to date. Any local plan within the strategy area must be in general conformity with the spatial development strategy. If the strategy has become out of date, this could have adverse implications for local plans. Strategies also need to be consistent with national policy, so may also need revising to reflect any changes in national policy. This power enables the Secretary of State to set out the circumstances when a strategy will need updating. This is secondary policy detail to give effect to the changes made by the Act, which the government considers is more appropriate for secondary legislation. It is likely these requirements would need to be updated relatively frequently, taking account of experience of the new planning system after the Bill has passed.

#### Justification for the procedure

350. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations.

#### **Clause 52: Power for the Secretary of State to give directions where strategic planning authority is failing etc. (new section 12P(2)(c) PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

### Context and Purpose

351. New section 12P PCPA 2004 makes provision as to the Secretary of State's powers where they think that:

- a. a strategic planning authority is failing to do anything it is necessary or expedient for them to do in connection with the preparation, adoption, alteration, replacement or review of a spatial development strategy,
- b. a spatial development strategy is, is going to be or may be unsatisfactory, or
- c. a proposed alteration of a spatial development strategy will, or may, result in the plan becoming inconsistent with current national policies or detrimental to the interests of an area outside the strategy area.

352. Where any of these apply, subsection (2) provides that the Secretary of State may take over preparation of the strategy, alter an operative strategy or give directions to the strategic planning authority in relation to the preparation, adoption, withdrawal, alteration, replacement, review or revocation of the strategy.

### Justification for taking the power

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

### Justification for the procedure

354. Where directions are made using this power, it may be important that such action can be undertaken swiftly to address any problems that may exist. Requiring parliamentary scrutiny each time a direction is made could prevent swift action being taken. In addition, any directions would be made in relation to a specific spatial development strategy which is unlikely to be of wider parliamentary interest.

**Clause 52: Power for the Secretary of State to direct a strategic planning authority to publish a spatial development strategy(new section 12Q PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

355. New section 12Q applies in the circumstance where a strategic planning authority has voted against passing a resolution to adopt a spatial development strategy. It provides that the Secretary of State may, if they consider it appropriate, approve the strategy or modify the strategy and approve it with modifications. These powers are exercisable on the Secretary of State's own initiative or in the case of a strategy prepared by a mayoral combined authority or a mayoral combined county authority, if the mayor of the authority requests that the Secretary of State exercises those powers. Under subsection (5), if the Secretary of State approves a spatial development strategy under this section, the Secretary of State must either publish the strategy or direct the strategic planning authority to publish it. The spatial development strategy becomes operative when it is published.

**Justification for taking the power**

356. This power complements the Secretary of State's other powers of intervention in relation to spatial development strategies, to ensure that these are being appropriately progressed, to achieve full plan coverage as swiftly as possible. It will depend upon individual local circumstances as to whether the Secretary of State decides to intervene in a particular case.

**Justification for the procedure**

357. It would not be practicable for Parliament to determine individual decisions in relation to the publication of a spatial development strategy. It is therefore appropriate that this power is delegated to the Secretary of State.

**Clause 52: power for the Secretary of State to direct strategic planning authority not to take steps regarding a spatial development strategy (new section 12S PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

358. New section 12S PCPA 2004 provides that, where the Secretary of State is considering whether to take action under new section 12P, they may direct a strategic planning authority not to take steps in relation to their strategy. The purpose of this power is to give the Secretary of State space to consider whether intervention under those other clauses is justified without worrying that an authority might withdraw or adopt a strategy before a decision is made.

**Justification for taking the power**

359. These powers provide the Secretary of State with the ability to intervene in a strategy where the tests set out above have been met.

360. Delegation is necessary as retaining the ability to intervene in plan making is vital to ensuring that the Secretary of State maintains oversight of the spatial development strategy process, can act swiftly and respond to individual local circumstances, and that full and effective plan coverage is delivered.

**Justification for the procedure**

361. Where directions are made using this power, it will be important that such action can be undertaken swiftly. The purpose of the power is to prevent irreversible action being taken in respect of a spatial development strategy before the Secretary of State has had an opportunity to consider whether to use their intervention powers. Requiring

parliamentary scrutiny each time a direction is made could prevent swift action being taken.

**Clause 52: Power for the Secretary of State to make regulations in connection with spatial development strategies (new section 12U PCPA 2004)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

**Context and Purpose**

362. New section 12U(1) PCPA 2004 provides that regulations can be made to make provision about the exercise of functions under Part 1A. Subsection (2) states that this may include provision about:

- a. procedural matters;
- b. remuneration and allowances payable to examiners;
- c. the supply of information or documents to the Secretary of State;
- d. the determination of the time by which anything must be done for the purposes of Part 1A;
- e. the manner of publication of any documents required to be published;
- f. the making of reasonable charges for the provision of copies or documents.

**Justification for taking the power**

363. Secondary details of the plan-making processes (including local plans and the London spatial development strategy) are already set out within regulations rather than primary legislation. It is considered appropriate to leave this secondary detail to regulations and this also ensures that any amendments to procedural matters can be made rapidly in a way that responds to changing circumstances.

