PLANNING AND INFRASTRUCTURE BILL

European Convention on Human Rights Memorandum (on moving to the House of Lords)

1. This Memorandum addresses issues arising under the European Convention on Human Rights ("**ECHR**") in relation to the Planning and Infrastructure Bill ("**the Bill**"). It has been prepared by the Ministry of Housing, Communities and Local Government with the support of the Department for Energy Security and Net Zero, the Department for Transport and the Department for Environment, Food and Rural Affairs.

2. 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. Two supplementary memoranda were published in relation to amendment made during Committee in the House of Commons [1]. This memorandum consolidates those supplementary memoranda and the original memorandum[2].

3. Section 19 of the Human Rights Act requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention Rights (as defined by section 1 of that Act).

4. On introduction of the Bill in the Commons, the Secretary of State for Housing, Communities and Local Government has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> *"In my view the provisions of the Planning and Infrastructure Bill are compatible with the Convention Rights"*

[1] Supp ECHR memo and suppECHRmemo
[2] ECHRmemo.pdf

5. When transferred to the House of Lords, the Minister for Housing and Local Government, Baroness Taylor of Stevenage shall make a statement under section 19(1)(a) of the Human Rights Act 1998 that in their view, the Bill's provisions are compatible with the Convention's rights.

6. The purposes of the Bill are:
   (i) Delivering a faster and more certain consenting process for critical infrastructure.
   (ii) Introducing a more strategic approach to nature recovery.
   (iii) Improving certainty and decision-making in the planning system. This includes localisation of planning fees to ensure that Local Planning Authorities can cover their costs through fee revenue and changes to planning committees such as mandatory training and a scheme of delegation to ensure that decisions on planning applications are taken at the right level.
   (iv) Unlocking land and securing public value for large scale investment.
   (v) Introducing effective new mechanisms for cross-boundary strategic planning.

Summary of Bill provisions

7. This Bill includes measures to 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.

8. Part 1 of the Bill (Infrastructure) includes measures to deliver a faster and more certain consenting process for critical infrastructure. This is primarily through

streamlining changes to the Nationally Significant Infrastructure Project consenting process (Chapter 1) alongside improvements to other infrastructure consenting regimes including the Electricity Act 1989 (Chapter 2), Transport and Works Act 1992 and Highways Act 1980 (Chapter 3). For energy infrastructure specifically, Chapter 2 will improve the grid connections process, encourage investment in Long Duration Electricity Storage and introduce a financial benefits scheme for those living closest to new transmission infrastructure. It also enables forestry authorities to use the public forest estate in connection with the production and supply of electricity from renewable sources.

9. Part 2 of the Bill (Planning) includes measures to improve certainty and decision-making in the planning system. Chapter 1 includes measures that will allow local planning authorities to set their own planning fees to ensure that they can cover their costs of providing a planning service. It also includes measures related to planning committees such as mandatory training for committee members and a scheme of delegation to ensure that decisions on planning applications are taken at the right level. Chapter 2 introduces effective new mechanisms for cross-boundary strategic planning. It makes provision to enable strategic planning authorities to take a strategic approach to planning, unlocking growth and supporting better alignment of infrastructure and housing.

10. Part 3 of the Bill (Development and Nature Recovery) introduces a more strategic approach to nature recovery. The Bill will create a Nature Restoration Fund which developers can pay into, allowing building to proceed immediately. A delivery body will then take responsibility for securing positive environmental outcomes at a strategic rather than site-by-site level.

11. Part 4 (Development Corporations) changes development corporation legislation so that they can operate more effectively, enabling more effective land assembly and getting more housing delivered. It also strengthens powers on infrastructure delivery and transport.

12. Part 5 of the Bill (Compulsory Purchase) introduces amendments to speed up, modernise and reduce administrative costs associated with the compulsory purchase order process. It also enables the delegation of decisions to inspectors and acquiring authorities and increases the situations in which 'hope value' can be removed from compensation, unlocking more sites for development and delivering more housing.

Convention Article Analysis

13. This memorandum provides analysis of the interaction of the provisions in the Bill with the various Convention rights engaged which support the Secretary of State's view that the Bill is compatible with those rights.

14. The Bill engages, or might be considered to engage, several Convention rights, including the right to a fair trial (Article 6), the right to respect for private and family life (Article 8) and the right to property (Article 1 of the First Protocol). The government has considered these Articles and the rights which they provide against each substantive measure in the Bill and has highlighted below those measures which we regard as being of significant interest. Other measures may raise minor ECHR issues but are not thought significant enough for the purposes of this memorandum.

15. Having considered these points, the government regards the measures in the Bill as being compatible with Convention Rights.

Retrospection

16. The government notes that certain of the provisions of the Bill are retrospective:
    (i) CPO (hope value) – we consider that the extension of the applicability of directions for the non-payment of hope value is likely to have retrospective

effect insofar as a direction changes the previously definite and predictable consequences of past transactions in a way which could not have been reasonably expected by those who are affected;

(ii) Financial benefits – this includes a delegated power to provide for projects to be captured which have already commenced construction prior to the legislation coming into force. We consider that this changes the previously definite and predictable consequences of past actions in a way which could not have been reasonably expected by those who are affected.

(iii) Electricity network connections – this includes a delegated power to make changes to codes or documents which could be argued to change the previously definite and predictable consequences of past transactions in a way which could not have been reasonably expected by those who are affected.

17. The government does not however consider that this retrospectivity gives rise to additional issues under the Convention.

Article, Protocol 1: Right to peaceful enjoyment of property

18. Article 1 of Protocol 1 ("**A1P1**") provides that:

> "*(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

Consenting Regimes

19. The Bill contains a number of provisions which amend the existing legislative regimes for consenting to the development of land ("consenting regimes").

(i) Part 1, Chapter 1 amends the Planning Act 2008 which provides for how development consent is granted for nationally significant infrastructure projects.

(ii) Part 1, Chapter 2 amends the Electricity Act 1989 which provides for how large-scale electricity infrastructure in Scotland is consented.

(iii) Part 1, Chapter 3 amends:

i. the Transport and Works Act 1992 which provides for the construction of transport systems (e.g. railways or tramways) through transport and works orders;

ii. the Highways Act 1980 which governs the management and maintenance of highways, providing mechanisms for authorising works; and

iii. the Harbours Act 1964 which provides for the making of harbour revision orders and harbour empowerment orders which can authorise works.

(iv) Part 2 amends the Town and Country Planning Act 1990 which provides for the grant of planning permission for development of land.

20. The government considers that these consenting regimes engage the A1P1 rights of those with an interest in the land. In so far as they control the ability of those interested in the land to develop that land, the consenting regimes impact on those individuals' proprietary rights and/or enjoyment of their property. The government considers that any interference with the aforementioned rights constitutes a control of use of the individuals' property.

21. The government's view is that, in so far as the consenting regimes control the use of property, that control is justified on the basis that is in the general interest of the

community. The government has a wide margin of appreciation in determining whether the control of use of property is in the wider public interest (see James v UK (1986) 8 E.H.R.R. 123), and it has been held that a well-functioning planning system can justify interference with A1P1 rights on the basis that such a system is necessary in the interests of the rights and freedoms of others and the economic well-being of the country (see Sporrong and Lönnroth v Sweden [1983] 5 EHRR 35).

22. The government considers that the consenting regimes are in pursuit of the legitimate aim of having a well-functioning planning system and therefore any interference with A1P1 rights is justified.

23. Further, the government considers that the consenting regimes are a proportionate means of achieving the aforementioned legitimate aim. Under the consenting regimes, a balancing exercise is carried out during decision-making processes, including on any appeal, to ensure that a fair and proportionate balance is struck between competing interests of the individual and the community as a whole. In addition, there are opportunities in the existing decision-making process to either completely eliminate any impact on individuals or, in so far as is possible and proportionate, limit any such impact on individuals by requiring mitigation measures.

24. The government considers that the consenting regimes are currently compliant with A1P1 and that the regimes, as amended by the provisions in the Bill, remain compliant.

