ENGLISH DEVOLUTION AND COMMUNITY EMPOWERMENT 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)

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the English Devolution and Community Empowerment Bill ("the Bill"). The Bill was introduced in the House of Commons on 10 July 2025 and transferred to the House of Lords after having completed its Commons Stages on 25 November. This memorandum identifies the provisions of the Bill that delegate legislative power. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

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

B. ABBREVIATIONS

3. This Bill amends several other pieces of legislation. The memorandum therefore contains abbreviations for some impacted legislation and certain local government concepts, this includes:

Legislation	
ASCLA 2009	Apprenticeships, Skills, Children and Learning Act 2009
CA 2006	Companies Act 2006
FRSA 2004	Fire and Rescue Services Act 2004
GLAA 1999	Greater London Authority Act 1999
LA 2003	Licensing Act 2003
LA 2011	Localism 2011

[1] Supplementary Delegated Powers Memo published 10.10.25 and Supplementary No.2 Delegated Powers Memo published 19.11.25.
[2] Delegated Powers Memorandum.

LAAA 2014	Local Audit and Accountability Act 2014
LDEDCA 2009	Local Democracy, Economic Development and Construction Act 2009
LGPIHA 2007	Local Government and Public Involvement in Health Act 2007
LTA 1954	Landlord and Tenant Act 1954
LURA 2023	Levelling Up and Regeneration Act 2023
NRSWA 1991	New Roads and Street Works Act 1991
PA 1996	Police Act 1996
RTRA 1984	Road Traffic Regulations Act 1984
RTRA 1997	Road Traffic Reduction Act 1997
TCPA 1990	Town and Country Planning Act 1990
Other	
ACV	Assets of Community Value
CA	Combined Authority
CCA	Combined County Authority
DPRRC	Delegated Powers and Regulatory Reform Committee
FRA	Fire and Rescue Authority
GLA	Greater London Authority
GPC	General Power of Competence
LAO	Local Audit Office
NMS	National Minimum Standards
PCC	Police and Crime Commissioner
PHV	Private hire Vehicle
RQB	Recognised Qualifying Body
SA	Strategic Authority
SACV	Sporting Asset of Community Value

C. PURPOSE AND EFFECT OF THE BILL

4. This Bill will deliver on the Government's manifesto commitment to transfer power out of Westminster to local leaders, and to empower communities.

5. The Bill will establish SAs – groups of councils working together across recognised economic geographies – with existing CAs, CCAs and the GLA serving this role where already in place. The Government wants to see all parts of England benefit from devolution, and to that end the Bill will give the Government the ability to ensure universal coverage of SAs in England. By 'filling the map' with SAs, the Government will oversee the rebalancing of power from central government, so that local leaders can benefit from the levers of growth.

6. The Bill will also introduce a systematic approach to devolution, ending one-off devolution deals with areas and instead putting into statute a "devolution framework" which will give mayors a consistent set of functions and enable the Government to confer functions on new SAs more rapidly in the future. The framework will also include new powers for SAs in planning and transport, and the new duty to produce a local growth plan.

7. The Bill will also include provisions to transform the system of local audit and to simplify the structures of local government.

8. Communities will also be given the tools they need to shape their local areas via a new community right to buy and a new type of asset of community value called sporting assets of community value, and a requirement for councils to put in place appropriate arrangements to secure effective governance of neighbourhood areas.

9. The Bill contains 6 Parts and 34 Schedules. The main provisions are:

    a. Part 1 of the Bill introduces the new devolution architecture for England. It creates and designates Strategic Authorities ("SAs") as one of three levels:
        i. foundation (including single and combined foundation);
        ii. mayoral strategic authority; or
        iii. established mayoral strategic authority.

    b. It also sets out seven areas of competence that provide limits on what new functions may be conferred on SAs and allows for mayors to appoint and renumerate commissioners and prohibits individuals from concurrently holding office as mayor and being an elected member of a UK legislature. This Part also sets out SAs' voting and governance arrangements; amends the power to borrow; and amends section 1 of the Cities and Local

Government Devolution Act 2016 with regard to the contents and publication of the Annual Devolution Report.

c. Part 2 of the Bill details the functions SAs and mayors will receive depending on the SA's level of designation as well as amending the Licensing Act 2003 to give the Mayor of London functions in relation to licensing. Part 2 also amends the general power of competence in the Localism Act 2011, introduces a new power enabling mayoral SAs and the Mayor of London to convene meetings with local partners to consider relevant local matters, and provides detail on how mayors of SAs exercise their duty to collaborate. This Part also introduces a streamlined process, via which powers can be conferred on SAs in the future, either permanently or as part of a pilot scheme, and sets out how established mayoral SAs will have the power to request additional functions, and how the Government will have the duty to respond to that request.

d. Part 3, Chapter 1 of the Bill includes amendments which streamline local government reorganisation provisions which provide for a single tier of local government; and governance structure. It also makes provision for the use of the supplementary vote system in elections of mayors and Police and Crime Commissioners; and makes provision preventing the automatic publication of local government members' and co-opted members' home addresses.

e. Part 3, Chapter 2 introduces a new community right to buy measure, giving community groups first refusal on the sale of assets of community value, including sports grounds. This measure applies to assets which have been listed by the local authority as of community value.

f. Part 3, Chapter 3 introduces a new National Minimum Standards (NMS) relating to licensing of taxis and private hire vehicles (regulated licences).

g. Part 3, Chapter 4 extends the General Power of Competence in the Localism Act 2011 to English National Park Authorities and the Broads Authority.

h. Part 4 of the Bill introduces amendments to the local audit system (which is the audit system for local authority accounts), including establishing the Local Audit Office as the body responsible for overseeing local audit.

i. Part 5 of the Bill makes provision about rent reviews and arrangements for new tenancies in commercial leases.

j. Part 6 of the Bill contains the technical sections related to this Bill, including on regulations, commencement and extent.

D. DELEGATED POWERS

Overview

10. The Bill includes a number of delegated powers to supplement the provisions of the Bill and, in some cases, give a degree of flexibility where required to keep provisions up to date with the expanding devolution framework. The powers in the Bill therefore primarily deal with secondary policy detail, which is more appropriate for secondary, rather than primary, legislation.

11. In total, this memorandum contains 92 delegated power entries, which cover both new powers and amendments to existing powers. This includes 68 distinct powers to make statutory instruments and 24 distinct powers to make statutory guidance, codes of practice, administrative orders and directions.

12. The Bill contains an additional 27 'parallel' powers, which are required as result of having to extend provisions both to CAs and CCAs (and in some cases the GLA) which are established under separate Acts of Parliament. As a result of this distinction, the Bill takes two, or in some cases three, 'parallel' delegated powers to deliver a single policy outcome. Therefore, to avoid duplication throughout the memorandum, any parallel powers have been grouped together into a single entry within section E, with a shared justification for taking powers and the same Parliamentary procedure having been adopted.

13. There are also an additional 14 delegated powers within Schedule 29 relating to ACV measures that are exact copies of the powers currently within the LA 2011 and therefore are not considered within this memorandum. This drafting approach has been taken because existing provisions are being retained for Wales, whereas new provisions will apply in England only.

14. Finally, there is one delegated power within Schedule 33, paragraph 22 of the Bill (inserting section 43A(3) into the LAAA 2014) which is an exact copy of a power currently contained within current Schedule 5, paragraph 8 of the LAAA 2014. This power is therefore not considered within this memorandum. Otherwise, where powers within Part 4 of the Bill (local audit) are restated but with some changes, full entries have been included below.

Summary of powers

15. The delegated powers (including amendments to existing powers) in this Bill are:

Part One: Strategic Authorities

i. **Clause 3:** Power to designate a single foundation Strategic Authority.

ii. **Clause 4 (Schedule 1), paragraphs 16 and 38):** Amending the power to establish a new Combined Authority or Combined County Authority (inserting new section 109B into the LDEDCA 2009 and new section 45A into the LURA 2023).

iii. **Clause 4 (Schedule 1, paragraphs 19 and 41):** Amending the power to add a local authority to an existing mayoral or non-mayoral Combined Authority or Combined County Authority (inserting new section 112B in the LDECA 2009 and new section 47A into the LURA 2023).

iv. **Clause 4 (Schedule 1, paragraphs 19 and 41):** Amending the power to provide for a mayor for an existing Combined Authority or Combined County Authority (inserting new section 112C into the LDEDCA 2009 and new section 47B into the LURA 2023).

v. **Clause 4 (Schedule 1, paragraphs 18, 20, 40, and 42):** Amending requirements in connection with changes to existing Combined Authority or Combined County arrangements (amending section 112A and substituting section 113 in the LDEDCA 2009 and amending section 47 and substituting section 48 in the LURA 2023).

vi. **Clause 4 (Schedule 1, paragraphs 21 and 43):** Amending requirements in connection with boundary changes or dissolution of a Combined Authority or Combined County Authority (inserting new sections 113ZA - 113ZC in the LDEDCA 2009 and new sections 48A-48C in the LURA 2023).

vii. **Clause 8:** Power to designate a mayoral Combined Authority or Combined County Authority as an established mayoral Strategic Authority (inserting new section 25A(1) into the LURA 2023 and new section 106B(1) into the LDEDCA 2009).

viii. **Clause 9 (Schedule 3):** Power to limit the delegation of functions to commissioners (inserting new Schedule 2A, paragraph 7(2)(a)(iv) into the LURA 2023 and new Schedule 5BA, paragraph 7(2)(a)(iv) into the LDEDCA 2009).

ix. **Clause 9 (Schedule 3):** Power to specify remuneration panels for the purposes of commissioner allowances (inserting new Schedule 2A, paragraph 8(4) into the LURA 2023 and new Schedule 5BA, paragraph 8(4) into the LDEDCA 2009).

x. **Clause 9 (Schedule 3):** Power to issue guidance in relation to the selection or appointment of commissioners (inserting new Schedule 2A, paragraph 12(1) into the LURA 2023 and new Schedule 5BA, paragraph 12(1) into the LDEDCA 2009).

xi. **Clause 9 (Schedule 3):** Power to issue guidance about the exercise of the function under paragraph 7(3) of approving arrangements for a function to be exercisable by a commissioner (inserting new Schedule 2A, paragraph 12(3) into the LURA 2023 and new Schedule 5BA, paragraph 12(3) into the LDEDCA 2009).

xii. **Clause 9 (Schedule 3):** Power to issue guidance in relation to the payment of allowances to commissioners and compliance with the duty to prepare and publish reports (inserting new Schedule 2A, paragraph 12(5) into the LURA 2023 and new Schedule 5BA, paragraph 12(5) into the LDEDCA 2009).

xiii. **Clause 9 (Schedule 3):** Power to issue guidance in relation to the terms of reports produced by remuneration panels in relation to commissioner allowances (inserting new Schedule 2A, paragraph 12(7) into the LURA 2023 and new Schedule 5BA, paragraph 12(7) into the LDEDCA 2009).

xiv. **Clause 9 (Schedule 3):** Power to issue guidance in relation to the making of recommendations to terminate the appointment of a person as a commissioner (inserting new Schedule 2A, paragraph 12(9) into the LURA 2023 and new Schedule 5BA, paragraph 12(9) into the LDEDCA 2009).

xv. **Clause 10:** Power to issue guidance in relation to payment of allowances to members who have special responsibilities and complying with the duty to prepare and publish reports (inserting new section 52A(4) into the LURA 2023 and new section 113E(4) into the LDEDCA 2009).

xvi. **Clause 10:** Power to issue guidance in relation to the terms of reports produced by remuneration panels in relation to allowances of members with special responsibility (inserting new section 52A(5) into the LURA 2023 and new section 113E(5) into the LDEDCA 2009).

xvii. **Clause 10:** Power to specify remuneration panels for the purposes of allowances of members with special responsibility inserting new section 52A(8) into the LURA 2023 and new section 113E(8) into the LDEDCA 2009).

xviii. **Clause 11 and 45:** Powers to modify the procedural framework to align with the expansion of mayors' precepting powers and ensure separate provision for PCC areas (amending section 41 of the LURA 2023 and section 107G of the LDEDCA 2009).