**Justification for the procedure**

364. The regulations contain matters of procedure of secondary detail which the government believes will not be of particular interest to parliament.

**Clause 52(4): Power for the Secretary of State to make regulations containing consequential provision and transition provision**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative procedure (Affirmative procedure where the power is exercised to amend or repeal any provision of primary legislation).

**Context and Purpose**

365. Clause 52(4) provides that the Secretary of State can make regulations containing consequential and transitional provision. These are intended to be used to transition existing Combined Authorities from the current Spatial Development Strategies system to the new system. Furthermore, in circumstances where there is local government re-organisation, this provision is intended to be used to ensure an orderly transition, including to enable the Secretary of State to set out what should happen to any operative or proposed spatial development strategy.

**Justification for taking the power**

366. Delegation is necessary as it is not possible to foresee all the scenarios where transitional and consequential provision may be needed.

**Justification for the procedure**

367. The government considers it appropriate that amendments to primary legislation will follow the affirmative procedure. Otherwise, the government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issues covered by these regulations.

**Part 3 – Development and Nature Recovery**

**Clauses 57(8), 62(6), 75(2), 85(3), 88(3): Powers to issue statutory guidance**

*Power conferred on:* Secretary of State

*Power exercised by:* Guidance

*Parliamentary Procedure:* None

### Context and Purpose

368. Part 3 of the Bill confers powers on the Secretary of State to issue guidance that bodies must have regard to when undertaking certain functions:

- a. Clause 57(8) provides that Natural England, in deciding how an environmental delivery plan should be monitored, should have regard to guidance published by the Secretary of State.
- b. Clause 62(6) provides that Natural England must have regard to guidance issued by the Secretary of State about the preparation of reports on an environmental delivery plan.
- c. Clause 75(2) provides that Natural England and other public authorities must have regard to guidance given by the Secretary of State about any matter connected with the nature restoration levy.
- d. Clause 85 requires Natural England to produce an annual report on the exercise of its functions under Part 3. Subsection (3) provides that Natural England must, in so doing, have regard to guidance issued by the Secretary of State.
- e. Clause 88(1) provides that a public authority in England must co-operate with Natural England and give it such reasonable assistance as it requests in connection with the implementation of an environmental delivery plan. Subsection (3) provides that such public bodies must have regard to guidance given by the Secretary of State about how the duty is to be complied with.

### Justification for taking the power

369. Natural England may and other public authorities may require detailed guidance about the provisions in the Bill. The guidance is intended to assist Natural England and other relevant bodies by providing detail as to the practical steps that may be necessary, or best practice, in order for Natural England to appropriately exercise

their functions. This is intended to cover a level of detail which cannot reasonably be provided in primary legislation.

370. In addition, it is likely that guidance will need to be continuously updated to keep pace with, for example, new issues, emerging technologies and operational good practice.

#### Justification for the procedure

371. Although prescribed public bodies will be required to have regard to such guidance, they will not be bound to comply with it. The government therefore is of the view that this guidance does not require parliamentary scrutiny.

#### **Clause 57(8): power to make regulations setting out further information that must be included, or matters that must be dealt, with in an EDP**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative procedure

#### Context and Purpose

372. Clauses 54 to 56 make provision as to the content of an EDP:

- a. Clause 54 requires an EDP to specify a development area (including a map) and the reasons why this area has been chosen; the kind of development to which it applies; the maximum amount of development; a date on which the EDP comes into force; and a date on which it will expire (which can be no longer than 10 years after coming into force).
- b. Clause 55 requires an EDP to identify one or more environmental features which are likely to be negatively affected by development and the environmental impact. An EDP must set out conservation measures that will be taken by Natural England (or on its behalf) to address the environmental impacts and contribute to an overall improvement in the conservation status of the environmental feature.



- c. Clause 56 provides that an EDP must include one or more charging schedules setting out the rate of nature restoration levy to be paid by a developer who wants to rely on an EDP.

373. In addition to this information, clause 57(8) gives the Secretary of State the power to set out further information that must be included, or matters that must be dealt with, in an EDP.

#### Justification for taking the power

374. It is recognized that as this new system for nature recovery becomes established, there may be a need for further information to be included, or matters addressed in an EDP. For example, the Secretary of State may wish to prescribe new matters that EDPs should deal with to reflect best practice or changing science. It is also conceivable that the content of EDPs could vary in different geographical areas, which would not be covered by the general principles set out in the Bill. It is not considered feasible to have all possible requirements set through primary legislation.

375. There is a key restriction on this power, in that the EDP can only be approved if the Secretary of State considers that it passes the overall improvement test. An EDP passes this test if the conservation measures are likely to be sufficient to enable an overall improvement in the conservation status of each identified environmental feature. Clause 60(5) sets out further information about the Secretary of State is to come to such a determination. It follows that, in exercising this power to set out further information to be included or matters to be addressed in an EDP, that this will be information that is required to ensure that the EDP works as it intends to and can pass the overall improvement test.