<u>Nationally Significant Infrastructure Projects – Clause 3 (power to disapply requirement for development consent)</u>

25. Clause 3 introduces a power for the Secretary of State give a direction that development consent under the PA 2008 is not required for specified development

that falls within the meaning of an NSIP. The purpose of the direction will be to transfer responsibility for consenting such development to an alternative consenting authority.

26. These alternative consenting regimes are likely to be those provided for by the Town and Country Planning Act 1990, Highways Act 1980, Transport and Works Act 1992 and the Harbours Act 1964. As set out at paragraphs 19 to 24 above, the government considers that these alternative consenting regimes are compliant with A1P1. As such the redirection of development from the NSIP regime to another consenting regime will not interfere with an individual's rights.

Nationally Significant Infrastructure Projects – clause 4 (removal of certain pre-application requirements)

27. Clause 4 removes provisions of the Planning Act 2008 related to consultation requirements before an application for development consent is made to the Secretary of State. This aligns the NSIP regime with other regimes for consenting to development which do not have a legal requirements to carry out pre-application consultation

28. The government considers that the NSIP regime engages the A1P1 rights of those with an interest in the land. The government considers that the NSIP regime is in pursuit of the legitimate aim of having a well-functioning planning system and therefore any interference with A1P1 rights is justified. Further, the government considers that the NSIP regime is a proportionate means of achieving this legitimate aim.

29. The government considers that the removal of pre-application consultation requirements does not change this analysis. Other consenting procedures do not have a legal requirement to carry out pre-application consultation and yet they are unquestionably compatible with the ECHR.

Nationally Significant Infrastructure Projects – clause 10 (right to enter and survey land)

30. Section 53 of the Planning Act 2008 provides that the Secretary of State may authorise a person to enter any land for the purpose of surveying and taking levels of it in connection with an application for development consent, a proposed application for development consent, or an order granting development consent which includes provision authorizing the compulsory purchase of land.

31. Clause 10 amends section 53 of the Planning Act 2008 to remove the requirement for an applicant/proposed applicant for development consent to obtain Secretary of State authorisation to enter land, but retains other relevant conditions of the provision and provides a power to prescribe further requirements to the notice provision to ensure sufficient detail is given to the owners and occupiers of the land. It is the government's intention that the notice requirements as prescribed in the regulations may include, but will not necessarily be limited to, the following: details of the negotiations that have been held regarding the entry, full details of the surveys to be undertaken and the rationale for taking them, and evidence that the surveys are required in connection with a Nationally Significant Infrastructure Project.

32. When exercising the right of entry, persons authorised by applicants/proposed applicants will be required to provide every owner or occupier of the land with at least 14 days' notice before entering the land and any person suffering damage caused by entry under the provision will be able to recover compensation from the person exercising the right. Persons exercising the right will also need to obtain a warrant if force is required to enter the land.

33. There will be an interference with A1P1 rights as use of any land by an owner / occupier might be inhibited during any entry or survey conducted by exercise of

this power. The length and nature of the disruption will also depend on the particular case and nature of any survey conducted under the provision.

34. The government considers any interference is justified as necessary and proportionate in the public interest. The right to enter land is a necessary power for applicants and proposed applicants for development consent to have as they often need to survey land in connection with their applications/ proposed applications. For example, in relation to proposals to compulsorily acquire land required for the project for which consent is being sought. It is necessary to streamline the process by which a person is authorised to enter land to avoid delays to the development consent process which can be prohibitively burdensome for applicants and proposed applicants.

35. The government considers that the provision is a proportionate means of achieving this objective. The right may only be exercised by authorised persons who cannot demand entry unless the applicant/ proposed applicant has given at least 14 days' notice to every owner or occupier of the land. The details of the information that must be included in the notice will be prescribed in regulations as outlined above. The authorised person may not use force unless a justice of the peace has issued a warrant authorising the person to do so. The force that may be authorised is limited to that which is reasonable to gain entry to the land. There is also provision for the payment of compensation in respect of damage that results from the exercise of the power.

<u>Connections to the electricity transmission and distribution systems – Clause 13 (licence and other modifications)</u>

36. Clause 13 of the Bill gives the Secretary of State and Ofgem the power to amend, add or remove conditions of electricity licences, industry codes, connection agreements and associated documents under licences, in order to facilitate an efficient process for managing connections to the transmission system or the

distribution system. This may also include the power for the Secretary of State and Ofgem to amend contracts directly.

37. Clause 16 of the Bill gives the Secretary of State and Ofgem the additional power to direct the Independent System Operator and Planner (being the NESO) and distribution network operators to modify agreements entered into by the NESO and electricity distributors to ensure that these reflect changes to the process for managing connections. These changes may have been introduced pursuant to the power conferred by clause 13, or relate to the reforms more generally.

38. The agreements to which the power relate take two forms. At a transmission level (where contracts are held between NESO and connecting parties) these are those documents entered in accordance with the code's terms. At a distribution level (where agreements are held between DNOs and connecting parties) these are the resulting bilateral agreements.

39. Both the enabling powers are capable of being exercised compatibly. The legislation provides powers, governed by a procedure, to facilitate an efficient process for managing connections to the transmission and distribution systems, but it does not require the exercise of the powers, nor does it prescribe the substance of the modifications that could be made.

40. Both the Secretary of State and Ofgem will be required to exercise these powers in a manner compatible with A1P1.

<u>Amendments to the Highways Act 1980 – clause 33 (compulsory acquisition powers to include taking of temporary possession)</u>

41. This Bill also creates a new power to take possession or occupation temporarily in relation to work being undertaken under the Highways Act 1980.

42. This measure seeks to enable highway authorities to take temporary possession or occupation of land, exercisable compulsorily or by agreement to facilitate the expedient delivery of highway infrastructure projects.

43. The government believes that the express provisions for temporary possession under the Highways Act impacts the A1P1 rights of property stakeholders. A1P1 rights are affected not only when ownership is removed but also when the usage of the property is regulated. The government views temporary possession as a form of usage control over an individual's property and power to be able to, if appropriate, provide compensation to the individuals affected by the temporary interference is included.

44. For such interference to be lawful, it must serve the public interest and be proportionate. The government contends that temporary possession meets these criteria as it serves the community's general interest. The courts afford the government considerable leeway in deciding whether property usage control aligns with the public interest. It is acknowledged that the needs of a robust and effective planning system could justify A1P1 rights infringements, as it is essential for the rights and freedoms of others and the country's economic health (Sporrong and Lönnroth v Sweden [1983]).

45. The government views temporary possession as supportive of an effective planning system, allowing for quicker utilisation of land for essential purposes without the need for compulsory purchase. This approach not only expedites the process but also minimises interference, as the property can be returned to the owner after its temporary use, contrasting with the permanent impact of compulsory acquisition.

46. This approach is considered to enhance the proportionality inherent in the planning system by introducing an alternative to compulsory purchase that has a lesser impact.

Spatial Development Strategies – Clause 52

47. There is an argument that A1P1 is potentially engaged by the spatial development strategy measures as these strategies, as part of the development plan, will result in decisions being made that will potentially impact upon an individual's proprietary rights and/or enjoyment of their property. Planning decisions are to be made in accordance with the development plan unless material considerations strongly indicate otherwise. Since human rights are relevant material considerations in planning decisions (Stringer v MHLG [1971] All ER 65), planning decision makers are required to ensure that a fair balance is struck between the competing interests of the individual and the community as a whole.

48. There are opportunities in the decision-making process, which will remain, to either completely eliminate any impact on neighbouring property owners or, in so far as is possible and proportionate, limit any impact on individuals by requiring mitigation measures, such as design alteration or planning conditions, to be put in place. The spatial development strategy measures do not alter the checks and safeguards of existing statutory procedures in relation to decisions taken in respect of applications for planning permission.