Part Two: Functions of Strategic Authorities

xix. **Clause 20 (Schedule 4):** Extension of the general power of competence (amending section 5 of the LA 2011).

xx. **Clause 21:** Power to issue guidance in relation to the mayoral power to convene meetings with local partners (inserting new section 17B(2) and (4) into the LURA 2023, new section 103B(2) and (4) into the LDEDCA 2009 and new section 40B(2) and (4) into the GLAA 1999).

xxi. **Clause 21:** Power to define "local partners" (inserting new section 17B(5) into the LURA 2023, new section 103B(5) into the LDEDCA 2009 and new section 40B(5) into the GLAA 1999).

xxii. **Clause 22:** Power to issue guidance for mayors of Strategic Authorities in relation to making and responding to requests to collaborate (inserting new sections 17C(7) and 17D(4)into the LURA 2023, new sections 103C(7) and 103(D)(4) into the LDEDCA 2009, and new sections 40C(7) and 40(D)(4) into the GLAA 1999).

xxiii. **Clause 23 (Schedule 5):** Power to specify vehicles of any other descriptions for licensing purposes (inserting new section 22F into the RTRA 1984).

xxiv. **Clause 23 (Schedule 5):** Power to set further exemptions from licensing requirements (inserting new section 22G into the RTRA 1984).

xxv. **Clause 23 (Schedule 5):** Power to make regulations regarding licences for micromobility rental services (inserting new section 22H and Schedule 3A into the RTRA 1984).

xxvi. **Clause 23 (Schedule 5):** Power to make regulations regarding the powers and duties of licensing authorities (inserting new section 22I(1) into the RTRA 1984).

xxvii. **Clause 23 (Schedule 5):** Power to issue guidance to licensing authorities in relation to their functions (inserting new section 22I(2) into the RTRA 1984).

xxviii. **Clause 23 (Schedule 5):** Power to authorise or require the disclosure of information relating to licensed operations (inserting new section 22J into the RTRA 1984).

xxix. **Clause 23 (Schedule 5):** Power to specify relevant roles for the purposes of being a responsible individual for the criminal offences under Part 2A of the RTRA 1984 (inserting new section 22K(4) into the RTRA 1984).

xxx. **Clause 25 (Schedule 7):** Power for the Secretary of State to grant or revoke approval to highway authorities, not within mayoral areas, to operate lane rental schemes (inserting new section 74B(2), (7) and (10) into the NRSWA 1991).

xxxi. **Clause 25 (Schedule 7):** Power for mayors to grant or revoke approval to highway authorities within their areas to operate lane rental schemes (inserting new section 74B(3), (4), (5) and (8) into the NRSWA 1991).

xxxii. **Clause 25 (Schedule 7):** Power to issue guidance to highway authorities and mayors about the approval of highway authorities to make charges (inserting new section 74B(6) into the NRSWA 1991).

xxxiii. **Clause 27:** Power to amend the list of persons Transport for London must consult before seeking consent to dispose of operational land and any consultation requirements (inserting new section 163(4B) into the GLAA 1999).

xxxiv. **Clause 28 (Schedule 9):** Power to issue guidance to mayoral Combined Authorities and Combined County Authorities in relation to the preparation of Key Route Network traffic reports (inserting new section 2A(6) into the RTRA 1997).

xxxv. **Clause 31 (Schedule 11):** Power to issue a direction to a Strategic Authority where they adopt rules of eligibility for awards made by an institution to which they make grants, loans, or other payments (inserting new section 114A(1) into the ASCLA 2009).

xxxvi. **Clause 31 (Schedule 11):** Power to issue guidance in relation to exercising adult education functions under ASCLA 2009 (inserting new section 114A(2) into the ASCLA 2009).

xxxvii. **Clause 32 (Schedule 12):** Expanding the scope of order making powers relating to applications of potential strategic importance (amending section 2A of the TCPA 1990).

xxxviii. **Clause 32 (Schedule 12):** Power for the Secretary of State to identify the planning applications of potential strategic importance which relevant mayors may elect to determine by written representations, rather than by mandatory oral hearing (amending section 2F of the TCPA 1990).

xxxix. **Clause 33 (Schedule 13):** Expanding development orders (amending sections 61DA, 61DB, 61DC, and 61DD of the TCPA 1990).

xl. **Clause 33 (Schedule 13):** Expanding development orders relating to the method of dealing with planning applications (amending section 74(1B) of the TCPA 1990).

xli. **Clause 34 (Schedule 15):** Power to prescribe conditions or requirements to be satisfied for a mayor of a Combined Authority or Combined County Authority to be a charging authority (inserting section 206(3A) into the Planning Act 2008).

xlii. **Clause 39 (Schedule 20):** Power to issue guidance in relation to Local Growth Plans (inserting new section 107M into LDEDCA 2009 and new section 32B into LURA 2023).

xliii. **Clause 39 (Schedule 20):** Power to specify public authorities in relation to 'shared local growth priorities' (inserting new section 107N(3) into the LDEDCA 2009, new section 32C(3) into the LURA 2023, and new section 333G(4) into the GLAA 1999).

xliv. **Clause 45:** Power to specify the time at which the mayor for a Combined Authority or Combined County Authority is to begin exercising functions of a Police and Crime Commissioner (inserting new section 107FA(5)(a) into the LDEDCA 2009 and new section 33A(5)(a) into LURA 2023).

xlv. **Clause 46:** Power to alter police areas (amending section 32 of the PA 1996).

xlvi. **Clause 46 (Schedule 22, paragraph 64):** Power to modify subordinate legislation in relation to Police and Crime Commissioner functions being exercised by mayors of Combined Authorities or Combined County Authorities (inserting new Part 7 of Schedule 10A to the Police Reform and Social Responsibility Act 2011).

xlvii. **Clause 47:** Power to designate a mayoral Combined Authority or mayoral Combined County Authority to become the Fire and Rescue Authority for the whole of its area or parts of its area (inserting a new section 1A into the FRSA 2004).

xlviii. **Clause 47 (Schedule 23):** Power to create a combined fire and rescue area (amending section 2 of the FRSA 2004).

xlix. **Clause 50 (Schedule 24):** Duty on Mayor of London to determine a policy in relation to the carrying out of relevant licensable activities in Greater London (inserting new section 8A into the LA 2003).

l. **Clause 50 (Schedule 24):** Power to make provision about the determination and revision of policies, and the preparation and publication of policy statements (inserting a new section 8A(10) into the LA 2003).

li. **Clause 50 (Schedule 24):** Power under paragraph 5 of Schedule 24 to repeal the amendments to the LA 2003 made by paragraphs 2 to 4 of the Schedule.

lii. **Clause 50 (Schedule 24):** Power under paragraph 6 of Schedule 24 to make provision for the purpose of conferring on the Mayor of London the function of determining relevant licence applications in certain circumstances.

liii. **Clause 51:** Power to issue guidance in relation to requests by mayors of established mayoral Strategic Authorities for further powers to deliver their area of competence.

liv. **Clause 52 (Schedule 25, paragraphs 1, 2 and 3):** Power to confer additional public authority functions and modify framework functions.

lv. **Clause 52 (Schedule 25, paragraphs 5, 6 and 7):** Power to move functions between mayors and Strategic Authorities.

lvi. **Clause 52 (Schedule 25, paragraphs 8, 9 and 10):** Power to prescribe how framework functions are conferred on one or more categories of Strategic Authority.

lvii. **Clause 52 (Schedule 25, paragraph 12):** Power to specify voting arrangements for functions conferred on one of more categories of Strategic Authority.

lviii. **Clause 52 (Schedule 25, paragraph 18(1)):** Power to confer further public authority functions on one or more Strategic Authorities on a time-limited pilot basis.

lix. **Clause 52 (Schedule 25, paragraph 18(3):** Power to extend a pilot period.

lx. **Clause 54:** Power to make incidental, consequential, transition or supplementary provision in relation to the functions of Strategic Authorities.

lxi. **Clause 55:** Power to make provision for the transfer of property, rights and liabilities.

Part Three: Other measures about Local Government and PCCs

lxii. **Clause 57 (Schedule 26):** Invitations, Directions and Proposals: Supplementary (amending section 3 of the LGPIHA 2007).

lxiii. **Clause 57 (Schedule 26):** Implementation Orders (amending section 7 and 11 of the LGPIHA 2007).

lxiv. **Clause 57 (Schedule 26):** Power to amend Strategic Authorities once local government reorganisation has taken place (inserting new section 11A into LGPIHA 2007).

lxv. **Clause 58:** Power to disapply certain functions of predecessor councils where an area is undergoing local government reorganisation (inserting new sections 12(3A) and 12(5A) into LGPIHA 2007).

lxvi. **Clause 60:** Power to prescribe appropriate arrangements to ensure effective governance of neighbourhood areas.

lxvii. **Clause 63 (Schedule 29):** 14 powers exactly replicated from the LA 2011. For completeness this includes: section 87(4) which is replicated in new section 86A(5); section 87(5) which is replicated in new section 86A(7); section 88(3) which is replicated in new section 86B(4); section 89(1) which is replicated in new section 86D(1); section 89(4) which is replicated in new section 86D(4); section 89(5) which is replicated in new section 86D(5); section 91(2)(d) which is replicated in new section 86F(2)(d); section 95(5) which is replicated in new section 86K(2)(e); section 96(7) which is replicated in new section 86L(7); section 98(3) which is replicated in new section 86N(4); section 99(2)(c) which is replicated in new section 86W(1); section 98(3) which is replicated in new section 86Z(1); section 101 which

is replicated in new section 86Z4(2); and section 107(6) which is replicated in new section 86Z5(6). Full entries for these powers have not been included within this memorandum given these powers are exact restatements of existing powers.

lxviii. **Clause 63 (Schedule 29):** Power to establish the procedure to be followed in connection with a review of list related decisions (inserting new section 86H(9) into the LA 2011).

lxix. **Clause 63 (Schedule 29):** Power to set further provisions in regard to meetings with owners of land and preferred community buyers (inserting new section 86S(3) into the LA 2011).

lxx. **Clause 63 (Schedule 29):** Power to set further provisions about the determination of the market value of estate in land (inserting new section 86T(4) into the LA 2011).

lxxi. **Clause 63 (Schedule 29):** Power to specify the circumstances in which another independent person appointed by the local authority may carry out a valuation in place of a Revenue and Customs officer (inserting new section 86T(10)(c) into the LA 2011).

lxxii. **Clause 63 (Schedule 29):** Power to specify "progress requirements" (inserting new section 86U(5) into the LA 2011).

lxxiii. **Clause 63 (Schedule 29):** Power to issue guidance on community right to buy and sporting assets of community value (inserting new section 86X into the LA 2011).

lxxiv. **Clause 65:** Power for the Secretary of State to set NMS in relation to the licensing in England of taxi and PHV drivers, taxi vehicles and PHVs, and PHV operators ('regulated licences') relating to the grant of a regulated licence.

lxxv. **Clause 66:** Power for the Secretary of State to set NMS relating to the suspension or revocation of taxi and PHV regulated licences, including retrospective effect for existing regulated licences.

lxxvi. **Clause 67:** Power for the Secretary of State to set NMS relating to the renewal of taxi and PHV regulated licences, including retrospective effect for existing regulated licences.

lxxvii. **Clause 69:** Power for the Secretary of State to issue guidance to licensing authorities in connection with the exercise of their licensing functions when setting NMS.

lxxviii. **Clause 71:** Power for the Secretary of State when making regulations under this Chapter to amend or repeal provision made by an Act of Parliament (whenever passed).

lxxix. **Clause 73:** Extension of general power of competence to English National Park Authorities and the Broads Authority (amending section 5 of the LA 2011).