#### Justification for the procedure

376. The Department considers that the negative procedure would give Parliament the appropriate level of scrutiny for these regulations given that they deal with secondary

level of detail as to the contents of an EDP in addition to what clauses 54 to 56 already provides for.

**Clause 58(4) power to make regulations about other things that must be done by Natural England when preparing an EDP**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative procedure

**Context and Purpose**

377. Clause 58 (preparation of EDP) makes provision about the preparation of an EDP by Natural England.

378. When Natural England decides to prepare an EDP, it must notify the Secretary of State. When preparing the EDP, Natural England must have regard to the development plan for the development area and any other relevant strategies, including specifically any Environment Act strategies which appear to be relevant.

379. Subsection (4) provides the Secretary of State with a power by regulations to make further provision about other things that must be done by Natural England when preparing an EDP.

**Justification for taking the power**

380. These regulations would allow procedural provision to be made in relation to the preparation of an EDP by the Secretary of State, in addition to what clause 58 already makes provision for. These are procedural matters and secondary level of detail that the government considers are appropriate for secondary legislation. For example, any new plans or strategies which may be created in the future to which it would be necessary for Natural England to have regard to when preparing an EDP.

**Justification for the procedure**

381. The government considers that the negative procedure would give parliament the right level of scrutiny for these regulations given that they deal with matters of process and procedure.

**Clause 59(1)(f) and (2) power to make regulations specifying public bodies to be consulted when preparing EDP**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative procedure

**Context and Purpose**

382. Clause 59 (consultation on draft EDP) makes provision about how Natural England must consult on a draft EDP before it can be finalised. Subsection (1) sets out the bodies that Natural England is required to consult, including any other public body that Natural England considers should be consulted. Paragraph (f) provides that the Secretary of State may specify other public bodies in regulations that also need to be consulted.

383. Subsection (2) provides that the Secretary of State may require a public authority to respond to the consultation within the consultation period.

**Justification for taking the power**

384. The list of public bodies that Natural England are required to consult are a “core” list and Natural England will be expected to exercise their judgment to decide which other public bodies they should consult. The varied nature of matters dealt with in an EDP means that they may potentially engage the interest of a wide range of public authorities.

385. In addition, new public bodies may be established in the future, or it may become clear that the development of an EDP would benefit from the input of other existing

public bodies, so this list may need expanding in future. It would not be possible to detail such a potentially wide range of bodies on the face of the Bill.

386. The outside scrutiny of expert bodies will be important to the process of developing a strong EDP, and there may be situations where it is particularly important that certain public authorities give their view. To cover this scenario clause 59(2) includes a power to require public authorities to respond within the consultation period. For the reasons set out above it would not be practical to set those bodies out on the face of the Bill.

#### Justification for the procedure

387. Applying the negative procedure to regulations made under this power will enable changes to be made for efficiently, without unnecessarily using Parliamentary time for procedural matters, in this case adding other public bodies to the list of consultation bodies.

#### **Clause 59(4) power to make regulations specifying consultation period**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Negative procedure

#### Context and Purpose

388. Clause 59(4) provides that the consultation period of a draft EDP is a period as specified in regulations made by the Secretary of State, but no shorter than 28 days.

#### Justification for taking the power

389. These are matters of procedure that are appropriate to deal with in secondary legislation. Some EDPs will be large scale and complex, and it may therefore be appropriate to allow for a longer consultation period. We have included a minimum period of 28 days to ensure that the public and consultees receive adequate time to submit their views.

### Justification for the procedure

390. The Department considers that the negative procedure would give parliament the right level of scrutiny for this power as these regulations concern matters of procedure.

### **Clause 60 – power to make an environmental delivery plan**

*Power conferred on: Secretary of State*

*Power exercised by: Publication*

*Parliamentary Procedure: None*

### Context and Purpose

391. Part 3 of the Bill makes provision for development and nature recovery to introduce a new process for how developers meet relevant environmental obligations. Developers will be able to make nature restoration levy payments which will discharge relevant environmental requirements, allowing planning consents to progress without delay. Natural England will then take responsibility for securing positive environmental outcomes at a strategic, rather than site-by-site, level through the implementation of EDPs.

392. An EDP will specify the development that it applies to as well as the environmental features and conservation measures which are likely to be affected by that development. The EDP then sets out the conservation measures to be taken by Natural England to address these adverse effects. A developer wishing to rely on an EDP will commit to pay the environmental levy to fund those conservation measures.

393. When it is made by the Secretary of State, the effect of that EDP will be that, for any development relying on that EDP consideration of that environmental effect will be disregarded for the purpose of existing environmental assessment (Schedule 4). This is because the responsibility for addressing that environmental impact will have moved from a project-specific assessment to the strategic approach which the EDP has put in place.

394. It follows therefore that the power to make an EDP is a power with legislative effect in that it requires that certain things contained within it are disregarded for the purposes of interpreting legislation.