49. Further, insofar as the spatial development strategy measures do interfere with any rights under A1P1, the government considers that this interference can be justified on the basis that a well-functioning planning system is necessary in the interests of the rights and freedoms of others and the economic well-being of the country, and the changes are necessary for that and are proportionate. In particular, the government considers that spatial development strategies are a necessary mechanism for effective cross-boundary strategic planning. Key spatial issues, including meeting housing need, delivering strategic infrastructure, growing the economy and improving climate resilience, cannot be effectively addressed without planning for growth on a larger than local scale.

Development and Nature Recovery – Clauses 77 to 82 (power to enter and survey or investigate land)

50. Clause 77 gives a person authorised by Natural England the power to enter land (except a private dwelling) in connection with devising proposals for and implementing conservation measures included in an environmental delivery plan. Where a warrant is necessary (e.g. because the authorised person has been denied entry to the land), clause 78 provides for a justice of the peace to issue a warrant conferring a power to enter and survey or investigate the land, if necessary using reasonable force.

51. Clause 82 creates equivalent measures where an environmental delivery plan is revoked and the Secretary of State, or a public authority to which the Secretary of State has given a direction, is to take conservation (or other) measures in place of Natural England (under Clause 86 of the Bill). It gives powers for the Secretary of State or such an authority to enter and survey land (except a private dwelling) for those purposes (except in relation to a proposal to purchase land); and makes provision for warrants to be issued where needed.

52. There will be an interference with A1P1 rights as the use of the land by the owner / occupier might be inhibited during the survey although this will depend on the type of work necessary. The length of the disruption will also depend on the particular case.

53. The government considers any interference is justified as necessary and proportionate in the public interest. The right to enter and survey land will enable Natural England (or, under Clause 86, the Secretary of State or another public authority directed by the Secretary of State) to survey land, take samples (soil, sub-soil, air and vegetation), monitor efficiency of measures, value land and monitor compliance with the environmental delivery plan.

54. These measures correspond to a pressing social need, namely the need to allow for conservation measures to be effectively drawn up and implemented for environmental delivery plans, which will speed up the delivery of development consents including new housing. These measures are proportionate to that aim and include a number of safeguards (in several clauses) including a requirement to give notice to occupiers, an exemption for private dwellings, a requirement to obtain a warrant where access to the land has been denied, a right to compensation for any person who has sustained damage as a result of the exercise of this power, and for any disputes relating to compensation to be resolved by the Upper Tribunal.

55. The government considers that there is a fair balance between the rights of the individual and the general interest.

Compulsory Purchase – Parts 3 (Development and Nature Recovery) and 5 (Compulsory Purchase)

56. Land (or an interest in land) is property and the compulsory deprivation or, or interference with land, will engage A1P1. Such interference will not amount to an infringement of A1P1 rights if it is in the public interest and there is proportionality between the means employed and the aims pursued by the State (James v United Kingdom A 98 (1986); 8 EHRR 123 PC, 50).

57. It is the government's position that powers to compulsorily purchase land are in the public interest and are proportionate to the aim they seek to achieve. Britain is in a housing crisis. The affordability of housing in particular has fallen drastically as too few houses have been built and local authorities face high costs of funding temporary accommodation. It is the government's mission to respond to this crisis, delivering new affordable homes and the critical infrastructure that underpins economic growth.

58. The compulsory purchase regime as provided for by statute including the Land Compensation Act 1961, Compulsory Purchase Act 1965, Land Compensation Act 1973 and Acquisition of Land Act 1981, and case law, strikes a fair balance between the public interest aims being pursued and the fundamental rights of individuals.

59. The measures in Part 5 of the Bill make amendments to compulsory purchase legislation and are considered to create no greater interference with A1P1 than is already the case and to be justified. We have highlighted below those measures which we regard as being of significant interest.

60. Clause 83 also confers power to compulsorily purchase land on Natural England for the purposes of a conservation measure set out in an environmental delivery plan, including power to acquire new rights over land. Clause 84 gives the Secretary of State the power to compulsorily acquire land in certain circumstances where an environmental delivery plan is revoked. Where that is the case, clause 64(6) confers obligations on the Secretary of State to carry out actions in order to outweigh the negative effect on the conservation status of any identified environmental feature.

61. It is the government's position that these powers are in the public interest and proportionate to the aim they seek to achieve. The existing statutory provisions for compulsory purchase (set out above, as provided for in clause 83 and Schedule 5, and the Acquisition of Land Act 1981, Part 2 in particular) as well as the availability of compensation (as provided for in particular by Part 2 of the Land Compensation Act 1961 and sections 7 and 10 of the Compulsory Purchase Act 1965) strike a fair balance between the public interest aims being pursued and the fundamental rights of individuals.

Compulsory Purchase – Clause 100 (general vesting declarations: expedited procedure)

62. On confirmation of a compulsory purchase order, an acquiring authority may (but is not bound to) use its powers of compulsory purchase. The acquiring authority can take possession of the relevant land through different procedural routes.

63. The choice of procedure depends on the objectives of the acquiring authority. The notice to treat procedure is normally used if an acquiring authority is developing the CPO land itself and needs to commence works on site swiftly following confirmation of the CPO. By serving notice to treat (and entry), the authority can secure a right to possession in the short term and leave the assessment of compensation and the acquisition of title to the CPO land to a later date.

64. The general vesting declaration route enables an acquiring authority to obtain title to the CPO land without having to finally determine interests in land, agree on a conveyance of the land with the landowner, or settle the amount of compensation payable before it acquires title. It replaces the notice to treat procedure and conveyance procedure (by which the land is transferred to the AA) with one procedure that, on a certain specified date, automatically vests title to the CPO land in the AA.

65. General vesting declarations are made under the Compulsory Purchase (Vesting Declarations) Act 1981. Section 4 of the Act provides for the execution of vesting declarations and the date of vesting. The general vesting declaration must specify the date on which the land vests in the acquiring authority which must not be less than three months from the date on which interested parties are notified.

66. Clause 100 amends the Compulsory Purchase (Vesting Declarations) Act 1981 to make provision for an expedited procedure. This allows general vesting

declarations to specify a date on which the land vests in the acquiring authorities of not less than six weeks from the date of notification.

67. The expedited procedure is only available where, on the day the general vesting declaration is executed, the following conditions are met:
    (i) in the case of land used as a dwelling:
        i. the relevant land is not occupied;
        ii. the relevant land is unfit for human habitation;
    (ii) in the case of other land, the land is contaminated, derelict, neglected, or unsafe; and
    (iii) the general vesting declaration must not be in respect of part of a house, building or factory only.

68. Alternatively, the expedited procedure is available where the acquiring authority has been unable to identify any land-interest holders of the relevant land.

69. The amendments made by clause 100 engage A1P1 because they theoretically reduce the amount of time an occupier or user of land has to vacate their property once a GVD is served.

70. However, the government is of the view that this is a theoretical interference only. By limiting the expedited procedure to where the land is not residentially occupied or fit for residential or commercial use and relying on the existing safeguards (requirements for the acquiring authority to make diligent enquiries to understand the interests in the property[3] and to serve two public notices about the acquisition[4]) it is highly unlikely that that the expedited procedure will be used in relation to a property where there is an occupier.

[3] section 12(2A) and paragraph 3(2A) of Schedule 2 to the Acquisition of Land Act 1981.
[4] with each notice published online, in a newspaper, and affixed to the land – section 11 and 15 of the Acquisition of Land Act 1981.

71. Further, allowing acquiring authorities to use the process only where land is not fit for use ensures that people that have an interest in unoccupied land in usable condition have the standard amount of time to retrieve any of their valuable possessions from that usable land before vesting.

72. The policy objective is to speed up the compulsory purchase process where land is unoccupied and unusable which benefits the public by:
    (i) reducing delays in bringing such land or land, which may promote antisocial behaviour and/or negative impact on neighbours, into productive use, and
    (ii) reducing the costs of development associated with delay.

73. This is in the context that it has already been established during the confirmation process that there is a compelling case in the public interest for the proposed acquisition of that land.

74. The government is of the view that, in the unlikely event there is interference with an individual's rights under A1P1, the measure is proportionate and strikes a fair balance between the public interest aims being pursued and the fundamental rights of individuals.