Part Four: Audit

lxxx. **Clause 74:** Power to issue guidance and directions to the Local Audit Office (inserting new section 1D into the LAAA 2014).

lxxxi. **Clause 75 (Schedule 32):** Power to provide for a qualification to be an appropriate qualification (inserting new Schedule 1D, Part 1, paragraph 3 into the LAAA 2014).

lxxxii. **Clause 75 (Schedule 32):** Power to provide for the payment of fees by recognised qualifying bodies (inserting new Schedule 1D, Part 2, paragraphs 7 to 9 into the LAAA 2014).

lxxxiii. **Clause 78:** Local Audit Office Codes of Practice (amending Schedule 6, paragraph 1 to the LAAA 2014).

lxxxiv. **Clause 79:** Power to apply an enactment that applies to a relevant authority or a committee of a relevant authority to individuals appointed as an audit committee (inserting section 33A(4) into the LAAA 2014).

lxxxv. **Clause 79:** Power to make provision about the membership of an audit committee and the appointment of members (inserting new section 33A(5)(a) and (b) into the LAAA 2014).

lxxxvi. **Clause 79:** Power to make provision about the payment of allowances to all members of audit committees of relevant authorities (inserting new section 33A(5(c)) into the LAAA 2014).

lxxxvii. **Clause 79:** Power to issue guidance in relation to about audit committees (inserting new section 33A(10) into the LAAA 2014).

lxxxviii. **Clause 82:** Power to provide for treatment as a smaller authority in previous years where an audit is outstanding.

lxxxix. **Clause 84 (Schedule 33, paragraph 3):** Power to make further provision about the appointment of local auditors to audit the accounts of specified health bodies (amending section 7 of the LAAA 2014).

xc. **Clause 84 (Schedule 33, paragraph 20):** Power to prescribe connection between a person and a relevant authority for the purposes of independence requirements (inserting new Part 5A, section 32B(7) into the LAAA 2014).

xci. **Clause 84 (Schedule 33, paragraph 22):** Power to amend the definition of a connected entity (inserting section 43A(3) into the LAAA 2014). A full entry for this power has not been included within this memorandum given this power is an exact restatement of an existing power.

Part Five: Rent reviews in business tenancies

xcii. **Clause 85 (Schedule 34):** Power to provide exceptions to the ban on Upwards Only Rent Reviews (inserting new Schedule 7A, paragraph 10 and new Schedule 7B, paragraph 9) into the LTA 1954).

Part Six: Final provisions

xciii. **Clause 88:** Power to make consequential provision.

xciv. **Clause 92:** Power to commence provision and make transitional or saving provisions.

E. ANALYSIS OF DELEGATED POWERS BY CLAUSE

Part One: Strategic Authorities

Clause 3: Power to designate a single foundation Strategic Authority.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

16. Part 1 of the Bill will establish and categorise SAs. This includes a foundation SA which will include non-mayoral CAs and CCAs automatically, referred to as combined foundation SAs. This category will also include any local authority designated as a SA without a mayor, referred to as a single foundation SA.

17. Clause 3 provides the power for the Secretary of State to designate a principal local authority as a single foundation SA. This will enable individual local authorities, on the invitation of the Secretary of State, to access the foundation tier of the devolution framework only. This power will only be used in exceptional circumstances. A single foundation SA designation is an interim arrangement, should it prove impossible for a CA or CCA to be established across a particular area at this stage of its devolution journey. The Government's ambition remains for all parts of England to benefit from mayoral devolution, via universal coverage of mayoral SAs.

18. The Secretary of State may remove this status from those authorities by further regulations under the same enabling provision. This will occur primarily when a principal local authority joins an existing CA or CCA or forms part of a new CA or CCA. There can only be one SA per area, and since CAs and CCAs will automatically be given SA status, the local authority will cease to be a single foundation SA.

Justification for taking the power

19. It is crucial that the Secretary of State has the power to designate principal local authorities as SAs, so the Government can achieve its ambition of extending devolution across England. By establishing foundation SAs, these areas will gain access to the devolution framework, in the interim period before new institutions (mayoral or non-mayoral CAs or CCAs) are established.

20. In addition, without express provision in the Bill, local authorities which currently have devolution agreements under the 'single local authority' model could not be SAs, despite having devolved functions and fulfilling this role. The four local authorities which are impacted by this are Cornwall Council, Buckinghamshire Council, Surrey County Council and Warwickshire County Council.

Justification for procedure

21. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any changes made using this power. This approach is in line with the current system whereby secondary legislation is used to establish new institutions and to implement agreed devolution deals. Secondary legislation will continue to be used to establish CA and CCAs (which will by default be designated as SAs in the future system too. Using delegated legislation to designate SAs is in keeping with the wider approach to rolling out devolution to specific areas; primary legislation for

English devolution is not place specific due to the potential for hybridity, hence the precedent for this to be done via secondary legislation.

Clause 4 (Schedule 1, paragraphs 16 and 38): Amending the power to establish a new Combined Authority or Combined County Authority (inserting new section 109B into the LDEDCA 2009 and new section 45A into the LURA 2023).

Power conferred on: Secretary of State

Power exercised by: Orders/Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

22. The Secretary of State will have a power to establish by secondary legislation new mayoral or non-mayoral CAs or CCAs without a proposal submitted by, or consent from, the relevant local authorities.

23. The Secretary of State may exercise the power to establish a new CA or CCA for the area of county councils and district councils in England where there has not been a devolution proposal for that area or there is no viable devolution proposal for that area.

24. In exercising this power, the Secretary of State must consider that the making of legislation is appropriate, having regard to the need to secure effective and convenient local government across the area of the CA or CCA in relation to the areas of competence as defined by the Bill.

25. The power will not enable the Secretary of State to remove constituent councils from existing CAs, or CCAs, or remove SA status from institutions that have been designated by the Bill.

26. Commencement of this provision will be by regulations. The Government anticipates that the power will only be exercised in areas where proposals or consent have not been advanced by the relevant local authorities.

Justification for taking the power

27. The Government considers that it is appropriate for the Secretary of State to have a power to establish CAs and CCAs without a proposal submitted by, or consent from, the relevant local authorities to extend devolution throughout England.

28. The establishment of a CA or CCA will require an assessment of the need to secure effective and convenient local government across the particular area of the CA or CCA in relation to the areas of strategic competence as defined by the Bill. The Government is of the view that secondary legislation is an appropriate vehicle as this assessment is area specific.

Justification for procedure

29. The affirmative procedure is consistent with the existing procedures for establishing CAs in section 103 of the LDEDCA 2009, and CCAs in section 9 of the LURA 2023. The Government considers that it affords an appropriate level of Parliamentary scrutiny for the establishment of a new CA or CCA.

Clause 4 (Schedule 1, paragraphs 19 and 41): Amending Secretary of State power to add a local authority to an existing Combined County Authority or Combined Authority (inserting new section 112B into the LDEDCA 2009 and new section 47A into the LURA 2023).

Power conferred on: Secretary of State

Power exercised by: Orders/Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

30. The Secretary of State will have a power to make secondary legislation to add a local authority to an existing mayoral or non-mayoral CA or CCA without a proposal submitted by, or consent from, the council being added or the mayor (if there is one) or the relevant CA or CCA. The power will not extend to cover mergers of CAs or CCAs or the dissolution of a CA or CCA.

31. The Secretary of State may exercise the power to add a council to an existing CA or CCA where a council has not submitted a proposal to establish a CA or CCA for their area or to add a local government area to an existing CA or CCA, or a council has not submitted a viable proposal to do so.

32. In exercising this power, the Secretary of State must consider that the making of legislation is appropriate, having regard to the need to secure effective and convenient local government across the area of the CA or CCA in relation to the areas of competence as defined by the Bill.

33. The power will not enable the Secretary of State to remove constituent councils from existing SAs or remove SA status from institutions that have been given by the Bill or designated by secondary legislation made under the Bill.

34. Commencement will be by regulations.

Justification for taking the power

35. The Government considers that it is appropriate for the Secretary of State to have a power to add local government areas to existing CAs and CCAs in order to extend devolution throughout England. The Government anticipates that the power will be exercised in respect of local government areas where these areas

have not provided proposals or consent, with the voluntary routes remaining the preference.

36. The expansion of an existing CA or CCA will require the Secretary of State to assess the need to secure effective and convenient local government across the particular area of the CA or CCA in relation to the areas of strategic competence as defined by the Bill. The Government is of the view that secondary legislation is an appropriate vehicle as this assessment will be specific to the local government areas concerned.

Justification for procedure

37. The affirmative procedure is consistent with the existing procedures for adding local government areas to an existing CA in section 106 of the LDEDCA 2009, and CCAs in section 25 of the LURA 2023. The Government considers that it affords an appropriate level of Parliamentary scrutiny for the expansion of an existing CA or CCA.

Clause 4 (Schedule 1, paragraphs 19 and 41): Amending the power to provide for a mayor for an existing Combined Authority or Combined County Authority (inserting new section 112C into the LDEDCA 2009 and new section 47B into the LURA 2023.

Power conferred on: Secretary of State

Power exercised by: Orders/Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

38. The provision adds to the existing requirements for making secondary legislation to provide for there to be a mayor for the area of a CA or CCA. The new provision enables the Secretary of State to make legislation to provide for a mayor for the area of an existing CA or CCA without a proposal submitted by, or consent from, the relevant local authorities.

39. In exercising this power in these circumstances, the Secretary of State must consider that the making of legislation is appropriate, having regard to the need to secure effective and convenient local government across the area of the CA or CCA in relation to the areas of competence as defined by clause 2 of the Bill.

Justification for taking the power

40. The Government considers that it is appropriate for the Secretary of State to have a power to make provision for mayors for existing CAs or CCAs without a proposal or consent in order to extend mayoral devolution throughout England.

41. Commencement is by regulations. The Government anticipates that the power will be exercised in areas where proposals or consent have not been advanced by the relevant CA or CCA.

Justification for procedure

42. The affirmative procedure is consistent with the existing procedures for making provision for there to be a mayor for an existing CA in section 107A of the LDEDCA 2009, and for there to be a mayor for the area of a CCA in section 27 of the LURA 2023. The Government consider that it affords an appropriate level of Parliamentary scrutiny.

Clause 4 (Schedule 1, paragraphs 18, 20, 40 and 42): Amending requirements in connection with changes to existing Combined Authority and Combined County Authority arrangements (amending section 112A and substituting section 113 in the LDEDCA 2009 and amending section 47 and substituting section 48 in the LURA 2023).

Power conferred on: Secretary of State

Power exercised by: Order/Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

43. The Secretary of State has the power to make changes to an existing CA by an order under section 113 LDEDCA 2009, and to existing CCA arrangements by regulations under section 48 of the LURA 2023. These changes may implement locally-led or Secretary of State-led proposals.

44. The requirements in these provisions to implement such proposals are being amended so that:

    a) for locally-led proposals, the consent of the relevant authorities is provided on submission of a proposal

    b) for Secretary of State-led proposals, the consent of the relevant authorities is to the proposal

    c) in either case, the Secretary of State may implement the proposal with or without modification

    d) only any person the council(s) preparing a proposal consider appropriate, and any person the Secretary of State considers appropriate (as applicable) have to be consulted.

45. The statutory test for all legislation under section 113 LDEDCA 2009 and under section 48 of the LURA 2023 has been amended to a requirement for the Secretary of State to have regard to the need to secure effective and convenient local government in relation to the areas of competence.

Justification for taking the power

46. The changes described above are intended to support the Government's objective to widen and deepen devolution across England. The combined effect will be to simplify the process and requirements for making changes to the arrangements for existing CAs or CCAs.

Justification for procedure

47. Orders or regulations made under these powers will continue to be subject to the affirmative procedure. This will ensure there is sufficient opportunity for Parliamentary scrutiny and to apply appropriate procedure safeguards for using the power to make changes to existing CA or CCA arrangements.

Clause 4 (Schedule 1, paragraphs 21 and 43): Amending requirements in connection with boundary changes or dissolution of a Combined Authority or Combined County Authority (inserting new sections 113ZA-13ZC in the LDEDCA 2009 and new sections 48A-48C in the LURA 2023).

Power conferred on: Secretary of State

Power exercised by: Order/Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

48. The Secretary of State has the power to make changes to existing CA boundaries to add or remove a local government area from the area of a CA under section 106 LDEDCA 2009, and a power to change a CCA's boundaries under section 25 LURA 2025. The Secretary of State also has a power to dissolve a CA under section 107 LDEDCA 2009, and to dissolve a CCA under section 28 LURA 2023. This secondary legislation may implement locally-led or Secretary of State-led proposals.

49. New sections 113ZA to 113ZC LDEDCA 2009 and new sections 48A to 48C LURA 2023 amend the requirements for secondary legislation under sections 106 and 107 LDEDCA 2009 and under sections 27 and 28 LURA 2023 as follows:

    a) for locally-led proposals, the consent of the relevant authorities is provided on submission of a proposal

b) for Secretary of State-led proposals, the consent of the relevant authorities is to the proposal

c) in either case, the Secretary of State may implement the proposal with or without modification

d) only any person the council(s) preparing a proposal consider appropriate, and any person the Secretary of State considers appropriate (as applicable) have to be consulted

50. The statutory test for all legislation under section 113 LDEDCA 2009 and under section 48 of the LURA 2023 has been amended to a requirement for the Secretary of State to have regard to the need to secure effective and convenient local government in relation to the areas of competence.