#### Justification for taking the power

395. The ability to make and approve an EDP is integral to the operation of the Development and Nature Recovery measures. Schedule 4 specifies the effect of an EDP on existing environmental obligations, but that effect can only occur where an EDP has been approved. The EDP sets out the conservation measures needed and the appropriate charging schedule to fund those measures, it would not therefore be possible nor desirable for existing environmental obligations to be changed absent an EDP being in place.

396. Ultimately the approval of an EDP is a technical exercise along the same lines as decisions are made within the current system. The Secretary of State In exercising the power to approve an EDP relies upon the expertise of Natural England in formulating the EDP; gathering the necessary evidence and proposing appropriate conservation measures. The EDP is then subject to expert and public consultation before the Secretary of State can sign it off. This decision is subject to clear criteria; the Secretary of State must in exercising this power be satisfied that the EDP passes the overall improvement test as set out in legislation. This decision is open to legal challenge and open to scrutiny from regulators.

#### Justification for the procedure

397. The sign off of an EDP is a technical exercise, with clear criteria that must be met, and is subject to appropriate consultation requirements (with the public and expert bodies) and safeguards. With this in mind, and considering the pressing need for the system to be agile and flexible, we do not foresee that this process introduces a need for parliamentary scrutiny compared with the current system.

## **Clauses 66 to 74: powers to make nature restoration levy regulations**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Affirmative procedure

### **Context and Purpose**

398. Clauses 66 to 76 provide the framework for the new nature restoration levy. Clause 67 (regulations about the nature restoration levy) provides that the Secretary of State may make regulations about the nature restoration levy that is to be paid by developers in relation to a development to which an EDP applies. The overall purpose of the nature restoration levy is to ensure that costs of delivering the conservations required under the EDP can be met in a way that does not make development economically unviable. The Secretary of State must aim to ensure this purpose is met when making levy regulations (see clause 67(2)).

399. Nature restoration levy regulations can make provision about
- a. the liability to pay the nature restoration levy (clause 68);
  - b. the amount of the levy set by Natural England in the charging schedule of an EDP (clause 69);
  - c. a right of appeal on a question of fact in relation to the calculation of a levy (clause 70);
  - d. the use of the nature restoration levy by Natural England on conservation measures (clause 71);
  - e. the collection of the nature restoration levy, including payment on account or in installments, repayment in cases of overpayment or the imposition of conditions (clause 72);
  - f. enforcement, including the imposition of civil penalties and creation of criminal offences (clause 73);
  - g. the payment of compensation in respect of loss or damage suffered as a result of enforcement action (clause 74).

400. The commitment to pay this nature restoration levy results in certain obligations relating to a protected feature of a protected site being disregarded and/or the developer being treated as having been given a relevant licence. If developers wish to proceed with development under an EDP, they can make a request to Natural England (as per clause 66(1)). If Natural England accepts, the developer is committed to pay the nature restoration levy as per the relevant charging schedule(s) (clause 66(2)). Clause 68(4) provides that the Secretary of State may make regulations regarding Natural England rescinding its acceptance of a request to pay the nature restoration levy.

#### Justification for taking the power

401. The provisions in this section seek to replicate as far as is relevant the powers used in the Planning Act 2008 for the Community Infrastructure Levy (CIL). Accordingly, it is the government's view that there is established precedent for this proposed approach, which is justified in relation to the nature restoration levy as it was in relation to CIL.

402. Notwithstanding, the government considers the powers to make nature restoration levy regulations are necessary and justified as:

- a. The regulations around the setting of the levy and its collection will be highly detailed and technical and so less appropriate for primary legislation.
- b. It is appropriate to retain a degree of flexibility as it is likely that changes and refinements will need to be made in these areas as the system develops.
- c. With regard to enforcement, the new emphasis on developers providing funding to Natural England to support conservation measures means that it is important to the functioning of the entire system of EDPs that there are robust measures in place to ensure that payments are made and that there are appropriate consequences where this does not happen, including the power to secure payment through the Courts. As this is a new system there must be flexibility around how these can be applied, although again, these have been



modelled on existing powers within the PA 2008 and are subject to appropriate constraints.

#### Justification for the procedure

403. The government consider that it is appropriate for these powers to be subject to the affirmative procedure to ensure that the regulations receive sufficient parliamentary scrutiny.

#### **Clause 86: Power to designate person to exercise functions of Natural England**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by statutory instrument

*Parliamentary Procedure:* Affirmative procedure

#### Context and Purpose

404. Part 3 of the Bill provide that Natural England is to be the environmental delivery body for the purposes of producing environmental delivery plans. In doing so, Natural England will rely on existing powers and powers given to it by provisions of the Bill.

405. Clause 86 (power to designate person to exercise functions under Part 3) gives the Secretary of State the power to designate another person to exercise the functions of Natural England in relation to these measures.

406. The power to make regulations under clause 86(1) includes the ability to make consequential amendments to primary legislation, including this Bill (clause 86(4)).