Compulsory Purchase – Clause 103 (home loss payment exclusions)

75. Clause 103 of the Bill potentially engages and interferes with A1P1 in that it removes entitlement to a statutory compensation payment for home loss following a compulsory acquisition of land in specified circumstances i.e. where the claimant has failed to comply with specified statutory notices or orders as to the state of their land or property which is the subject of the compulsory acquisition.

76. Home loss payments are provided for by the Land Compensation Act 1973 in cases of compulsory purchase, as an additional sum to reflect and recognise the distress and discomfort of being compelled to move out of one’s home. They are

paid in addition to other compensation for compulsory purchase available under the Land Compensation Act 1961 such as for the market value of the land and for disturbance.

77. Clause 103 excludes entitlement to a home loss payment where statutory notices or orders requiring neglect or disrepair of land or property to be rectified have been served on the claimant and have not been complied with. The same exclusion already applies to other statutory compensation payments of a similar nature provided for under the Land Compensation Act 1973: basic loss payments and occupier's loss payments.

78. While case law of the European Court of Human Rights has held some statutory payments to be regarded as generating a proprietary interest falling within the ambit of A1P1 for a person satisfying the statutory requirements (Stec v United Kingdom (2005) 41 E.H.R.R., the government does not consider home loss payments are analogous or that A1P1 is engaged, following for instance the decision of the House of Lords in R. (on the application of RJM) v Secretary of State for Work and Pensions [2009] 1 A.C. 311).

79. To the extent that A1P1 is engaged, the government considers any interference justified where the compulsory purchase follows from a property owner's neglect or inability to bring a property into compliance with statutory repair requirements. Local authorities expand significant costs in bringing neglected properties back into effective use in the public interest through use of compulsory purchase. In light of the housing crisis, which makes housing unaffordable and holds back economic growth, the government considers lowering those costs and disincentivising non-compliance with orders/notices strikes the right balance.

<u>Compulsory Purchase – Clause 104 (temporary possession of land)</u>

80. Public authorities (and their contractors) may need temporary possession of land when undertaking a public work. For example, they may require possession of land as a work site, for the storage of construction materials, or for the placement of machinery.

81. Currently there is no general power in force that allows acquiring authorities to take temporary possession of land compulsorily. Acquiring authorities must either compulsorily purchase the land permanently or enter into a commercial agreement with the relevant landowner for use of that land. This can result in acquiring authorities being unable to take temporary possession of the land at a reasonable cost and/or delay the implementation of the relevant scheme.

82. Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017 introduced a power for acquiring authorities to take temporary possession of land compulsorily for purposes connected with purposes for which it could acquire land compulsorily. For example, an acquiring authority could take temporary possession of land under this power to undertake a public work on adjacent land. However, this power is not yet in force.

83. The taking of temporary possession is subject to the following provisions:
    (i) the taking is to be subject to the same procedures for authorising and challenging the taking of land on a temporary basis as if the provision relating to temporary possession were provision relating to compulsory acquisition (section 19);
    (ii) notice must be given to anyone with an interest in the land (section 20);
    (iii) the owner may limit the period of temporary possession by the acquiring authority (section 21(2));
    (iv) compensation is payable for loss or injury sustained by a person with an interest in the land and for any business disturbance (section 23);

(v) the Secretary of State (or Welsh Ministers where they are the acquiring or confirming authority) must make regulations about the reinstatement of land subject to temporary possession (section 29(1)).

84. Section 18(3) of the Neighbourhood Planning Act 2017 provides that the power to take temporary possession of land under that section is the only power under which a person may take temporary possession of land compulsorily unless expressly provided for in another Act of Parliament.

85. Currently, there are other regimes that facilitate the taking of temporary possession compulsorily. Powers to enter and/or use land on a temporary basis are regularly sought in orders made under special Acts, Transport and Works Act 1992 Orders ("TWOs"), development consent orders ("DCOs") under the Planning Act 2008 and infrastructure consent orders ("ICOs") under the Infrastructure (Wales) Act 2024.

86. However, there is no express provision in the Planning Act 2008, the Transport and Works Act 1992 of the Infrastructure (Wales) Act 2024 that empowers the taking of temporary possession of land. Promotors have consistently relied on implied powers under these Acts and the taking of temporary possession is regulated by the wording of the relevant order.

87. The government considers that if brought into force, the Neighbourhood Planning Act 2017 power will prevent infrastructure promotors from taking temporary possession under the current Planning Act 2008 processes, Transport and Works Act 1992 processes and Infrastructure (Wales) Act 2024 processes. Clause 104 amends section 18(3) of the Neighbourhood Planning Act 2017 so it does not prevent TWO, DCO or ICO promotors from relying on the relevant order for taking temporary possession.

88. The taking of temporary possession engages A1P1.

89. In passing the Neighbourhood Planning Act 2017 power, parliament put in place safeguards to ensure those rights are not unjustifiably infringed when taking temporary possession, including those set out at paragraph 83. Clause 104 removes those explicit protections where an acquiring authority takes temporary possession under TWOs, DCOs or ICOs.

90. However, the government is of the view that this is a theoretical interference only. The Planning Act 2008, the Transport and Works Act 1992 and the Infrastructure (Wales) Act 2024 each establish:

    (i) procedures for notification of the relevant order sufficient to alert relevant interested persons of the impact the order may have on their land (sections 42(1)(d), 44, 48, 56 of the Planning Act 2008; rules 12, 14 and 15 of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006); sections 30, 34 and 74 of the Infrastructure (Wales) Act 2024, and regulations to be made under them, as constrained by section 108A(2)(e) of the Government of Wales Act 2006)

    (ii) procedures for the taking account of responses (sections 49, 90, 91, 104, 105 of the Planning Act 2008; sections 10 and 13 of the Transport and Works Act 1992); principles of public law in respect of the Infrastructure (Wales) Act 2024;

    (iii) provision for compensation (section 152 of and paragraph 36 of Schedule 5 to the Planning Act 2008; section 5 of and paragraph 11 of Schedule 1 to the Transport and Works Act 1992); sections 60, 66, 67 and paragraph 33 of Schedule 1 to the Infrastructure (Wales) Act 2024;

    which safeguard against unjustified interference of the relevant rights.

91. Additionally, section 6 of the Human Rights Act 1998 requires that public bodies responsible for authorising the taking of temporary possession to act in a way that is compatible with convention rights. These bodies are prevented from allowing the taking of temporary possession in a manner that would be an unjustified interference with Article 8 or A1P1.

92. The policy objective of the Neighbourhood Planning Act 2017 power to take temporary possession was to ensure there was a general power to take temporary possession that applied across all powers of compulsory purchase. The policy objective of clause 104 is to pave the way for the general power to take temporary possession to be brought into force without affecting the taking of temporary possession under the TWO, DCO and ICO regimes. Clause 104 does not introduce any new powers for the taking of temporary possession.

93. The government is of the view that the provisions made under the TWO, DCO and ICO regimes sufficiently safeguard against interferences with an individual's rights under A1P1.

Compulsory Purchase – Clause 105 (amendments relating to section 14A of the Land Compensation act 1961)

94. Clause 105 of the Bill engages and potentially interferes with A1P1 to the extent that it extends the circumstances in which a direction for the non-payment of hope value may be made.

95. The amount of compensation paid as a result of compulsory acquisition (which engages A1P1) must be proportionate and strike a fair balance between the private interests of those affected, and the public interests underlying the acquisition.

96. Although there is no explicit reference to compensation within A1P1, the European Court of Human Rights held (James v United Kingdom A 98 (1986); 8 EHRR 123 PC, 54) that: "compensation *terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicants*".

97. For the deprivation of property by the State to be proportionate, the compensation should be of "*an amount reasonably related to its value*" (Lithgow V United Kingdom A 102(1986); 8 EHRR 329 PC) and it will be relevant whether or not the property owners have had to bear a "*disproportionate and excessive burden*" (Scordino v Italy (No.1) (2007) 45 E.H.R.R. 7, 99).