Justification for taking the power

51. The changes described above are intended to support the Government's objective to widen and deepen devolution across England. The combined effect will be to simplify the process and requirements for making changes to the arrangements for existing CAs or CCAs.

Justification for procedure

52. Orders or regulations made under this power will continue to be subject to the affirmative procedure. This will ensure there is sufficient opportunity for Parliamentary scrutiny and to apply appropriate procedure safeguards for using the power to make changes to existing CA or CCA boundaries or dissolve a CA or CCA.

Clause 8: Power to designate a mayoral Combined Authority or Combined County Authority as established mayoral Strategic Authority (inserting new section 25A into the LURA 2023 and new section 106B(1) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Regulations/Order (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

53. Part 1 of the Bill will establish and categorise SAs, as a new tier of local government, with CAs, CCAs and the GLA serving this role.

54. The established mayoral SA tier exists because the Government wishes to confer further functions automatically on the subset of mayoral SAs with a strong record of delivery and which can demonstrate exemplary stewardship of public functions.

It is anticipated that over time all SAs will seek to move up to the established mayoral SA tier, which will give them access to further powers and functions responsibilities and powers such as Clause 49 relating to requests by mayors for further powers to deliver their area of competence

55. Clause 8 provides the power for the Secretary of State to change the designation of a mayoral SA to established mayoral SA. This will form part of the process where a mayoral SA has submitted a written proposal to be designated as an established mayoral SA supported by a majority of members including the mayor.

Justification for taking the power

56. To achieve the Government's ambition of deepening devolution across England, SAs will, over time, be expected to meet specific criteria (as set out in the English Devolution White Paper) and seek to move up through the levels of the devolution framework.

57. Mayors of SAs may then write to the Secretary of State to apply to become an established mayoral SA. The Secretary of State can only grant the change in designation using this power, without which SAs will be unable to move up through the tiers and take on more powers and functions. This designation would involve consideration of the individual circumstances of the mayoral SA.

Justification for the procedure

58. Using secondary legislation to designate a mayoral CA as an established mayoral SA is an appropriate mechanism consistent with the mechanism to establish CAs in section 104 of the LDEDCA 2009, and to establish CCAs in section 9 of the LURA 2023.

59. In line with the above, regulations made under this power will therefore be subject to the affirmative procedure. This will ensure there is sufficient opportunity for Parliamentary scrutiny and to apply appropriate procedure safeguards for a power which confers additional functions on SAs.

Clause 9 (Schedule 3): Power to limit the delegation of functions to commissioners (inserting new Schedule 2A, paragraph 7(2)(a)(iv) into the LURA 2023 and new Schedule 5BA, paragraph 7(2)(a)(iv) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Regulations/Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

60. The Bill introduces the ability for mayors to appoint and remunerate ‘commissioners’ to lead on one of the seven areas of competence (defined in clause 2).

61. If they choose to appoint them, the mayor may arrange for the commissioner to exercise functions, subject to paragraph 7 of the inserted Schedules, which provides that certain functions cannot be delegated.

62. There are some functions that cannot be delegated, including the approval of certain documents. These include vital strategic plans with significant impacts for the future of the region, for which elected officials should be accountable. The plans listed are i) a local growth plan, ii) a local transport plan and iii) a spatial development strategy.

63. Paragraph 7(2)(a)(iv) allows the Secretary of State to make regulations which specify other documents, approval of which cannot be delegated to a commissioner.

Justification for taking the power

64. This power will allow the Secretary of State to set out additional documents to provide more flexibility than amending primary legislation. This may be necessary as CAs and CCAs may have more strategic plans to approve in the future, that should not be delegated to a commissioner.

Justification for procedure

65. Regulations or orders made under this power will be subject to the negative resolution procedure. The Government does not consider the use of this power will be controversial, as it is setting parameters for delegation of approval, rather than providing further powers to commissioners. The Government therefore considers that the negative resolution procedure provides sufficient scrutiny of the legislation made under this power.

Clause 9 (Schedule 3): Power to specify remuneration panels for the purposes of commissioner allowances (inserting new Schedule 2A, paragraph 8(4) into the LURA 2023 and new Schedule 5BA, paragraph 8(4) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Regulations/Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

66. The Bill provides that a CA or CCA must only pay commissioners in accordance with a scheme of payment they have drawn up and such a scheme can only be

made following consideration of a report published by a relevant remuneration panel, which makes recommendations on the level of payment**.** Paragraph 8(4) of both the inserted Schedules defines a 'relevant remuneration panel' as one specified in regulations, or an order made by the Secretary of State for that purpose.

Justification for taking the power

67. This power will allow the Secretary of State to set out in secondary legislation detail required in the context of the Bill, and deal with things which can reasonably be anticipated to change regularly in the future and which would be too detailed for inclusion in primary legislation. The power is necessary, because the main policy intention (being able to pay commissioners) will not work if there is not a panel to make reports that recommend payments.

Justification for procedure

68. Regulations or orders made under this power will be subject to the negative procedure as the use of this power is unlikely to be controversial since it deals with administrative matters to establish remuneration panels for CAs and CCAs. The Government considers that the negative resolution procedure provides sufficient scrutiny of the secondary details set out under this power.

Clause 9 (Schedule 3): Power to issue guidance in relation to the selection or appointment of commissioners (inserting new Schedule 2A, paragraph 12(1) into the LURA 2023 and new Schedule 5BA, paragraph 12(1) into the LDEDCA 2009)

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

69. Clause 9 of the Bill inserts a new section 29A into the LURA 2023 and a new section 107CA into the LDEDCA 2009, that provide CAs and CCAs the ability to appoint commissioners, with certain stipulations.

70. Paragraph 12(1) of the inserted Schedules gives the Secretary of State power to make guidance about the selection or appointment of commissioners.

Justification for taking the power

71. The guidance is needed to ensure the selection and appointment of commissioners is done in accordance with best practice, and to clarify how the appointment and selection of commissioners should operate in most cases. This

flexible ability to set guidance is particularly useful for the selection and appointment of commissioners as they are a new and novel policy, so some direction-setting is likely to be appropriate as different mayors use them differently. The guidance is intended to assist and not direct CAs and CCAs by providing practical criteria that they could consider in the hiring of commissioners. It can be updated as the use of commissioners is developed in different ways by authorities, which will happen more quickly than legislation could keep up with.

Justification for procedure

72. Guidance issued by the Secretary of State for the purpose of paragraph 12(1) is not subject to Parliamentary procedure. This is considered appropriate because the guidance is setting out best practice rather than law. Moreover, the main details of the policy are in primary legislation and will receive full parliamentary scrutiny.

Clause 9 (Schedule 3): Power to issue guidance about the exercise of the function under paragraph 7(3) of approving arrangements for a function to be exercisable by a commissioner (inserting new Schedule 2A, paragraph 12(3) into the LURA 2023 and new Schedule 5BA, paragraph 12(3) into the LDEDCA 2009)

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

73. Paragraph 7(3) of the new Schedule 2A in the LURA 2023 and Schedule 5BA in the LDEDCA 2009 states that the mayor must obtain the consent of the CCA/CA to any arrangement for a commissioner to exercise a function, but this does not apply to a function that is exercisable only by the mayor on behalf of the CCA/CA.

74. Paragraph 12(3) of the new Schedules listed above, provides the Secretary of State with the power to issue guidance about the exercise of the function under paragraph 7(3) of approving arrangements for a function to be exercisable by a commissioner.

75. The purpose of this power is to allow the Secretary of State to outline the process within a CA or CCA for approving the delegation of a function not exercisable only by the mayor on behalf of the CCA/CA, if necessary. This could include things such as the whether the process is a formal vote or criteria for approving or rejecting a proposed delegation.

Justification for taking the power

76. This power would allow the Secretary of State to set out additional detail in the context of the Act. As different CAs and CCAs have different constitutions and membership arrangements, the guidance would accommodate the need for a detailed policy to work differently for different areas. As this is a new policy, it would allow the Secretary of State to set best practice for CAs and CCAs, where they may not be sure how they should approve the delegation of a function not exercisable only by the mayor on behalf of the CCA/CA. The guidance would allow a degree of flexibility in setting out the best practice for arranging for a CA or CCA function to be delegated to a commissioner.

Justification for procedure

77. Any guidance issued under paragraph 12(3) is not subject to parliamentary procedure. As this guidance relates solely to the internal processes for deciding on the delegation of a CA or CCA function, it does not require full parliamentary scrutiny. The guidance will not be presented as law and is intended to be useful for the CAs and CCAs, rather than binding on them. The ability to delegate a CA or CCA function is set out in primary legislation, as are several functions that are prohibited from being delegated. These provisions will be scrutinised fully.

Clause 9 (Schedule 3): Power to issue guidance in relation to the payment of allowances to commissioners and compliance with the duty to prepare and publish reports (inserting new Schedule 2A, paragraph 12(5) into the LURA 2023 and new Schedule 5BA, paragraph 12(5) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

78. Paragraph 8 the new Schedule 2A in the LURA 2023 and 5BA in the LDEDCA 2009, provides mayors with the ability to pay an allowance to commissioners, provided they have considered a report by a relevant remuneration panel and the allowances do not exceed those recommended by the report.

79. Paragraph 8(3) provides that a CA or CCA which has made a scheme under this section must produce and publish reports on the allowances paid under the scheme, including their amounts.

80. Paragraph 12(5) of the new Schedule 2A in the LURA 2023 and 5BA in the LDEDCA 2009 gives Secretary of State the power to issue guidance on the exercise by CAs or CCAs of the power to pay an allowance to commissioners.

Justification for taking the power

81. This power will allow the Secretary of State to develop guidance on things that can reasonably be anticipated to change in the future, such as recommended allowance amounts. Guidance will add additional detail clarifying the best practice of how paying commissioners should work, allowing the Secretary of State to support the sector in the use of a new and novel power.

82. The power to issue guidance on complying with the duty to publish reports on allowances will allow the Secretary of State to set clear expectations for the frequency of such reports, the formatting of them, and any other information that would likely be useful to the reader. This will be useful to those producing the reports and will also allow the Secretary of State to ensure such reports support the Government in monitoring how commissioners are being used and paid.

Justification for procedure

83. This guidance will not be subject to any parliamentary procedure. This is considered appropriate as it will set out best practice and provide further clarity firstly regarding the ability to pay allowances to commissioners, and secondly regarding the duty to produce reports detailing payments. It will not make binding rules but will aid the implementation of the policy which is set out in the Bill and which will receive full parliamentary scrutiny. There is already a clear procedure in the primary legislation which outlines under which conditions a CA or CCA can pay an allowance to a member and details the main contents of a report. Parliamentary scrutiny is not generally required for guidance, and it would be inappropriate to use legislation for providing non-binding extra details on how to pay commissioners and produce good quality reports. The Government intends to engage with the local government sector in developing the guidance.

Clause 9 (Schedule 3): Power to issue guidance in relation to the terms of reports produced by remuneration panels in relation to commissioner allowances (inserting new Schedule 2A, paragraph 12(7) into the LURA 2023 and new Schedule 5BA, paragraph 12(7) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

84. To ensure the level of payment to a commissioner is fair, and the process for agreeing that payment transparent, the Bill provides that a CA or CCA must only pay commissioners in accordance with a scheme they have drawn up, and that the CA or CCA may only make that scheme if it has considered a report published

by a relevant remuneration panel which contains recommendations for the allowances paid. The amounts paid must not exceed the recommendations.

85. Paragraph 12(7) of the new Schedule 2A in the LURA 2023 and 5BA in the LDEDCA 2009 provides the Secretary of State the power to make guidance on the terms of reports produced by relevant remuneration panels. The purpose of this is to give Secretary of State the ability to ensure that such reports are being produced fairly via setting out guidelines for them, if the Government thinks it is suitable to do so.

Justification for taking the power

86. This guidance would ensure that relevant remuneration panels are aware of the kind of information that should be included in their reporting and give them an idea of best practice. The reports produced by independent remuneration panels are both procedural information that would not be appropriate for legislation and cover financial information that is likely to change more quickly than legislation could reasonably be expected to be updated. This ability to produce guidance is particularly useful as commissioners are a new policy, and their use will develop over time. As best practice develops in the reports produced by remuneration panels, the Government will be able to highlight it to the local government sector.