#### Justification for taking the power

407. The amendments that could be made to primary legislation are limited to those that are consequential on the designation of a new environmental delivery body. It is sensible to take this power to ensure that such designation can work within the existing legislation.

#### Justification for the procedure

408. The government consider that it is appropriate for these powers to be subject to the affirmative procedure. As it may involve giving a new or existing body significant new powers, it is appropriate it be subject to this level of parliamentary scrutiny.

#### **Clause 87: Power for the Secretary of State to make a transfer scheme**

Power conferred on: *Secretary of State*

Power exercised by: *Scheme*

Parliamentary Procedure: *None*

#### Context and Purpose

409. This clause allows the Secretary of State to make a transfer scheme to transfer rights, liabilities or assets from Natural England to a designated person, or from one designated person to another. Where the responsibility for exercising the functions of Part 3 of the Bill is transferred to another party, the department considers these powers necessary to ensure continuity.

#### Justification for taking the power

410. The most appropriate vehicle for effecting these transfers will be a statutory transfer scheme, as is commonly used in similar situations involving transfers of assets following transfers of functions between public bodies. It would not be feasible to deal with the detail of all of the necessary transfers of property, rights and liabilities on the face of the Bill.

#### Justification for the procedure

411. As is generally the case with statutory transfer schemes, there is no parliamentary procedure for the schemes. Parliament will have the opportunity to consider the general principle behind the transfer when regulations are laid to designate another person to exercise the functions of Natural England under clause 86(1).

#### **Clause 89: power to make consequential amendments**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure (Affirmative procedure if making amendments to primary legislation)*

### Context and Purpose

412. Clause 89 (amendments relating to Part 3) provides that the Secretary of State may make amendments to primary and secondary legislation that are consequential on Part 3.

### Justification for taking the power

413. This power is necessary to ensure the government is able to make regulations to meet technical and procedural requirements. This power provides the Government with the power to make provisions to replicate the various technical provisions of other affected regimes. A delegated power is required as this provision will be used to reflect technical that can only be settled once related matters are finalised and may need to be changed in future.

### Justification for the procedure

414. Given the procedural nature of regulations made under this power, the government proposes that regulations made under these provisions be subject to the negative resolution procedure. In the case that this power is used to amend primary legislation, the affirmative procedure will apply.

## **Part 4 – Development Corporations**

### **Clause 93(2): Amendment of power to designate an area as the site of a proposed new town**

*Power conferred on: Secretary of State*

*Power exercised by: Order made by statutory instrument*

*Parliamentary Procedure: Affirmative (s.77(3B) NTA 1981)*

### Context and Purpose

415. Under section 1 of the NTA 1981, the Secretary of State may designate an area as the site of a proposed new town. This clause amends this power to confirm that separate parcels of land may be designated as the area for the site of a proposed new town in England.

### Justification for taking the power

416. The government is of the view that it could be argued that section 1 of the NTA 1981 already allows separate parcels of land to be designated as the site of a proposed new town. In order to give confidence to those who might make proposals for a new town development corporation (including local authorities who wish to take forward a locally led new town development corporation) we are amending section 1 to put it beyond doubt.
417. Whether an area of a new town consists of a single parcel of land, or several is a relatively minor amendment to the existing power to designate an area as the site of a proposed new town.
418. The power remains restricted in that it can only be used if the Secretary of State is satisfied, after consultation with any concerned local authorities, representative groups for residents and businesses and any other appropriate consultees, that it is expedient in the national interests that the land should be developed as a new town. The Secretary of State will need to be satisfied of this in the case of separate parcels of land.

### Justification for the procedure

419. The existing power is subject to the affirmative procedure and we are not intending to change this.

**Clause 93(3): Amendment of power establish a development corporation for a new town**

*Power conferred on: Secretary of State*

*Power exercised by: Order made by statutory instrument*

*Parliamentary Procedure: Affirmative (s.77(3B) NTA 1981)*

**Context and Purpose**

420. Under section 3 of the NTA 1981, the Secretary of State must establish a development corporation for the purposes of the development of a designated new town site. This clause amends this power to provide that a single development corporation may be established for the purposes of the development of more than one new town in England.

**Justification for taking the power**

421. The government wants to promote maximum flexibility in respect of new town development corporations to encourage their use to deliver the development needed to address the housing crisis and provide for growth. This amendment to section 3 will allow for the possibility of a single development corporation being established for the purposes of overseeing more than one new town.
422. The Secretary of State will only be able to establish a single development corporation to oversee the development of more than one new town where it is considered, following consultation of locals, businesses, councils and any other appropriate consultees to be expedient in the national interests to do so.
423. It is already possible, under section 6 of the NTA 1981, for the Secretary of State to transfer new town functions from one development corporation to another in exceptional circumstances. This would result in a single development corporation being responsible for the development of more than one new town.