98. The requirement for confirming authorities (themselves subject to the prohibition against acting incompatibly with convention rights in section 6(1), Human Rights Act 1998) to weigh up the public interest justification arguments in favour of making a direction as against the private interests in each case, only confirming a direction where satisfied it is justified in the public interest, and the limitation of the availability of directions to specific types of CPOs which are most likely to be of wider public benefit, provides sufficient safeguards. Directions may only be included in certain CPOs made by public bodies relating to development that includes affordable housing, development for education purposes or for health-related purposes.

99. Nothing in the case law however requires that compensation must equate to the full market value of the property taken, and Lithgow v United Kingdom, 121 (cited with approval in Holy Monasteries v Greece (1995) 20 EHRR 1) and Scordino v Italy provide examples of where less than reimbursement of the full market value was considered justified.

100. To the extent that the extension of the circumstances in which hope value can be removed from the calculation of compensation amount to an interference with an individual's A1P1 rights, they are considered justified.

Article 6: Right to a fair trial

101. Article 6 provides that:

"*in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*"

102. The government considers the civil rights at issue to be the rights of those with an interest in the land. Provisions aimed at determining any of these rights (e.g. decisions to grant of refuse planning permission or development consent, or to authorise compulsory purchase or temporary possession) would engage Article 6 and therefore need to comply with the substantive and procedural obligations required by the Article.

Consenting Regimes

103. The Bill contains a number of provisions which amend the existing legislative regimes for consenting to the development of land ("consenting regimes").
    (i) Part 1, Chapter 1 amends the Planning Act 2008 which provides for how development consent is granted for nationally significant infrastructure projects.
    (ii) Part 1, Chapter 2 amends the Electricity Act 1989 which provides for how large-scale electricity infrastructure in Scotland is consented.
    (iii) Part 1, Chapter 3 amends:
        i. the Transport and Works Act 1992 which provides for the construction of transport systems (e.g. railways or tramways) through transport and works orders.
        ii. the Highways Act 1980 which governs the management and maintenance of highways, providing mechanisms for authorising works.
        iii. the Harbours Act 1964 which provides for the making of harbour revision orders and harbour empowerment orders which can authorise works.

(iv) Part 2 amends the Town and Country Planning Act 1990 which provides for the grant of planning permission for development of land.

104. The government considers that the consenting regimes are currently compliant with Article 6 and that the regimes, as amended by the provisions in the Bill, remain compliant. Where these amendments contain powers to make procedural provision in secondary legislation it will be possible to make provision which is procedurally fair such that the regimes as a whole are assessed to be compliant with Article 6.

105. It has been held that planning decisions, including decisions to grant or refuse planning permission or development consent, generally involve the determination of civil rights, namely the property rights of those with an interest in the relevant land (see Bryan v UK (1995 21 EHRR)). As the consenting regimes concern planning decisions or the process by which such decisions are made, the government considers that they engage Article 6 and therefore need to comply with the substantive and procedural obligations required by Article 6.

106. It is the government's view that the framework provided by the consenting regimes and the availability of judicial review for effective redress meets the relevant procedural safeguards required by Article 6(1).

107. Planning permission are a classic exercise of administrative discretion (see Alconbury Developments v Secretary of State for the Environment, Transport and the Regions [2003] 2AC 295), such that judicial review is sufficient for Article 6 purposes. Furthermore, the availability of judicial review has been held (both domestically and at the European Court of Human Rights) to provide Article 6 compliance in planning decisions (see ISKCON v United Kingdom Application No 20490/92, 8 March 1994, and applied in Bryan v United Kingdom (1995) 21 EHRR 342 and Chapman v United Kingdom Application No 27238/95, 18 January 2001).

108. The government considers that compliance with Article 6 is ensured by the fact that the public authorities who make determinations in respect of the consenting regimes, and the courts, are required to act in a manner that is compatible with section 6 of the Human Rights Act 1998.

Nationally Significant Infrastructure Projects – Clause 3 (power to disapply requirement for development consent)

109. Nationally Significant Infrastructure Projects ("NSIPs") are major infrastructure developments that are granted planning consent in the form of a Development Consent Order ("DCO") through a consenting regime established in the PA 2008. It is accepted that Article 6 is engaged in respect of decisions about development consent as it has been held that these involve the determination of civil rights to which Article 6 applies (Bryan v UK (1995 21 EHRR 342)). The process for granting development consent, and the availability of judicial review, is considered to be compatible with Article 6.

110. Clause 3 introduces a power for the Secretary of State to give a direction that development consent is not required for specified development that falls within the meaning of an NSIP under the PA 2008. The purpose of the direction will be to transfer responsibility for consenting to a project to an alternative consenting authority.

111. These alternative consenting regimes are likely to be those provided for by the Town and Country Planning Act 1990, Highways Act 1980, Transport and Works Act 1992 and the Harbours Act 1964. As set out at paragraphs 103 to 108 above, the government considers that these alternative consenting regimes are compliant with Article 6. As such the redirection of development from the NSIP regime to another consenting regime will not interfere with an individual's rights.

Nationally Significant Infrastructure Projects – clause 4 (removal of certain pre-application requirements)

112. This clause removes provisions of the Planning Act 2008 related to consultation requirements before an application for development consent is made to the Secretary of State.

113. It has been held that planning decisions, including decisions to grant or refuse development consent, generally involve the determination of civil rights, namely the property rights of those with an interest in the relevant land (see Bryan v UK (1995 21 EHRR)). As the regime for granting development consent for nationally significant infrastructure projects concerns the process by which such decisions are made, the government considers that they engage Article 6 and therefore need to comply with the substantive and procedural obligations required by Article 6.

114. It is the government's view that the removal of pre-application consultation requirement does not alter the rights that persons have to participate in the decision-making process. It is the government's intention to retain the requirement to publicise an application for development consent, meaning those who may be affected by it can still be made aware. Furthermore, removing pre-application consultation will not remove the requirement to notify the statutory consultees currently captured by the Planning Act (for example, category 3 persons) once an application for development consent has been accepted. This then gives them automatic "interested party" status, and entitles them to participate in the examination.

115. The government also considers that compliance with Article 6 is ensured by the fact that the Secretary of State, who make determinations in respect of the development consent, and the courts, are required to act in a manner that is compatible with section 6 of the Human Rights Act 1998.

Nationally Significant Infrastructure Projects – Clause 12 (legal challenges relating to NSIPs)

116. Clause 12 of the Bill makes provision in respect of how the courts will manage legal challenges relating to national policy statements and development consent orders within scope of sections 13 and 118 of the Planning Act 2008 (the Nationally Significant Infrastructure Projects "NSIP" regime). It makes provision:
    (i) mandating that the Civil Procedure Rules Committee amend the Civil Procedure Rules to remove the paper permission stage so that all disputed applications for permission to apply for judicial review proceed straight to an oral permission hearing where such claims can be certified as 'totally without merit'; and
    (ii) removing the right of appeal for claims certified as being totally without merit at the oral permission hearing.

117. This is in addition to existing sections 13 and 118 of the Planning Act 2008 which provides that a court may only entertain a claim for judicial review where the claim form is filed within 6 weeks of publication or notification of a relevant decision.

118. The government considers that these measures are compatible with articles 6 and 13 of the ECHR.

119. Neither the common law right to access to justice, nor Article 6, requires a specific number of opportunities to obtain permission. They do however require that an oral hearing must be made available if necessary for the fair determination of proceedings. In reducing the number of attempts a claimant has to obtain permission for judicial review, we are ensuring that in all cases there will be a right to an oral hearing.

120. Article 6 does not convey a specific right to appeal a determination; it can be legitimate to limit onward appeals in the interests of legal certainty and ensuring

the proper administration of justice (Zubac v Croatia Application No 40160/12, 5 April 2018). However, an appeal may provide a necessary safeguard to ensure that the right of access to the court remains 'real and effective' in cases where there have been serious procedural defects.

121. We propose only removing the right of appeal for applications that have been determined by the courts to be totally without merit. The threshold for certifying a claim as totally without merit is high and given the implications of such a finding in this context, namely, the lack of an onward appeal, we would expect the judiciary to exercise caution when certifying cases as such.