Justification for procedure

87. Guidance on the terms of remuneration panel reports will not be subject to any Parliamentary procedure. The procedure around paying commissioners and the attendant duty to consider a report by a relevant remuneration panel is set out in detail in the Bill, which will receive full scrutiny, including the key things the report must include. If the power is used, this guidance will provide further best practice for the contents of such a report. It will not be considered law, however will be a useful tool for Secretary of State to ensure areas know how to produce a report that is suitable. The Government will consult with the sector on it.

Clause 9 (Schedule 3): Power to issue guidance in relation to the making of recommendations to terminate the appointment of a person as a commissioner (inserting new Schedule 2A, paragraph 12(9) into the LURA 2023 and new Schedule 5BA, paragraph 12(9) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

88. Paragraph 10 of new Schedule 2A in the LURA 2023 and 5BA in the LDEDCA 2009 provides that overview and scrutiny committees must have a power to recommend that a commissioner's appointment is terminated. Whilst commissioners will be appointments of, and accountable to, the mayor, if the mayor is not effectively managing their performance, or there are concerns about their suitability or relevant experience, it is right that the CA or CCA can step in to investigate and recommend their removal.

89. The power under 12(9) new Schedule 2A in the LURA 2023 and 5BA in the LDEDCA 2009 provides the Secretary of State the ability to issue guidance about the making of recommendations by the overview and scrutiny committee to recommend the termination of a commissioner's appointment.

Justification for taking the power

90. This guidance will allow for the Secretary of State to lay out the best practice for overview and scrutiny committees when making recommendations that an appointment is terminated. The Government anticipates that this would involve setting out the broad categories of things that such a committee could recommend an appointment is terminated for, and any recommended processes for doing so. As this is a new power relating to a new position (that of commissioner), a flexible mechanism for the Secretary of State to set out expectations and react to developments in the use of the power will be useful.

Justification for procedure

91. Any guidance issued under paragraph 12(9) is not subject to Parliamentary procedure. It is meant to inform overview and scrutiny committees as to how to best use their power to recommend a commissioner's position is terminated, setting out the best practice rather than law. Suitable safeguards are built into the primary legislation for the use of the power such as the process for accepting a recommendation to terminate a commissioner's appointment, including the voting threshold for doing so.

Clause 10: Power to issue guidance in relation to payment of allowances to members who have special responsibilities, and complying with the duty to prepare and publish reports (inserting new section 52A(4) into the LURA 2023 and new section 113E(4) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

92. Clause 10 of the Bill inserts section 52A into the LURA 2023 and section 113E into the LDEDCA 2009, which provide CCAs and CAs the ability to pay allowances to members that take on special responsibilities.

93. Sections 52A(4) and 113E(4) give Secretary of State the power to issue guidance about the payment of allowances to members. The purpose of this is to allow the Government to provide extra technical detail that informs the sector about the best practice in paying members, that CAs and CCAs must have regard to. Such guidance may outline things it is considered appropriate to pay members for and give recommended allowance amounts. As the ability to pay member is a new power, this guidance also allows the Secretary of State some flexibility to shape how the ability to pay members is used.

Justification for taking the power

94. The Government's view is that it requires guidance to enable the Secretary of State to set out the best practice in the use of the power to pay members, and steer consistency. The guidance can be a flexible mechanism for the Secretary of State to set out expectations and react to developments in the use of a new power. The power relates to secondary policy detail (e.g. reasonable monetary amounts) may change (e.g. due to inflation) that would not be appropriate to include on the face of the Bill.

Justification for procedure

95. Any guidance issued by the Secretary of State for the purpose of sections 54A(4) and 113(4) is not subject to Parliamentary procedure. It will deal with practical advice to areas, supporting them in using their new ability to pay their members appropriately, including setting reasonable parameters for payment and the type of things payment is suitable for. It will not create new law for areas, and the sector will be engaged in its production. The core principles regarding the payment of allowances, including safeguards to ensure it is done fairly, are set out in the Bill and will receive full parliamentary scrutiny.

Clause 10: Power to issue guidance in relation to the terms of reports produced by remuneration panels in relation to allowances of members with special responsibility (inserting new section 52A(5) into the LURA 2023 and new section 113E(5) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

96. Under the new sections 52A of the LURA 2023 and 113E of the LDEDCA 2009, an allowance to a member must be made in accordance with a scheme drawn up by the CA or CCA.

97. That scheme may only be made if the CA or CCA has considered a report published by a relevant remuneration panel, which contains recommendations for the allowances provided for in the scheme. Allowances payable must not exceed the amounts specified by the remuneration panel.

98. Section 52A(5) and 113E(5) give Secretary of State the ability to make guidance on the terms of a report produced by a relevant remuneration panel. Guidance may include technical detail on the recommendations that a report can make and the process for publishing reports. The purpose would be to ensuring consistency across remuneration panels and ensure they are working in line with best practice.

Justification for taking the power

99. The Government's view is that guidance is appropriate as a means of setting out clearly what is considered appropriate to include in a report by a relevant remuneration panel recommending a particular level of payment to a commissioner. This will allow panels to clearly understand the things they should be including, such as levels of recommended payment and payment methods. As the reports produced by independent remuneration panels cover procedural and financial information that is likely to change more quickly than legislation could reasonably be expected to be updated, guidance will be useful. The power relates to secondary, non-binding policy detail that would not be appropriate to include in legislation but may be necessary to ensure that the policy is working correctly.

Justification for procedure

100. Guidance issued under sections 52A(5) and 113E(5) is not subject to any Parliamentary procedure. This is appropriate because if the power is used, this guidance will provide practical advice for the contents of a report and will not be considered law. It will instead be a useful tool for Secretary of State to ensure remuneration panels know how to produce a report that is suitable and allow for the development of consistency.

Clause 10: Power to specify remuneration panels for the purposes of allowances of members with special responsibility inserting new section 52A(8) into the LURA 2023 and new section 113E(8) into the LDEDCA 2009).

Power conferred on: Secretary of State

Power exercised by: Regulations/Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

101. Under the new sections 52A of the LURA 2023 and 113E of the LDEDCA 2009, an allowance to a member must be made in accordance with a scheme drawn up by the CA or CCA. That scheme may only be made if the CA or CCA has considered a report published by a relevant remuneration panel, which contains recommendations for the allowances provided for in the scheme. Allowances payable must not exceed the amounts specified by the remuneration panel.

102. Subsection (8) of the inserted section 52A and 113A defines 'relevant remuneration panel' as one that is specified or of a description specified in regulations or an order made by the Secretary of State.

Justification for taking the power

103. The Government requires regulations to set up a relevant remuneration panel in the case that there is not one, or those that are set up under current legislation are disbanded for any reason. Specifying exact details about a 'relevant remuneration panel' in primary legislation would not be appropriate because it is technical detail needed to give effect to the Act and including it would make the Act unnecessarily long.

104. The power is necessary, because the main policy intention (being able to pay commissioners) will not work if there is not a panel to make reports that recommend payments.

Justification for procedure

105. Regulations or orders made under this power will be subject to the negative procedure. The Government considers that the negative resolution procedure provides sufficient scrutiny of the secondary details set out under this power.

Clauses 11 and 45: Powers to modify procedural framework to align with the expansion of mayors' precepting powers and ensure separate provision for PCC areas.

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and purpose

106. Clause 11 of the Bill expands the functions of CA and CCA mayors so that they can raise precepts in relation to all their functions. At present, they can only raise precepts in respect of their mayoral functions. The procedural framework for the setting of budgets and precepts is set out in secondary legislation by the Secretary

of State under section 41 of the LURA 2023 and section 107G of the LDEDCA 2009. Secondary legislation under these powers covers matters such as voting procedures, the ringfencing of certain precept components, methods of calculation, and provision for a general fund.

107. These powers need to be amended so that the Secretary of State can make such provision to take account of mayors' expanded precepting powers and establish a clear framework for mayors and authorities.

108. Clause 11 will update the condition on the powers in section 41(4)(a) of the LURA 2023 and section 107G(4)(a) of the LDEDCA 2009 so that the Secretary of State must include provision setting out that there must be a separate component for PCC functions in the precept. This does not change the overall power but amends this condition on its use to align with the new expanded precepting power.

109. Clause 11 also changes the powers under section 107G(5)(b) of the LDEDCA 2009 and section 41(5)(b) of the LURA 2023 to give the Secretary of State the ability to make provision about the preparation of annual budgets for all an authority's functions, not just mayoral functions.

110. In addition clause 45(3) and (6) ensure that where the powers under section 107G(4)(a) of the LDEDCA 2009 and section 41(4)(a) of the LURA 2023 are used in respect of authorities with more than one PCC area, the condition is updated to ensure separate provision is made in respect of each PCC area.

Justification for taking the power

111. The amendments to the powers are necessary in order for the policy intent of expanding mayors' precepting powers to cover all functions to operate effectively. Without these changes, the Secretary of State would not be able to make a provision about how budgets are to be set and how precepts are to be calculated by mayors across all their functions, among other things. This would lead to a lack of legal certainty for mayors and authorities when using their budgeting and precepting powers and potentially undermine the overall policy.

112. Without the amendments relating to section 107G(4)(a) of the LDEDCA 2009 and section 41(4)(a) of the LURA 2023 regarding PCC functions, it would not be clear what provision must be made for separate components for non-PCC functions in the precept, nor what provision must be made where authorities have more than one PCC area, again leading to a lack of legal clarity. Without these changes, there may be uncertainty as to whether the powers allow provision in respect of separate components across all the mayors' functions. These changes are required and justifiable as they are required in order for the policy to work effectively, provide legal clarity, and do not represent a significant change in the existing powers.

113. The only alternative would be to provide for mayoral budget setting processes and precepting calculations in primary legislation. Given the technical nature of these requirements, they are considered appropriate for secondary legislation as is the case with the existing powers being amended.

Justification for the procedure

114. These powers are exercisable under the affirmative procedure. The powers enable the Secretary of State to set out technical details, and the procedure authorities must follow when setting their budgets and raising precepts. The procedure used for the powers being amended is considered an appropriate level of scrutiny in line with established precedent.

Part Two: Functions of Strategic Authorities

Clause 20 (Schedule 4): Extension of the general power of competence (amending section 5 of the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative/Affirmative/Super Affirmative (as provided for in sections 15 to 18 of the Legislative and Regulatory Reform Act 2006)

Context and purpose

115. The LA 2011 established the GPC, which applies to local authorities and denotes the power to do "anything that individuals generally do" unless specifically prohibited. This will apply to SAs as designated by this legislation, with the exception of the GLA which will retain its own unique general power.

116. To ensure that the GPC can operate as intended, the Secretary of State has the power to make amendments and repeal provisions which are adversely impacting the exercising of the GPC. This includes restricting or putting conditions on the exercise of the GPC via secondary legislation. The Secretary of State may only exercise the power where its effect is proportionate, strikes a fair balance between the public interest and the interests of any person adversely affected by it, not constitutionally significant and that it will not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

117. Before exercising this power, the Secretary of State must consult any local authorities, representatives of local government and any other persons that the Secretary of State considers appropriate. If after the consultation the Secretary of

State considers it appropriate to make an order the Secretary of State must lay before Parliament a draft of the order, any consultation undertaken and response made in relation to that consultation, an explanation of the provision and on how its effect is proportionate, strikes a fair balance between the public interest and the interests of any person adversely affected by it, that it does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise and that it is not of constitutional significance. The Secretary of State must also make a recommendation as to whether the negative, affirmative or super affirmative procedure should apply to the draft. This power was brought in as part of the LA 2011 to ensure that the GPC was "future proofed". The power has been used in local instances, such as the disapplication and amendment of the Harrogate Stray Act 1985 which ensured that the Tour de Yorkshire could travel through Harrogate.

Justification for taking the power

118. The Bill will amend the LA 2011, enabling SAs to use the GPC. As the GPC is being extended to SAs it is necessary for the Secretary of State to have the power to make supplementary provision as outlined above.

Justification for procedure

119. As this is an extension of scope to the Henry VIII power under section 5 of the LA 2011, the same consultation requirements (as set out in section 5(7)) and limitations on the power (as set out in section 6) will apply. The same parliamentary procedure for the explanatory document and draft order (as set out in section 7 of the LA 2011 and allow for the Secretary of State to choose a negative, affirmative or super affirmative procedure in accordance with sections 15 to 19 of the Legislative and Regulatory Reform Act 2006) will also apply.