**Justification for the procedure**

424. The existing power is subject to the affirmative procedure and the government is not proposing to change this.

**Clause 93(6): Amendment of power to establish an urban development corporation**

*Power conferred on: Secretary of State*

*Power exercised by: Order made by statutory instrument*

*Parliamentary Procedure: Affirmative (s. 135(3) of the Local Government, Planning and Land Act 1980*

**Context and Purpose**

425. Under section 135 of the Local Government, Planning and Land Act 1980 the Secretary of State has the power to establish an urban development corporation (UDC) for the purposes of regenerating an urban development area. The Bill amends this power to clarify that a UDC can be for the purpose of developing an urban development area.

**Justification for taking the power**

426. The government is of the view section 135 could already allow for development and therefore this provision does not delegate further power but clarifies the purposes of the existing delegated power. The amendment is to put it beyond doubt and to give confidence to those seeking a new UDC.

427. This provision is included in this memo for completeness and clarity. It should also be noted the objects of Mayoral Development Corporations are similarly amended in s.201 of the Localism Act 2011 to confirm they include “development” but there no change the designation power is required.

**Justification for the procedure**

428. The existing power is subject to the affirmative procedure and the government is not proposing to change this.

### **Clause 96: Power to direct transport authority to comply with statutory duty**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

#### **Context and Purpose**

429. Clause 96 (exercise of transport functions) inserts new section 9A into the NTA 1981 and section 140A into the Local Government, Planning and Land Act 1980 which makes provision in relation to the exercise of transport functions in respect of the area of a development corporation. It places duties on relevant transport authorities to have regard to any plan produced by a development corporation when developing local transport policies and co-operate with development corporations in the development and implementation of the corporation's plans.
430. Where the Secretary of State considers that a transport authority has failed to comply with either of these duties, she may direct the authority in relation to the exercise of those functions.

#### **Justification for taking the power**

431. Under current legislation, development corporations do not have transport powers or highway authority powers. New town development corporations are also restricted from providing any railway, light railway or tramways. This has affected proposals for new towns where, owing to the transport challenges, congestion and scale of growth envisioned, a sustainable mass transit system may be needed. Currently new town development corporations that might be tasked with delivering a new settlement cannot, as part of its activities, also deliver a mass transport system other than a trolleybus.
432. What the government wants is a 'cascade of interventions', that starts with the expectation of cooperation between local transport authorities, highways authorities and the development corporation. Where the Secretary of State believes that

cooperation between the bodies has not followed, she may issue a direction (which is the delegated power that this entry is concerned with). The last resort, if directions are not complied with, would be the transfer by regulations of specified local transport and local highway powers to the development corporation (see below).

433. This power to issue a direction to a relevant transport authority is considered justified to ensure that a development corporation can promote a transport scheme for its development area and make it more likely that transport infrastructure will be provided in a timely manner to support the development.

#### Justification for the procedure

434. The government considers that it is appropriate for this power to be exercised by way of a direction. This direction-making power will be the exception rather than the rule but will provide a tool for the Secretary of State to ensure that relevant transport authorities are exercising their functions in a way that complies with the duties set out in primary legislation. Directing authorities in relation to the exercise of their functions is not considered to be a matter that would be appropriate for legislation.

#### **Clause 96: Power to provide for a function of the transport authority to be exercisable by a development corporation**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative (s.77(2) NTA 1981 and s.140A(7) Local Government Planning and Land Act 1980)*

#### Context and Purpose

435. If a transport authority fails to comply with a direction, the Secretary of State may make regulations to provide for a function of the transport authority to be exercisable by the development corporation in relation to the development corporation's area. The power to make such regulations only applies in relation to a centrally led new town development corporation and centrally led urban development corporations (i.e.



where the Secretary of State, and not a local authority, oversees the development of the new town).

436. Regulations that confer transport functions on a new town development corporation can do so generally, or subject to conditions and limitations. They can also provide that functions are exercisable instead or, concurrently or jointly with, the relevant transport authority.

#### Justification for taking the power

437. As set out above, this power is part of a 'cascade of interventions'. This power to confer the functions of a relevant transport authority onto a development corporation is considered justified to ensure that a development corporation can promote a transport scheme for its development area and make it more likely that transport infrastructure will be provided for to support the development.

#### Justification for the procedure

438. The government considers that the negative procedure would give parliament the right level of scrutiny for this power due to the discrete issue covered by these regulations. This is the same level of scrutiny given to other power to confer functions on new town development corporations (see s.7A, as inserted by s.175(2) of the LURA).

### **Clause 96: Power to provide for a transfer scheme in connection with regulations transferring the function of a transport authority to a Development Corporation**

*Power conferred on: Secretary of State*

*Power exercised by: Scheme*

*Parliamentary Procedure: None*

#### Context and Purpose

439. If the Secretary of State makes regulations to provide for a function of the local transport authority to be exercisable by the development corporation in relation to the

development corporation's area, they may also make a transfer scheme to transfer property, rights and liabilities to which the regulations relate. This reflects a power already available in relation to Mayoral Development Corporations under section 200 of the Localism Act and grants a similar power in relation to New Town Development Corporations and Urban Development Corporations but only for the limited purpose of supporting the exercise of any transferred transport functions.