122. We are therefore satisfied that these proposals strike a proportionate balance between the interests of ensuring legal certainty and the proper administration of justice, and the rights to a fair hearing protected by article 6.

123. Article 13 (right to an effective remedy) does not add materially to the nature of the safeguards required considered above.

<u>Consents for electricity infrastructure in Scotland – Clause 20 (proceedings for questioning certain decisions on consents)</u>

124. Clause 20 applies the current regime for challenging offshore s36 decisions in Scotland to onshore s36 decisions, s37 decisions, and all variation decisions. An application for judicial review of these decisions can currently be brought within 3 months. The proposed provision means that the main route of challenge would change to statutory appeal within the grounds set out in s36D of the Electricity Act 1989. Any such challenges must be brought within 6 weeks in the Inner House of the Court of Session.

125. The grounds for bringing a challenge under s36D are as follows: (a) that the decision is not within the powers of the Scottish Ministers under Part I of the

Electricity Act 1989; and (b) one or more of the relevant requirements have not been complied with in relation to the decision. These grounds mirror s239(1) of the Town and County Planning (Scotland) Act 1997 and s288 and 289 of the Town and Country Planning Act 1990 (which applies to England and Wales). In assessing the first ground and what kind of appeal it may cover under these pieces of legislation, courts have given a broad interpretation and held that it covers grounds that would typically be brought under judicial review[5].

126. Our assessment is that the new proposals are compatible with Article 6 as:
    (i) While the introduction of a statutory appeal mechanism for challenge replaces judicial review as the main route of challenge, the first ground of appeal in s36D continues to provide a method for bringing proceedings that would typically be reviewable under judicial review grounds. The second ground will deal with the challenges regarding failure to comply with procedural requirements.
    (ii) Additionally, while s36D provides for proceedings to be initiated in the Inner House of the Court of Session (as opposed to the lower Outer House of the Court of Session), there is a sufficiency of review when the consenting process and this subsequent route of challenge is considered as a whole. Decisions made by the Inner House of the Court of Session can also be further appealed to the Supreme Court.

<u>Amendments to the Highways Act 1980 – Clause 33 (compulsory acquisition powers to include taking of temporary possession)</u>

127. The government considers that the temporary possession provisions whilst clearly involving the determination of civil property rights would be compliant with Article 6 because of the availability of judicial review as a remedy against a decision to make a temporary possession order or to refuse compensation. As set out above

[5] See Ashbridge Investments v MHLG [1965] 1 W.L.R. 1320 and Wordie Property Co. Ltd v Secretary of State for Scotland [1984] S.L.T. 345 (at 347-348).

Judicial Review is sufficient in this context to ensure that there is an effective remedy.

128. The government further considers that compliance with Article 6 is ensured by the fact that the public authorities who make determinations in respect of temporary possession, and the courts, are required to act in a manner that is compatible with section 6 of the Human Rights Act 1998 and so is consistent with the Article 6

Amendments to the Transport and Works Act 1992 – Clause 36 (duty to hold inquiry or hearing)

129. Article 6 rights may be engaged by planning decisions, including decisions to grant or refuse deemed planning permission or compulsory acquisition powers sought through applications made under the Transport and Works Act 1992. These decisions will generally involve the determination of civil rights, namely the property rights of those with an interest in the relevant land.

130. Clause 36 makes changes to the process under the Transport and Works Act 1992 by which such affected parties' objections are considered by the relevant confirming authority. The Bill increases the occasions on which applications for orders under that Act will proceed straight to determination as opposed to a public inquiry or a hearing by a person appointed by the confirming authority. The amendments under the Bill will enable a confirming authority to use this approach where it considers an objection made by any local authority, or owner, leaser or occupier of land which is the subject of proposals for compulsory acquisition, does not merit serious consideration at a hearing or public inquiry. At present, where there are objections from such parties, the Transport and Works Act 1992 only permits the application to proceed straight to determination when the relevant confirming authority considers the objections to be frivolous or trivial, or to relate to matters which fall to be determined by a tribunal concerned with the assessment of compensation.

131. We do not consider that the changes made by this Bill to the Transport and Works Act 1992 reduce rights of affected individuals (i.e. those with an interest in affected or compulsorily acquired land) or local authorities to put their objections in writing to the relevant confirming authority and for those objections to be considered when deciding whether their objections merit serious consideration at a hearing or public inquiry. Where they do merit that consideration, they will additionally be considered at either a public inquiry or be heard by a person appointed by the confirming authority.

132. In addition, the Bill makes no interference with the rights of those aggrieved by a compulsory purchase order to bring a claim for Judicial Review in the High Court.

Spatial Development Strategies – Clause 52

133. The government accepts that Article 6 is engaged in respect of decisions about planning permission as it has been held that these involve the determination of civil rights to which Article 6 applies (Bryan v UK (1995 21 EHRR 342)). However, the government does not consider the spatial development strategy measures set out in clause 52 of the Bill engage Article 6. There is existing analogous caselaw which has found that other development plan policies, namely local plans, do not engage Article 6 because decisions in these policies do not directly affect ownership rights or rights to use land. The right to apply for planning permission remains, even if the outcome is influenced by the development plan (Bovis Homes Ltd v New Forest District Council [2002] EWHC 483 (Admin)). None of the changes that the Bill makes in respect of spatial development strategies increase the extent to which the development plan, of which these strategies form part, affects civil rights. The government does not therefore consider Article 6 to be engaged.

Development and Nature Recovery – Clause 65 (challenging an EDP)

134. Clause 65 provides that the preparation, amendment or revocation of an Environmental Delivery Plan can only be challenged by means of a claim for judicial review if a challenge is brought within 6 weeks of publication of the EDP, the amended EDP or the notice of revocation (as appropriate).

135. The government considers that these measures are appropriate to ensure that claims for judicial review are brought and resolved swiftly. This will help reduce the uncertainty for the EDB in delivering conservation measures and for developers wanting to rely on a Delivery Plan to bring forward their development. This is consistent with the time limits for challenging decisions made by the Secretary of State or local planning authorities under the planning acts (defined in section 336 of the Town and Country Planning Act 1990) under CPR Rule 54.5(5), and other statutory challenges such as to refusals to of the Secretary of State to grant planning permission (under section 288 of the Town and Country Planning Act 1990) or to the validity of National Policy Statements (under section 13 of the Planning Act 2008).

136. The government does not consider the environmental delivery plan itself engages Article 6. There is existing analogous caselaw which has found that other development plan policies, namely local plans, do not engage Article 6 because decisions in these policies do not directly affect ownership rights or rights to use land. The right to apply for planning permission remains, even if the outcome is influenced by the development plan (Bovis Homes Ltd v New Forest District Council [2002] EWHC 483 (Admin)).

<u>Compulsory Purchase – Parts 3 (Development and Nature Recovery) and 5 (Compulsory Purchase)</u>

137. Compulsory purchase powers are an important tool to use as a means of assembling the land that is needed to deliver housing, infrastructure and regeneration. They allow a person's interest in land to be acquired, extinguished

or overridden by public authorities which have the power to acquire land for a public purpose. It is accepted that the confirmation stage of a compulsory purchase order engages Article 6 as the civil rights of those with an interest in the land being compulsorily acquired are being determined.

138. It is the government's position generally that it is appropriate for property rights of this kind to be determined by confirming authorities (the Secretary of State or Welsh Ministers and/or an inspector from the Planning Inspectorate on their behalf) with specialist expertise. In confirming a compulsory purchase order, these authorities are required to be satisfied that there is a compelling case in the public interest for the land to be purchased compulsorily. The confirmation process provides affected land-interest holders rights of notification and information, objection and to make representations which the confirming authority must take account of.

139. Taken together with the right for those aggrieved by a compulsory purchase order to bring a claim in the High Court or, where appropriate by Judicial Review, there is in the round a sufficiently fair process. This is supported by Tower Hamlets LBC v Begum [2002] EWCA Civ 239; R v (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] 2 WLR 1389.