120. The Government considers that this same level of scrutiny is appropriate following an extension of this power, as it ensures that debate, views and inquiry can be given to the Secretary of State's decision and the option for Parliament to reject the legislation if it so chooses.

Clause 21: Power to issue guidance in relation to the mayoral power to convene meetings with local partners (inserting new section 17B(2) and (4) into the LURA 2023, new section 103B(2) and (4) into the LDEDCA 2009 and new section 40B(2) and (4) into the GLA 1999).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

121. The power to convene will allow the mayors of SAs to bring together “local partners” (local and public authorities and other organisations responsible for delivery of public services across a mayoral SA area) to promote economic, social and environmental wellbeing and community cohesion. When the power to convene is used by a mayor there is a corresponding duty on those "local partners” to respond to a mayor’s request to convene.

122. The provisions within the Bill will require that the mayor of a SA and those “local partners” to have regard to any guidance issued by the Secretary of State on the use of the power.

Justification for taking the power

123. The power relates to the operational detail and clarification on its intended day-to-day use. Guidance will not be able to set out additional requirements that must be followed beyond those forming the new power and duty outlined in the Bill. It would not be appropriate to include guidance outlining best practice on the face of the Bill, nor within secondary legislation. Instead, a power to issue guidance is necessary to ensure that mayors of SAs and local partners understand how the new power to convene and the corresponding duty on local partners should operate in practice, and so that the policy works as intended.

Justification for procedure

124. The guidance will outline best practice and clarify how the provisions should operate in most cases. As such, it is appropriate for this information to be in guidance which is not subject to parliamentary scrutiny rather than primary or secondary legislation.

Clause 21: Power to define “local partners” (inserting new section 17B(5) into the LURA 2023, new section 103B(5) into the LDEDCA 2009 and new section 40B(5) into the GLA 1999).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and Purpose

125. Under the power to convene, the mayors of SAs will have the power to convene “local partners” with a corresponding duty on these partners to respond.

126. Local partners are a vital component in ensuring that mayors can achieve the Government’s ambition for mayors. Whilst mayors will have powers, as conferred

via the Bill, to act across the areas of competence (public health, economic development and regeneration), they will not always be the main service provider for these areas (for example, running local train services).

127. The provision will allow for regulations to specify the "local partners" to whom the mayor's power to convene applies to and who also have a corresponding duty to respond when a mayor exercises that power.

Justification for taking the Power

128. The power to specify who the "local partners" are in regulations is required so that it provides flexibility over time without the need to amend primary legislation. This power will accommodate the need to update or amend which local partners are subject to the requirement in future. For example, as new bodies are created or bodies are abolished, or as new functions are added to the statutory framework, meaning that mayors may need to engage and work with bodies where they have had little or no dealings previously.

Justification for the Procedure

129. Parliamentary scrutiny is appropriate to ensure that the local partners to whom mayors may convene meetings with and who must respond to that mayor's request are appropriate in all the circumstances. However, the "local partners" to be specified in the regulations are expected to be updated with reasonable frequency as these bodies will change over time. Also, the duty that the specified local partners are subject to is more procedural in nature than substantive, as it only requires them to respond to a mayor's notification and so is not intended to be overly burdensome on them. It is deemed therefore that the negative procedure is the most proportionate level of parliamentary scrutiny to attach to such regulations, to ensure scrutiny while not occupying a significant amount of parliamentary time on an ongoing basis.

Clause 22: Power to issue guidance for mayors of Strategic Authorities in relation to making and responding to requests to collaborate (inserting new sections 17C(7) and 17(D)(4) into the LURA 2023, new sections 103C(7) and 103(D)(4) into the LDEDCA 2009, and new sections 40C(7) and 40(D)(4) into the GLAA 1999).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

130. The duty of mayors to collaborate is a formal process allowing mayors of neighbouring Strategic Authorities to make written requests for collaboration on matters which relate to the SAs' areas of competence and will likely improve the economic, social or environmental wellbeing of those who live or work across their areas. Mayors will be under a duty to respond in writing to such requests.

131. Clause 22 inserts three new clauses into each of the LURA 2023, LDEDCA 2009 and GLAA 1999 to introduce the new duty to collaborate and place various statutory requirements on mayors who issue or receive such a request. Clause 22 also provides the Secretary of State the power to issue guidance that mayors must have regard to in relation to the duty.

132. Mayors will be required to publish any requests and responses they make for collaboration, providing transparency on how neighbouring mayors aim to work together across geographies.

Justification for taking the power

133. This power will allow the Secretary of State to set out how the formal process should work in practice.

134. Guidance will not be able to introduce new or additional requirements on mayors when exercising these powers. Guidance will instead be aimed at clarifying the operational detail and best practice that will govern the day-to-day use of making and responding to requests to collaborate. It would not be appropriate to include detail outlining best practice, that may itself be informed by initial operation of this provision, on the face of the Bill. Instead, guidance is considered the most appropriate means of ensuring that mayors of SAs understand how the new duty to collaborate should operate in practice.

Justification for procedure

135. The guidance is intended to aid policy implementation by supplementing the legal rules laid down in legislation, rather than adding to them.

136. The guidance will outline best practice and clarify how the provisions should operate in most cases. As such, it is appropriate for this information to be in guidance which is not subject to parliamentary scrutiny rather than primary or secondary legislation.

Clause 23 (Schedule 5): Power to specify micromobility vehicles of any other descriptions for licensing purposes (inserting new section 22F into the RTRA 1984).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

137. Clause 23 and Schedule 5 confer new powers on SAs, and in all cases, where no SA is in place, the highest tier of local authority for an area, to regulate micromobility vehicles provided for use in that area. New section 22E provides that passenger and non-passenger micromobility vehicles provided for use on a publicly accessible road or place, will require a licence from the licensing authority for that area. It will be a criminal offence to operate a licensable service without a licence, with a maximum penalty of an unlimited fine. A passenger micromobility vehicle is defined as a pedal cycle or electrically assisted pedal cycle, however the Government may wish to use this framework to regulate the deployment of other types of passenger vehicle and in future such as e-scooters. In respect to these vehicles, only vehicles that can be 'taken possession of' from a publicly accessible road or public place (or any other place) require a licence, meaning those available for hire off a street or public area. The power to regulate for new types of non-passenger micromobility vehicles in future, may be used for vehicles such as pavement delivery devices. This would be done through regulations made under this power, as set out in Schedule 5, which inserts a new power in section 22F of the RTRA 1984. The scope of this power will be limited by the definition of a passenger micromobility or non-passenger micromobility vehicles, set out in the Bill.

138. Examples of potential regulations under this power, not limited to:

    a) Adding new categories of passenger micromobility services to be regulated under this framework, such as those of newly emerging vehicles in future.

    b) Adding new categories of non-passenger micromobility services to be regulated under this framework, such as those of newly emerging vehicles in future.

Justification for taking the power

139. The Government considers it is appropriate for the Secretary of State to allow for regulation of further on-street micromobility services in future. The landscape this legislation is operating in contains existing business models that are still quite novel, and vehicle technologies that continue to develop and be introduced to the market at pace. As the industry, its operating models, and types of vehicles change in future, so will considerations around which of these falls within the scope of this framework. Shared schemes of new vehicles or novel operating models for existing vehicles might emerge which occupy shared street space and present challenges similar to those currently seen with shared dockless e-bikes. Pre-empting a definition wide enough to encompass all potential future types of vehicles and operations in primary legislation is not feasible. Therefore, flexibility

is needed to actively designate future shared schemes as falling within scope of this licensing framework where they are not automatically captured by the Bill.

140. This power provides flexibility for regulating new innovations effectively. In other areas such as vehicle regulation, the rigidity of legislation has made it difficult to regulate for new vehicles proportionately and effectively. An example of this can be the challenges with regulating for e-scooters under existing motor vehicle legislation. It is important to empower local leaders in a timely way to address impacts on shared street space from other shared vehicle schemes that could emerge in the future.

141. Designations of new types of schemes to be captured by micromobility vehicle licensing will need to be carefully considered and be responsive to changing vehicle types and business models in an emerging industry. Setting this out via regulations is therefore the most appropriate approach. Delegated legislation can be updated to reflect changes in the market.

Justification for procedure

142. Regulations made under this power will be subject to the affirmative procedure. This is consistent with the existing procedures established by the RTRA 1984. The selection of this procedure will ensure there is appropriate Parliamentary scrutiny of any change to legislation made using this power.

Clause 23 (Schedule 5): Power to set further exemptions from licensing requirements (inserting new section 22G into the RTRA 1984).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

143. Some exemptions to the micromobility vehicle licensing framework are set out in this clause alongside a power to exempt further types of scheme that might otherwise fall within the framework. Some examples of the schemes which do not fall within the definition of the framework and are out of scope of the Bill are: services which are operated solely from private premises (i.e. hire shops); motor vehicle rental; invalid carriage rental; pedicabs; and long-term rental where a vehicle is loaned to be used as a private vehicle.

144. The exemption at 22G exempts schemes operated by or on behalf of the licensing authority themselves (such as Transport for London's docked cycle hire scheme) are actively exempted.

145. There is also a power to exempt other types of services by regulations, that would otherwise fall within the framework. This could be used to exempt small operations which might otherwise be in scope, However, exemptions based on scale of operations will likely vary by vehicle type and will be set out in regulations. It may also be appropriate to exempt other scheme types, for example those operated by registered charities.

146. Examples of potential regulations under this power, not limited to:

    a) Detailing criteria to qualify for an exemption

    b) Exempting small operations

Justification for taking power

147. New vehicles or operating models may emerge which offer particularly acute social benefits and limited disbenefits which may warrant exemption from licensing requirements. Crucially, the scale at which operations have sufficiently limited impact to warrant an exemption from licensing will vary by vehicle and scheme type. Setting out all exemptions in primary legislation would not be appropriate as these will need to be revisited relatively frequently as the industry and operational models evolve.

148. Both exemptions and designations of new types of services or schemes to be captured by a licensing framework will need to be carefully considered and be responsive to changing vehicle types and business models in an emerging industry. Setting this out via regulations is therefore the most appropriate approach.

Justification for procedure

149. Regulations made under this power will be subject to the affirmative procedure. This is consistent with the existing procedures established by the RTRA 1984. The selection of this procedure will ensure there is appropriate parliamentary scrutiny of any change to legislation made using this power, particularly given potential impacts on businesses.

Clause 23 (Schedule 5): Power to make regulations regarding licences for micromobility rental services (inserting new section 22H and Schedule 3A into the RTRA 1984).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

150. New section 22H inserts a new Schedule 3A into the RTRA 1984, which provides for the Secretary of State to make regulations on licences for micromobility vehicle services. This is intended to encompass various tenets of licensing, including:

a) mandatory licence conditions

b) enabling the addition of local additional licence conditions

c) processes related to the consideration and actioning of renewals, suspensions, or revocations of licensing

d) licence lengths (e.g. maximum licence durations)

e) processes related to the consideration and actioning of variations to and transfers of licences

f) administrative processes related to the consideration and actioning of licence applications including a power to require an inspection of a site when approving an application and to confirm when monitoring compliance with conditions

g) Setting out the circumstances in which financial penalties may be levied for operating without a licence or breaching licence conditions. Additionally, the level of financial penalty which may be imposed and how this should be done.

h) A requirement for regulations to set out further detail on how appeals may be made against prescribed decisions of a licensing authority

i) Enabling the establishment of a fee-charging regime for licensed schemes and setting the parameters for this, including the scale of fees which may be charged and the fee-charging mechanisms permitted

j) A power to introduce new criminal offences by regulation, of knowingly or recklessly providing false information to obtain or retain a licence, or in relation to an appeal against a decision of a licensing authority and in response to a request for information under section 22J.

151. Schedule 3A is also inserted into the RTRA 1984 and makes detailed further provisions about regulations to be made through this power. Each of the relevant sections of Schedule 3A is detailed in turn below.

<u>Justification for taking power</u>

152. These powers are intended to support a delicate balance between effective local regulation through licensing and a viable shared micromobility market by offering clarity and consistency on key procedural aspects of licensing.

153. The legal requirement for licences to be required to operate, ensures local leaders will have clear oversight of on-street micromobility services, allowing

safety or civil matters to be addressed through the issuing of notices, ensuring engagement and shared responsibility between operators and licensing authorities.