#### Justification for taking the power

440. This power is to ensure the Development Corporation can make effective use of any transferred transport functions. This is considered justified to ensure that a development corporation can promote a transport scheme for its development area and make it more likely that transport infrastructure will be provided for to support the development.

#### Justification for the procedure

441. The government considers that the transfer scheme procedure is appropriate as these transfers will be accompany the statutory instrument which approves the substantive transfer of functions (see entry above). A scheme is appropriate to the level of detail required for such transfers. This aligns with the procedure for Mayoral Development Corporations in section 200 of the Localism Act 2011.

### **Part 5 – Compulsory Purchase**

#### **Clause 103: Home loss payments: exclusions**

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure (see new section 32A(10) LCA 1973)*

#### Context and Purpose

442. Clause 103 amends the provisions relating to home loss payments in Part 3 of the LCA 1973. Section 29 of that Act provides that in certain circumstances, including in

cases of compulsory acquisition, qualifying people displaced from their home have a right to a home loss payment. Similar payments, known as basic and occupier's loss payments, are provided for by sections 33A-33C for people with an interest in property when that interest is compulsorily acquired but who are not entitled to receive home loss payments. Section 33D of the LCA 1973 provides for an exclusion to the right to a basic or occupier's loss payment where specified statutory notices or orders (relating to disrepair/neglect of land and property) have been served on the person and not complied with.

443. New section 32A, to be inserted by clause 103 (home loss payments: exclusions), applies the same exclusion to eligibility for a home loss payment, i.e. provides that qualifying persons will not be eligible for such a payment where they have been served with and not complied with specified statutory notices or orders. The notices and orders in question are listed in subsections (4) and (5). Subsection (8) confers a power on the Secretary of State for land in England, and the Welsh Ministers for land in Wales, to amend the list of statutory notices and orders by making regulations.
444. This is intended to enable the government to ensure that these lists can keep pace with any amendments to the applicable statutory regimes for disrepair/neglect of property and land.

#### Justification for taking the power

445. The primary legislation sets out the primary policy for the circumstances in which eligibility for a home loss payment will be excluded. The power allows for the relevant lists of statutory notices and orders to be amended in order to allow for procedural amendment relating to the detail of those statutory schemes. The power therefore concerns a discrete matter and is constrained. This is secondary policy detail which the government consider is appropriate to be able to amend using secondary legislation.

#### Justification for the procedure

446. The government considers that, although the power amends primary legislation, the negative procedure would give parliament the right level of scrutiny for this power because the power is only capable of making amendments of a minor character. This is the same level of scrutiny given to the similar existing power under section 33D(7) LCA 1973 which the government would expect to be exercised at the same time and to the same extent as any exercise of the power referred to.

**Clause 105(3): Expansion of existing power to direct that hope value is not to be paid – new paragraph A1 of Schedule 2A to the ALA 1981**

*Power conferred on: Secretary of State and Welsh Ministers (as confirmation authorities)*

*Power exercised by: Direction*

*Parliamentary Procedure: None*

**Context and Purpose**

447. Section 14 of the LCA 1961 provides that, when assessing the value of land for the purpose of assessing compensation in respect of a compulsory acquisition, account may be taken of the prospect of planning permission being granted. This is known as ‘hope value’.

448. The Levelling-up and Regeneration Act 2023 introduced a power to allow acquiring authorities to include in their CPOs a direction which allows hope value to be removed from the assessment of compensation of land where doing so is justified in the public interest (section 14A of the LCA 1961). The CPO will then be confirmed in the usual way by either the Secretary of State for land in England or the Welsh Ministers for land in Wales. In practice, the decision as to whether to make a direction is made at the same time as the decision as to whether or not to confirm the CPO.

449. This is a delegation of legislative power insofar as the effect of the direction, once confirmed, would disapply section 14 of the LCA 1961.

450. Section 15A of the ALA 1981 makes provision in relation to directions that apply section 14A of the LCA 1961. It provides that an acquiring authority may only include a direction that hope value be removed if the enactment that confers the power to make the compulsory purchase is listed in Schedule 2A to the ALA 1981. Furthermore, CPOs made under the enactments listed in paragraphs 1 - 7 of Schedule 2A to the ALA 1981 which seek such directions must provide provision of affordable housing.
451. Clause 105(3) of this Bill amends Schedule 2A to add 'section 125 of the Local Government Act 1972 (compulsory acquisition of land on behalf of parish or community councils)' to the list of enactments. This gives a general power to district councils to compulsorily acquire land on behalf of parish or community councils for the purpose of their functions or for the benefit, improvement or development of their area (subject to confirmation by the Secretary of State).
452. Clause 105(4) also amends section 15A(5) of the ALA 1981 to provide that, in respect of CPOs made under section 125 of the Local Government Act 1972, the acquiring authorities' intentions must include the provision of a certain number of units of affordable housing.