140. The government does not consider that any provision of the Bill relating to compulsory purchase orders changes this analysis. This is because the mechanisms under the compulsory purchase regime for determining rights over land and any suitable compensation, which ensure a fair hearing, are not materially affected by the measures in the Bill.

141. The proposal in clause 99 to delegate confirmation decisions to an acquiring authority (who has an interest in the process) does affect the decision-making mechanism for compulsory purchase orders. Section 14A of the Acquisition of Land Act 1981 already allows an acquiring authority to confirm a CPO if there have

been no objections to the CPO and where no modifications are required. Clause 99 will allow for delegation to acquiring authorities in circumstances where modifications are needed, but those modifications will not result in the acquisition of additional interests in land (by the acquiring authority) unless the interest holders consent. Furthermore, the modifications will need to be specified by the confirming authority before confirming decisions are delegated. The government considers that these safeguards will ensure that confirmation decisions will only be delegated to acquiring authorities where such decisions are not controversial.

142. The proposal in clause 104 to allow temporary possession of land to be taken under the existing processes in the Planning Act 2008 and Transport and Works Act 1992 does affect the decision-making for the taking of temporary possession. The Neighbourhood Planning Act 2017 provides particular safeguards for the participation by affected persons in the process by which temporary possession can be taken. The safeguards under the Planning Act 2008 and Transport and Works Act 1992 are not identical to those set out in the Neighbourhood Planning Act 2017 (set out at paragraph 83). However, the government is of the view the Planning Act 2008 and Transport and Works Act 1992 processes provide effective protection of an affected person's right to a fair and public determination of their civil rights through the mechanisms set out in paragraph 90 because those processes sufficiently enable the relevant people to be heard in relation to the taking of their land on a temporary basis.

143. Clause 83 also confers power to compulsorily purchase land on Natural England for the purposes of a conservation measure set out in an environmental delivery plan. Clause 84 also gives the Secretary of State the power to compulsorily acquire land in certain circumstances where an environmental delivery plan is revoked. Where that is the case, clause 64(6) confers obligations on the Secretary of State to carry out actions in order to outweigh the negative effect on the conservation status of any identified environmental feature.

144. The confirmation process, as set out in Part 2 of the Acquisition of Land Act 1981 (as applied with relevant modifications by Schedule 5, paragraph 1) and including the right for affected landowners to object and have their representations heard and considered under section 13A taken together with the right for those aggrieved by a compulsory purchase order to bring a claim in the High Court under section 23 of the Acquisition of Land Act 1981 or, where appropriate by Judicial Review, provides sufficiently fair process.

Compulsory Purchase – clause 104 (temporary possession of land in connection with compulsory purchase)

145. As set out above, determining whether an acquiring authority can take temporary possession engages Article 6.

146. Whilst clause 104 removes the explicit protections provided for by the Neighborhood and Planning Act 2017 where an acquiring authority takes temporary possession under TWOs, DCOs or ICOs.

147. However, the government is of the view that this is a theoretical interference only. The Planning Act 2008, the Transport and Works Act 1992 and the Infrastructure (Wales) Act 2024 each establish measures which safeguard against unjustified interference of the relevant rights (see paragraph 90).

148. The policy objective of clause 104 is to pave the way for the general power to take temporary possession to be brought into force without affecting the taking of temporary possession under the TWO, DCO and ICO regimes. Clause 104 does not introduce any new powers for the taking of temporary possession.

149. The government is of the view that the provisions made under the TWO, DCO and ICO regimes sufficiently safeguard against interferences with an individual's rights under Article 6.

Article 8: Right to respect for private and family life, home and correspondence

150. Article 8 provides that:

> "*Everyone has the right to respect for his private and family life, his home and his correspondence.*"

151. Any interference with this right must be in accordance with the law and necessary in a democratic society in the interests of a number of legitimate aims. For the purposes of the measures in this Bill, the relevant legitimate aims are the economic well-being of the country and the protection of rights and freedoms of others. In particular:
    (i) ensuring landowners are awarded fair, rather than inflated, compensation for land acquired by district councils on behalf of town/parish or community councils for the purpose of their functions or for the benefit, improvement or development of their area;
    (ii) reducing delays in bringing land forward for development associated costs;
    (iii) ensuring that communities see direct benefits for their hosting of new transmission network infrastructure;
    (iv) a well-functioning planning system which includes cross-boundary strategic planning to address key spatial issues including meeting housing need, delivering strategic infrastructure, growing the economy and improving climate resilience.

Nationally Significant Infrastructure Projects – clause 4 (removal of certain pre-application requirements)

152. Clause 4 removes provisions of the Planning Act 2008 related to consultation requirements before an application for development consent is made to the Secretary of State.

153. Article 8 may be engaged where the land that is subject to compulsory acquisition (as a result of a development consent order) includes someone's home or where development for which consent is sought is sufficiently close to a home to interfere with private and family life.

154. The government considers that the removal of pre-application consultation requirements does not change the compatibility of the NSIP regime with article 8. As noted above, removal of pre-application consultation will not remove the requirement to notify certain categories of people once an application is accepted. This will include category 3 persons, who are defined as being someone who would be entitled to make a claim for compensation if the development consent order were fully implemented. Further to this, removal of the requirement to consult such persons will not affect their rights to apply for compensation should a development interfere with their home or private life.

155. Insofar as compulsory purchase is concerned, DCO applicants are still expected to demonstrate that there is a compelling case in the public interest that sufficiently justifies interfering with the rights of those with an interest in the land affected. The Secretary of State, when determining a DCO, may only include provision authorising compulsory acquisition where satisfied that there is a compelling case in the public interest.

<u>Nationally Significant Infrastructure Projects – clause 10 (right to enter and survey land</u>

156. Clause 10 amends section 53 of the Planning Act 2008 to remove the requirement for an applicant/proposed applicant for development consent to obtain Secretary of State authorisation to enter land, but retains other relevant conditions of the provision and provides a power to prescribe further requirements to the notice provision to ensure sufficient detail is given to the occupiers of the land. When

exercising the power, persons authorised by applicants/proposed applicants will be required to provide the occupier of the land with at least 14 days' notice before entering the land and any person suffering damage caused by entry under the provision will be able to recover compensation from the person exercising the right. Persons exercising the right will also need to obtain a warrant if force is required to enter the land.

157. Any interference with this right must be in accordance with the law, in the pursuit of a legitimate aim, and necessary in a democratic society. Rights to enter property will interfere with A8 rights, however the government considers that this interference is justified and in pursuit of a legitimate aim (namely, the economic well-being of the country) for the reasons given at paragraphs 34 and 35 above.

Consumer benefits – Clause 26 (benefits for homes near electricity transmission projects)

158. Clause 26 establishes a power for the Secretary of State to make regulations establishing a financial benefits scheme for the purposes of improving community acceptability of eligible new and upgraded electricity transmission network infrastructure. The scheme is to be managed by a central administrator who would manage and oversee the financial benefits scheme, ensuring continuity and effective delivery, and helping ease delivery burden on stakeholders.

159. To implement the scheme, the administrator will need to identify eligible properties within an eligibility zone. For recipients with a traditional relationship with a supplier, eligible recipients will need to be matched with their supplier to ensure delivery of discounts. Identification of eligible recipients that do not have a relationship with a supplier (hard-to-reach) is more complex. Eligible hard-to-reach recipients are not automatically provided with discounts and will need to manually apply. Communication with these recipients may be required to alert them to their eligibility and a comprehensive communication and engagement strategy will be

integral to the success of this part of the scheme, to ensure as many eligible hard-to-reach recipients as possible are aware and carry out an application.

160. Clause 26 makes provision for the regulations to include “information provisions” which may compel stakeholders to provide to the scheme administrator, Ofgem or suppliers (together “Data Recipients”), third party personal information collected for other purposes.