154. The current landscape of shared micromobility use does not currently provide the opportunity for continued learning through the sharing of data. Through this power, the requirement to share data may allow continued improvements in both safety and micromobility service provision, benefitting both the sector and the licensing authority.

155. Fairness relating to the issuing, revocation or suspension of a licence can be upheld through the powers of the appeals and reconsideration process. It is envisaged that this approach will reduce the burden on the courts, and the licensing authority by removing the opportunity for contesting of individual licence conditions.

156. Additionally, many aspects of micromobility licensing expected to be regulated under this power will vary according to the type of scheme being regulated. For example, if new vehicle types are added to the framework in future, the levels of financial penalties and fee-charging which are appropriate, fair, and proportionate, are likely to differ between these according to their respective business models.

157. Potential future changes, particularly those relating to the emerging shared micromobility market, may be rapid and unpredictable, requiring changes to the various areas of licensing set out under this power more frequently than primary legislation can be expected. The nature of how licences are managed and issued, as well as the reconsideration and appeals processes and the nature of offences will change as authorities become more experienced and confident in their licensing functions and as industry develops and evolves.

Mandatory Licence Conditions

158. Paragraph 2(1) of Schedule 3A allows conditions to be set that must be included in licences. This power is designed to ensure that all on-street micromobility services are operating safely and effectively above a universal base standard, regardless of the capacity, capability, or level of experience of the licensing authority. Without minimum standard conditions set by the Secretary of State and informed by the resources and expertise of the Department for Transport, there is a risk that smaller or less experienced authorities will be unable to assess what levels of operational standards should be in place to protect communities and either issue licences to unsafe schemes or feel unable to issue any licences at all. Additionally, these minimum standards are expected to largely be technical.

159. This power also allows the Secretary of State to explicitly detail conditions which must not be included by licensing authorities in order to ensure a level of consistency, clarity, and long-term viability in all schemes.

160. Non-exhaustive examples of conditions which may not be allowed:

a) Conditions that seek to obtain revenue-sharing from operators. Any permitted charges that can be levied against an operator, will be set out in the fee charging regulations (power set out below)

b) Disproportionately expensive technological requirements

161. It is expected that the Secretary of State would review the minimum standard conditions regularly as the industry and relevant vehicle and operating technologies develop (such as changes in data collection technology and which is rapidly changing as well as new safety features for these vehicles) to ensure the effective functioning or safe operation of all schemes.

162. The flexibility of regulation-making powers is required in setting these conditions as they will vary by vehicle and service type. With additional service types to be designated in regulations as new vehicles and models for on-street micromobility services emerge, the ability to set mandatory licence conditions in accompanying regulations is necessary.

163. A non-exhaustive list of examples of conditions which could be set with this power includes, but is not limited to:

a) Disclosure of information such as mandatory sharing of trip data with the local authority and the Department for Transport

b) The operator must devise an anti-social behaviour plan and parking plan in conjunction with the police and local authority

c) A unique identification number on each vehicle for easy reporting of poorly parked vehicles

d) Appropriate levels of vehicle servicing and maintenance

e) Appropriate training offered to users

f) A statement of the expected vehicle standards, noting a vehicle must already be legal to use on the highway and a licence cannot be issued for illegal vehicles

g) A requirement to share details of antisocial users with other operators

Additional local licence conditions

164. Paragraph 2(2) of Schedule 3A allows the Secretary of State to establish further conditions a licensing authority can include in a licence for an on-street micromobility service. Any conditions set by this power, would be considered in addition to any established under paragraph 2(1) of Schedule 3A.

165. The ability to add local conditions will empower local authorities to ensure that on-street micromobility services in their areas are designed with consideration of local needs and interests. Setting out the types of licence conditions which will be allowed will offer clarity and consistency to operators. The power to make regulations on the nature of these additional conditions will also ensure that local additional conditions are not disproportionately restrictive to business or damaging to the long-term viability of schemes. This will be supported by guidance as set out at section 22I(2).

166. The nature of what is appropriate and viable to include in local additional conditions is likely to change quickly and non-uniformly as the emerging industry grows and changes. The flexibility afforded by regulations will ensure that the regulatory regime keeps pace with these developments.

167. Non-exhaustive examples of conditions that a local authority may add into a licence could include:

a) Designated operating areas and any geo-fencing of those areas

b) Fleet sizes

c) Minimum service levels

Detailing processes for the duration, renewal, suspension, and revocation of licences

168. Paragraphs 3(1) and 6 will allow the Secretary of State to make detailed provisions for how long a licence may be issued for, processes and requirements for the renewal of an existing licence as well as the processes that must be followed if a licensing authority wishes to suspend or revoke a licence. This will create standardised administrative procedures to create consistency for operators and reduce administrative burden for licensing authorities.

169. As these processes must be set out in extensive technical detail to achieve their intended purpose of offering clarity, certainty, and consistency across the country, there is a likelihood that some of this technical detail may need to change fairly frequently as local authorities develop their capacity and expertise in managing schemes and as the industry develops; for example, new considerations may arise and previous considerations may lessen. Therefore, it is most appropriate for these processes to be set out in regulations, as is typical for such administrative detail.

170. Non-exhaustive examples of detail set out in regulations may include:

a) Criteria a licensing authority must be satisfied of when considering the renewal of a licence

b) Minimum or maximum term limits for a licence

c) Notification requirements prior to and during the suspension or revocation process

d) Route that must be followed by operators and authorities before arriving at suspension or revocation.

Directions to licensing authorities not to renew; or to suspend; or to revoke, a licence for purposes related to the protection of public safety

171. Paragraph 3(2) and (3) allow for regulations to provide for a power for the Secretary of State to issue directions to licensing authorities on how they must carry out their functions in cases where there are urgent potential risks to public safety. This is expected primarily to include revocation or suspensions of licences in cases where the Secretary of State is not satisfied that a licensed scheme is operating safely. However, other types of direction may be needed to ensure the ongoing safe operation of schemes.

172. The Government believes that the Secretary of State must have the power to intervene to protect public safety in cases where a licensing authority is unable or unwilling to do so. However, it is important for both operators and licensing authorities that the circumstances under which this may happen are clearly established through regulations.

173. The circumstances in which such an intervention is appropriate and justified will change as this emerging industry develops. Crucially, the flexibility of regulations is needed to account for the potential addition of new vehicles into this framework and the different ways in which new vehicles and new operations could present risks to public safety if not properly managed.

174. Parliamentary scrutiny is appropriate to the regulations which will be made setting out the specific circumstances in which the Secretary of State can direct a licensing authority in its duties, given the potential contradictory impact of this power on the devolutionary intent of this measure. Though the regulations allowing for Secretary of State directions are already limited on the face of Bill to grounds of public safety and this therefore remains a relatively narrow power, it could have impacts for businesses and therefore the affirmative procedure is appropriate.

175. However, it is deemed that as any powers of direction themselves are expected to be used in emergency circumstances to address serious risks to public safety, any directions from the Secretary of State to a licensing authority would not themselves be subject to parliamentary scrutiny.

How applications to vary or transfer a licence should be made, considered, and determined

176. Paragraph 4 of Schedule 3A allows the Secretary of State to set out detail on the processes which a licensing authority must follow and considerations it must have when varying a licence (i.e. changing licensing conditions within its competence, such as allowing for an increase to an operator's fleet size). It would also be used to set out processes and considerations for transferring a licence (i.e. allowing a new operator to take over an existing operator's licence, such as when two operators merge).

177. As with similar powers to set out administrative process around licensing functions, this power is intended to be used to create standardised administrative procedures to ensure a degree of consistency for operators and reduce administrative burden for licensing authorities. As these processes must be set out in extensive technical detail to achieve their intended purpose of offering clarity, certainty, and consistency across the country, it is likely that some of this technical detail may need to change fairly frequently. For example, as local authorities develop their capacity and expertise in managing schemes and as the industry develops, new considerations may arise and previous considerations may lessen. Therefore, it is most appropriate for these processes to be set out in regulations, as is typical for such administrative detail.

178. A non-exhaustive list of examples of regulations made under this power may include (but is not limited to):

    a) Processes for varying a licence

    b) Processes for transferring a licence

    c) Considerations to be given when making decisions on varying or transferring licences

    d) Requirements of which licensing authorities must be satisfied before approving applications to vary or transfer a licence

Setting out processes for how applications for licences should be made, considered, and determined

179. Paragraph 5 of Schedule 3A allows the Secretary of State in regulations to set out application processes for licences for on-street micromobility services. Any regulations made under this power would be in aid of creating a standardised application procedure to ensure a degree of consistency for operators. This is viewed positively by local authorities and the businesses operating these schemes. As one of the key objectives of this policy is to improve upon the inconsistencies that currently exist (variation in local authorities' approach to operators) and make expectations for operators clearer as well as create transparency to encourage more local authorities to feel confident when offering these schemes.

180. As with similar powers to set out administrative process around licensing functions, this power is intended to be used to create standardised administrative procedures to ensure consistency for operators and reduce administrative burden for licensing authorities. As these processes must be set out in extensive technical detail to achieve their intended purpose of offering clarity, certainty, and consistency across the country, there is a likelihood that some of this extensive detail may need to change fairly frequently. For example, as local authorities develop their capacity and expertise in managing schemes and as the industry develops, new considerations may arise and previous considerations may lessen. Therefore, it is most appropriate for these processes to be set out in regulations, as is typical for such administrative detail.

181. A non-exhaustive list of examples of regulations made under this power may include (but is not limited to):

a) How an application should be made (relevant forms, etc.)

b) Supporting evidence for applications

c) Fulfilment criteria for operators

d) Considerations to be given when processing applications and making decisions to grant (or not grant) licences

Monitoring powers

182. Paragraph 7 of Schedule 3A provides the powers to make regulations to enable the licensing authority to issue contravention, warning and prohibition notices where there has been a breach, or suspected breach, of a licence condition.

183. The regulations may provide that a notice may include directions to the operator and may make provision about the consequences of failure to comply with a direction. The regulations may enable the licensing authority to inspect sites, facilities, equipment or vehicles for the purposes of monitoring compliance with the terms of a licence. This does not amount to a power of entry. The regulations may provide for the suspension, variance or revocation of a licence until the breach of the licence has been rectified.

184. This power will be needed to ensure the ability of licensing authorities to carry out their monitoring and enforcement functions effectively. Providing clarity and consistency on the procedures for a licensing authority to follow when carrying out these functions will ensure they can use these powers confidently when tackling issues. It will also provide certainty for operators with a consistent approach to such processes across the country. This power will also ensure that decisions to levy financial penalties (more detail below) are well-informed and are only used after a proper process of warnings and notifications of potential breaches have been issued.

Financial penalties that may be imposed by licensing authorities

185. Paragraph 8 of Schedule 3A allows the Secretary of State within regulations to enable a licensing authority to impose a financial penalty if an operator (a) provides a service without a licence, or (b) breaches a condition included in the licence. The regulations will establish appropriate financial penalties for differing types and levels of breaches and the process a licensing authority must follow when levying financial penalties.

186. Non-exhaustive examples of how this power might be used include:

a) An escalatory process of formal written warnings and notifications before financial penalties are levied, including sufficient and reasonable opportunity for any minor or inadvertent breaches to be rectified without proceeding to a financial penalty

b) Provision for a process by which the operator can contest the basis upon which a financial penalty is being considered and make representations to the licensing authority before a decision on a financial penalty is made

c) Setting the level and/or range of potential fines for different types of offending behaviour. These are likely to vary significantly according to the type of behaviour being sanctioned, the level of egregiousness, scale of adverse impact on the community, and any repeat nature of the behaviour

d) Details of how penalties can be recovered by the licensing authority

e) The appropriate judicial appeals route if an operator has exhausted all of the consideration and reconsideration procedures directly with the licensing authority itself and remains dissatisfied with the outcome

f) Detailing the process by which a Licensing Authority can withdraw any notices given as well as allowing the penalty to increase if payment is late

187. Prescribing the levels of these penalties in secondary legislation ensures that any fines remain proportionate to the nature of the breach and not overly prohibitive to businesses, while also ensuring authorities have clear enforceable powers to sanction operators where needed. The regulations will help ensure licensing authorities are confident in the correct procedure for levying penalties. The flexibility of regulations is necessary to ensure that fines remain proportionate and effective as a deterrent as the industry grows and changes.