#### Justification for taking the power

453. The power to confirm a direction is one that already exists and allows for 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. Adding CPOs made under section 125 of the LGA 1972 to the list of enactments eligible for such directions is not intended to be a substantial extension of the direction-making power. The number of CPOs including a direction under this power is likely to be less than a handful in any year, if any at all.
454. 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 (for example, local authorities for CPOs made under the Housing Act 1985 or development corporations for CPOs made under the NTA 1981) of detailed evidence relating to its particular scheme, which the confirming authority will need to consider carefully in each case. 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 the procedure

455. 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 ALA 1981 or NTA 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.

#### **Clause 106: New powers to appoint inspectors**

*Power conferred on: Secretary of State and Welsh Ministers (as confirmation authorities)*

*Power exercised by: Appointment*

*Parliamentary Procedure: None*

#### Context and Purpose

456. CPOs made under the NTA 1981 must be submitted by the acquiring authority to the relevant Minister for confirmation. Where an order has been objected to, an Inspector is appointed to conduct a public inquiry or consider the case through written representations. The Inspector then submits a report and recommendation to the relevant Minister who makes the decision on the order.
457. Clause 106 (new powers to appoint an inspector) amends Schedule 4 to the NTA 1981 to provide that the confirming authority may appoint an inspector to act instead of it in relation to the confirmation of a CPO. This would include confirmation of a

CPO that includes a direction that hope value should be removed from the assessment of compensation (see paragraph 5A of Schedule 4 to the NTA 1981).

458. Additionally, clause 106 amends Schedule 2A to the LCA 1961 to enable confirming authorities to appoint an inspector to carry out functions under paragraph 1(2) of that Schedule on the confirming authority's behalf. These are functions concerned with the assessment of compensation for compulsory purchase where a direction for the removal of hope value has been made. The LCA 1961 provides for additional compensation to be payable where specified conditions arise that demonstrate that commitments made by the beneficiary of the direction at the time of its confirmation will not be met. This clause allows the functions of considering an application from a claimant for a direction that additional compensation must be paid, determining whether the conditions apply and making a direction for additional compensation may be made by an inspector, as well as associated publicity functions under delegated legislation.

459. The powers mirror that of section 14D of the ALA 1981 which already allows an inspector to confirm CPOs submitted to the confirming authority under that Act.

#### Justification for taking the power

460. To speed-up the decision-making process for CPOs made under the NTA 1981 to create consistency between the procedures for authorising CPOs under the ALA 1981 and the NTA 1981, we wish to allow inspectors to be appointed under Schedule 4 to the NTA 1981 to act instead of the confirming authority when confirming New Town CPOs.

461. A new power to appoint inspectors to act on the confirming authority's behalf under paragraph 1(2) of the LCA 1961 will speed-up the decision-making process for CPOs with directions applying section 14A of the LCA 1961 and ensure consistency in approach to the delegation of decisions relating to these types of CPOs.

462. As for decisions on CPOs made under the ALA 1981, the government considers the appointment of inspectors to undertake confirmation decisions under the NTA 1981 and LCA 1961 will not be appropriate in all cases and a confirming authority may decide not to appoint an inspector to take any decisions. Where appointment of an inspector is proposed, the same criteria as set out in the government's Guidance on the Compulsory Purchase Process<sup>8</sup> will apply.
463. As an additional safeguard, we propose to ensure that where a confirming authority has decided to appoint an inspector, there is also a power to "recover" the case back for their own determination at any time until the decision is issued. This would allow for consideration of exceptional cases where, for example, an important novel issue has emerged during the course of the confirmation process which means the decision should be made directly by the confirming authority.

#### Justification for the procedure

464. The confirming authority's power to appoint an inspector to confirm a CPO on its behalf will not be subject to further parliamentary scrutiny. This is consistent with its ability to appoint inspectors under section 14D of the ALA 1981 without further scrutiny. This is considered proportionate because any given appointment will only apply to a particular CPO so would not warrant specific parliamentary scrutiny.

## **Part 6 - General**

### **Clause 110: Commencement and transitional provision**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: None*

#### Context and Purpose

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<sup>8</sup> [Compulsory purchase process: guidance - GOV.UK](#)



465. Clause 110 makes provision about as to when provisions of the Bill come into force. Subsection (7) provides that regulations can make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

Justification for taking the power

466. It is standard procedure to make provision for commencement by way of regulations. Parliament will have approved the provisions of the Act, and the power affords the necessary flexibility to bring them into force at the appropriate time. This allows the government to have regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.
467. The power to make transitional, transitory or saving provision in connection with the Act coming into force is also a standard power. It is appropriate to allow the Secretary of State to such provision in order to ensure the orderly implementation of the provisions.

Justification for the procedure

468. As is usual with commencement and transitional powers, regulations made under clause 110 are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced and commencement by regulations enables the provisions to be brought into force at the time best suited to the sector. The absence of parliamentary procedure also means that where transitional, transitory or saving provision relates to provisions being brought into force by regulations, those provision can be contained in the same instrument.

Ministry for Housing, Communities and Local Government

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