161. It is possible that Article 8(1) could be engaged depending on the type of personal information that is processed and shared. If Article 8 is engaged, the scheme design will seek to ensure that any such data sharing falls within the justification in Article 8(2) and has adequate safeguards. It would be in accordance with the law under the provisions in this legislation and would be necessary and proportionate in pursuit of legitimate aims of the economic well-being of the country or to prevent crime (fraud).

162. There will also be procedural safeguards in place to protect personal data. The data protection principles, as set out in Article 5 to the UK General Data Protection Regulation , provide that data must only be obtained for one or more specified and lawful purposes and shall not be processed further in a manner incompatible with those purposes. The Data Recipients would therefore be prevented from using data held for any purposes other than those specified in the Bill in an inappropriate manner.

163. The data protection principles also provide that data that is held must be kept up to date and only held as long as necessary. The UK GDPR also grants data subjects have a right to access the data that is held about them. In the event that a data subject considered that the data protection principles had been breached, there is the opportunity to bring a complaint to the Information Commissioner’s Office.

164. The scheme administrator requires powers to access data sources from other bodies – for example, local authorities and banks – for the purposes of data verification for opt-in applications, specifically, (i) verifying if an application has used authentic documentation (e.g. council tax bill, bank statement) and (ii) verifying that someone is still eligible for the scheme prior to receiving the next payment instalment. This is a key mitigation to an otherwise-prominent fraud risk whereby households could tailor documents to look as though they are living in an eligible property when they (i) never lived there or (ii) have moved out and are no longer living there. Ofgem, as Regulator, requires access to third part personal information so that it is able to investigate whether suppliers have complied with their duties within the scheme and suppliers need to be able to confirm that their customers have complied with the pass-through requirements of the scheme.

165. It is possible that Article 8(1) could be engaged depending on the type of personal information that is processed and shared. It is envisaged that personal data particularly around a person's home address (which, for example, could be related to an aspect of their private life such as residency in a care home, etc.) obtained via other sources will be used to verify eligibility for the scheme.

Spatial Development Strategies – Clause 52

166. There is an argument that Article 8 is potentially engaged by the spatial development strategy measures as these strategies, as part of the development plan, will result in decisions being made that will potentially impact upon an individual's proprietary rights and/or enjoyment of their property (which could include someone's home). Planning decisions are to be made in accordance with the development plan unless material considerations strongly indicate otherwise. Since human rights are relevant material considerations in planning decisions (Stringer v MHLG [1971] All ER 65), planning decision makers are required to ensure that a fair balance is struck between the competing interests of the individual and the community as a whole.

167. There are opportunities in the decision-making process, which will remain, to either completely eliminate any impact on neighbouring property owners or, in so far as is possible and proportionate, limit any impact on individuals by requiring mitigation measures, such as design alteration or planning conditions, to be put in place. The spatial development strategy measures do not alter the checks and safeguards of existing statutory procedures in relation to decisions taken in respect of applications for planning permission.

168. Further, insofar as the spatial development strategy measures do interfere with any rights under Article 8, the government considers that this interference can be justified on the basis that a well-functioning planning system is necessary in the interests of the rights and freedoms of others and the economic well-being of the country, and the changes are necessary for that and are proportionate. In particular, the government considers that spatial development strategies are a necessary mechanism for effective cross-boundary strategic planning. Key spatial issues, including meeting housing need, delivering strategic infrastructure, growing the economy and improving climate resilience, cannot be effectively addressed without planning for growth on a larger than local scale.

Development and Nature Recovery – Clauses 77 to 82 (power to enter and survey or investigate land)

169. Clause 77 gives a person authorised by Natural England the power to enter land (except a private dwelling) in connection with devising proposals for and implementing conservation measures included in an environmental delivery plan. Where a warrant is necessary (e.g. because the authorised person has been denied entry to the land), clause 78 provides for a justice of the peace to issue a warrant conferring a power to enter and survey or investigate the land, if necessary using reasonable force.

170. Clause 82 creates equivalent measures where an environmental delivery plan is revoked and the Secretary of State, or a public authority to which the Secretary of State has given a direction, is to take conservation (or other) measures in place of Natural England (under Clause 86 of the Bill). It gives powers for the Secretary of State or such an authority to enter and survey land (except a private dwelling) for those purposes (except in relation to a proposal to purchase land); and makes provision for warrants to be issued where needed.

171. Any interference with this right must be in accordance with the law, in the pursuit of a legitimate aim, and necessary in a democratic society. Rights to enter property will interfere with A8 rights – however the government considers that this interference is justified and in pursuit of a legitimate aim (namely, the economic well-being of the country).

172. The power to enter land does not include the power to enter domestic premises. This is an important mitigation of any interference of article 8 rights. To the extent that the use of powers may still infringe on these rights, the exercise of this power will be in accordance with the law and there will be procedural safeguards as set out above.

<u>Compulsory Purchase – Parts 3 (Development and Nature Recovery) and 5 (Compulsory Purchase)</u>

173. We consider Article 8 may be engaged where the land that is subject to compulsory purchase includes someone's home. Interference with Article 8 may be justified where to do so is necessary in a just society and in the public interest.

174. When making a compulsory purchase, acquiring authorities (which are subject to section 6 of the Human Rights Act 1998) are expected to demonstrate that there is a compelling case in the public interest that sufficiently justifies interfering with the rights of those with an interest in the land affected.

175. Confirming authorities are required to consider objections from affected parties and, according to the department's CPO Guidance, should assess the public interest justification in each case, to ensure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.

176. The taking of temporary possession may interfere with the home life of an individual if the relevant land is that individual's home. The Neighbourhood Planning Act 2017 provides particular safeguards for the taking of temporary possession that safeguard against unjustified interferences to this right. The safeguards under the Planning Act 2008, Transport and Works Act 1992 and Infrastructure (Wales) Act 2024 are not identical to those set out in the Neighbourhood Planning Act 2017 (set out at paragraph 83). However, the Government is of the view these Acts provide effective protection of an affected person's home life through the mechanisms set out in paragraphs 90 and 91 because they require the decision-maker to take the views of affected persons into account, prevent the decision-maker acting inconsistently with ECHR rights, and enable the payment of compensation to ensure the AA does not disproportionately burden the landowner.

177. We do not consider that the changes made by this Bill reduce rights of individuals (i.e. those with an interest in compulsorily acquired land) when compared with the interests of the state and the rights of others.

178. Clause 83 also confers power to compulsorily purchase land on Natural England for the purposes of a conversation measure set out in an environmental delivery plan. Clause 84 gives the Secretary of State the power to compulsorily acquire land in certain circumstances where an environmental delivery plan is revoked. Although it is unlikely that these powers will be exercised in a way that would

interfere with Article 8, for the reasons given above these powers are considered to be compatible.

Part 5 – Compulsory Purchase – Clause 104 (temporary possession of land)

179. As set out above, determining whether an acquiring authority can take temporary possession engages Article 8 where the relevant land is a home.

180. Clause 104 removes the explicit protections provided for by the Neighborhood Planning Act 2017 where an acquiring authority takes temporary possession under TWOs, DCOs and ICOs.

181. However, the Government is of the view that this is a theoretical interference only. The Planning Act 2008, the Transport and Works Act 1992 and Infrastructure (Wales) Act 2024 each establish measures which safeguard against unjustified interference of the relevant rights (see paragraphs 90 and 91).

182. Additionally, section 6 of the Human Rights Act 1998 requires that public bodies responsible for authorising the taking of temporary possession to act in a way that is compatible with convention rights. These bodies are prevented from allowing the taking of temporary possession in a manner that would be an unjustified interference with Article 8 or A1P1.

183. The policy objective of clause 104 is to pave the way for the general power to take temporary possession to be brought into force without affecting the taking of temporary possession under the regimes in the Transport and Works Act 1992, the Planning Act 2008 and the Infrastructure (Wales) Act 2024. Clause 104 does not introduce any new powers for the taking of temporary possession.

184. The Government is of the view that the provisions made under the TWO, DCO and ICO regimes sufficiently safeguard against interferences with an individual's rights under Article 8.

Ministry for Housing, Communities and Local Government
10 June 2025