Further detail on appeals processes

188. Paragraph 9 of Schedule 3A allows for regulations to make a provision about appeals against decisions of a licensing authority which includes the ability to request prescribed decisions are reconsidered by a licensing authority and for

appeals of decisions that have been reconsidered to be made to the First-Tier Tribunal. The regulations will establish the reconsideration panel and prescribe the decisions that can be reconsidered through the bespoke process. This delegated power will be used to set out the procedural and administrative detail of how this process would operate. All other decisions outside the bespoke appeals framework are subject to the judicial review process.

189. Some non-exhaustive examples of regulations which could be made under this power include (but are not limited to):

    a) The types of licensing decision which could (and which could not) be reconsidered through this process and the grounds of reconsideration

    b) What information an appellant should provide when applying for a reconsideration and how they should formally submit the application

    c) Persons qualified to hear the application for reconsideration

    d) What resources and procedures should be in place to ensure the effective functioning of the reconsideration

    e) The process for reconsidering a decision

    f) The timeframe for submitting an application for reconsideration

    g) The timeframe for authorities to decide an application for reconsideration

    h) Powers exercisable by the court that will decide further appeals

190. The flexibility of regulations is proposed to set out this detail. As with other aspects of the framework, significant amounts of technical procedural detail are expected to be required, meaning a likelihood that some of the above aspects will need to be changed relatively frequently. Additionally, it is likely that many of these aspects will depend upon the nature of the decision being reconsidered. For example, it is likely that timeframes will vary according to the type of decision being reconsidered, as some decisions will be more complex than others and require the consideration of greater amounts of evidence and/or a larger number of factors.

Fee-charging regime

191. Paragraph 10 of Schedule 3A allows for the regulations to provide the details of any fees a licensing authority may seek to charge an operator for, the details of which must be set out in a charging scheme. The regulations may provide that the licensing authority must consult persons who may be affected by the scheme on their draft charging scheme and publish the details of the charging scheme. Shared mobility is a growing industry with some operators making record profits in 2023. Establishing schemes in a local area can be resource intensive and in tough economic circumstances, the Government would like to empower local

authorities to expand their revenue streams and charge operators fairly and appropriately for costs incurred by schemes.

192. The power to charge operators fees would be set out as a primary power as part of a licensing authority's ability to set bespoke local licensing conditions. However, as with monitoring and enforcement, for licensing authorities to be able to use these powers confidently and with reduced risk of legal challenge, supplementary powers to set out how this can and should be done would help ensure they can exercise these powers.

193. Non-exhaustive examples of what these regulations may require include:

    a) Requiring formal consultation with those providing licensed micromobility vehicle services or other affected parties when developing their fee charging scheme on aspects such as determining an appropriate and sustainable level of fee charging

    b) Requiring the publication of a proposed and/or final charging scheme within a particular timeframe of its intended implementation to ensure transparency

    c) Limiting the levels of fee-charging permitted as part of the micromobility vehicle licensing framework

    d) Limiting the mechanisms by which licensing authorities can seek financial contributions from licensed operators unless prescribed by the regulations

Provision of criminal offences

194. Paragraph 11 of Schedule 3A allows for the creation of two additional offences. In addition to the criminal offence established by new section 22E in the RTRA 1984, providing a service without a licence there is a power to introduce new fraud offences, at Schedule 3A(11) of knowingly or recklessly providing false information to a licensing authority in connection with an application, a reconsideration, an appeal. The penalties that will apply, if these offences are brought forward, is set out in draft provisions.

195. This detail must be set out in regulations as a person can only be in breach of the offence of providing false information once the detail of what information they must share is also regulated for. If this was on the face of the Bill, it would be an unenforceable offence (without the further regs regarding applications).

196. Examples of detail set out in regulations may include:

    a) Knowingly or recklessly providing false information in an application for a licence

    b) Knowingly or recklessly providing false information in a reconsideration or for an appeal

Justification for procedure

197. The affirmative resolution procedure is the appropriate procedure safeguard for these powers which can, among other things, change licensing conditions and set financial penalties. This procedure will ensure adequate scrutiny.

Clause 23 (Schedule 5): Power to make regulations regarding the powers and duties of licensing authorities (inserting new section 22I(1) into the RTRA 1984).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

198. The new power inserted in section 22I(1) of the RTRA 1984 will enable the Secretary of State to make regulations about the powers and duties of licensing authorities.

Duties of a Licensing Authority

199. To ensure authorities have full transparency and consistency as to what will be expected of them in their function as licensing authorities, further detail as to their duties will be required within regulations. Experience in managing on-street micromobility services will vary across authorities so giving clarity with regards to their duties will be instructive and reduce administrative burden. This will be supported by the statutory guidance, also enabled under new section 22I, and will outline how licensing authorities can meet these expectations in practice.

200. These duties imposed on licensing authorities through this power are likely to be of two types. The first would require a licensing authority to be satisfied that certain criteria have been met before taking decisions. The second type of duty could require that licensing authorities give due regard to certain considerations when making decisions.

201. Non-exhaustive of duties of a licensing authority could include:

a) To monitor the provision of on-street micromobility services in their area

b) To work collaboratively with other organisations (e.g. police or other levels of local government)

c) Reporting duties to the Secretary of State to publish information about their functions as licensing authorities such as licensing conditions, parking plans, compliance or antisocial behaviour

Justification for taking the power

202. As the industry develops, the Secretary of State will review the duties of a licensing authority to ensure that these account for new and different vehicle and service types.

203. The use of regulations is considered appropriate to outline specific powers and duties of licensing authorities. To remain suited to the changing nature of on-street micromobility services and the micromobility industry, the duties of a licensing authority may need to change frequently and be adaptable to changing circumstances and the different types of service.

204. While parliamentary scrutiny is appropriate to ensure any duties upon licensing authorities are not disproportionate or unreasonable, the nature of such duties and associated powers of licensing authorities is expected to be updated with reasonable frequency. It is deemed therefore that the negative procedure is the most proportionate approach to such regulations, ensuring scrutiny while not occupying a significant amount of parliamentary time on an ongoing basis.

Clause 23 (Schedule 5): Power to issue guidance to licensing authorities in relation to their functions (inserting new section 22I(2) into the RTRA 1984).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and Purpose

205. Section 22I(2) also provides Secretary of State the power to issue statutory guidance to licensing authorities on how they should carry out their licensing functions.

206. Guidance as to how best to manage on-street micromobility services is considered appropriate as it provides the Secretary of State the opportunity to provide support to licensing authorities in their duties and encourage best practice in a way that would be difficult to do just through regulations. This includes allowing the Secretary of State to provide practical examples to authorities new to managing on-street micromobility services.

207. Further, as the Secretary of State may impose legally binding duties upon licensing authorities, statutory guidance is appropriate to aid licensing authorities in considering how they can meet any such duties.

208. In addition, due to the growing nature of this sector, it is likely the Secretary of State will need to amend the guidance and best practice examples as the industry grows.

209. This guidance will support licensing authorities to implement the new framework, which for many places, will be novel and there may be limited expertise on managing on-street micromobility services. The guidance will therefore support local authorities as they build their experience and capability to run these services through detailed statutory guidance to which licensing authorities must have regard.

210. This approach builds on that used for the e-scooter trials, where guidance was successful in helping facilitate the local management of shared micromobility services.

211. Some (non-exhaustive) examples of how this power might be used to issue:

a) Guidance with regards to adding local additional licensing conditions

b) Guidance regarding best practices for parking and antisocial behaviour plans

c) Guidance for best practices for fee-charging schemes

d) Considerations which licensing authorities should have when making licensing decisions, including on enforcement

Justification for power

212. The use of guidance is also considered appropriate as it permits the Secretary of State to outline in greater detail the expectations for relevant licensing authorities. The guidance will not however introduce any new requirements, rather supplement the regulations and the Act. The Government therefore is of the view that this guidance does not require Parliamentary scrutiny.

Justification for procedure

213. No Parliamentary procedure is proposed for the issuance of statutory guidance by the Secretary of State, as is usual for the exercising of powers to issue such guidance to keep it adaptable to changing circumstances.

Clause 23 (Schedule 5): Power to authorise or require the disclosure of information relating to licensed operations (inserting new section 22J into the RTRA 1984).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

214. Under new section 22J inserted into the RTRA 1984, the Secretary of State may make regulations authorising or requiring licensing authorities, licensed on-street micromobility operators, and the Secretary of State to disclosure of relevant information with one another and/or the public. 'Relevant Information' includes all operational data. This power is required to aid licensing authorities monitoring of schemes operating in their local area and ensure licensing conditions and safety requirements are being upheld. Without this, monitoring operator practices and adherence to licence conditions would incur a much higher level of administrative burden. Access to this information will also be beneficial for licensing authorities to integrate on-street micromobility services into their transport networks.

215. This power also provides that regulations may create an offence of knowingly or recklessly providing false information in response to a request for information made under this power.

216. An example when this could be particularly helpful is with regards to "dockless" rental of vehicles. This means vehicles do not have to be returned or docked in specific places once users have finished using them and the usage is often managed entirely via an operator app, the disclosure of data held by the operator will be essential for authorities to be successful in their monitoring functions, ensure operators are adhering to their licence conditions and that vehicles remain safe for the public to use. The Secretary of State may also require information to be shared by licensing authorities to promote transparency.

217. It is also expected that the Secretary of State may use this power to require information, which is routinely held and collected by operators, in order to inform minimum standard licensing conditions, monitor adherence to licensing conditions, or inform the wider work of the Department for Transport.

218. It is not intended that this power be used to require the disclosure of personal information of users. Regulations will also ensure that there are strict and transparent parameters to ensure that the exercise of the power remains effective and proportionate.

219. Some non-exhaustive examples of information that may be required by this power include:

a) operational data about vehicles

b) fleet size

c) how and where vehicles are being used

d) level of usage

e) adherence to parking conditions

f) Licence conditions imposed by licensing authorities

g) Information relating to licensing authorities' approach to monitoring and enforcement of licensing conditions

Justification for taking the power

220. Regulations will be used to specify the types of data and information which will need to be disclosed by licensing authorities and licensed operators, and how and with whom such information must be shared.

221. Data collection through apps has seen fast paced development in recent years so regulations around what kinds of information a licensing authority may require can be reasonably expected to change fairly frequently due to the emerging and fast-paced nature of the industry and associated technology.

Justification for procedure

222. Due to the nature of the power and its implications regarding criminal offences, liability and impacts on businesses and potentially on individuals who are held to account for the actions of the organisation, this power would be subject to the affirmative procedure.

Clause 23 (Schedule 5): Power to specify relevant roles for the purposes of being a responsible individual for the criminal offences under Part 2A of the RTRA 1984 (inserting new section 22K(4) into the RTA 1984).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

223. In cases of criminal acts, it can be difficult to hold a company to account. The Government therefore intends to require all licences to have named responsible individuals on behalf of the operator which it will require through the application process.

224. This clause provides that an officer of a company, being a director, secretary or other similar officer and in respect to partnership, a partner, or a 'responsible individual' may be held personally liable for the offences of the organisation if they are found to have been responsible for the offending. This is where either the offending activity has been committed with the consent or connivance of the individual or attributable to neglect on their behalf.

225. The regulation making power defines who is a 'responsible individual' for the purposes of this clause. The delegated power is intended to be used to allow the Secretary of State to establish that a person, who may play a key decision-making

role in a company or organisation, but is not a director of partner of an organisation, may also be held personally liable for the offending of the organisation, if they were instrumental in the offending.

226. Regulations will make clear and transparent what kinds of persons within an organisation could be a responsible individual. There are other examples of this kind of provision in other legislation. For example, S17 of Health Act 2006 has a similar regulation-making power for having named individuals of designated bodies who have prescribed responsibilities with regards to the appropriate and effective management and use of controlled drugs.

Justification for taking the power

227. To ensure that licensing authorities can effectively exercise their enforcement powers and guarantee the safety of schemes and ensure that the appropriate persons and decision-makers of an organisation are held to account for the offences of that organisation, where proved responsible.

Justification for procedure

228. Due to the nature of the power and its implications regarding criminal offences, liability and impacts on businesses and potentially on individuals who are held to account for the actions of the organisation, this power would be subject to the affirmative procedure.

Clause 25 (Schedule 7): Power for the Secretary of State to grant or revoke approval to highway authorities, not within mayoral areas, to operate lane rental schemes (inserting new section 74B(2), (7) and (10) into the NRSWA 1991).

Power conferred on: Secretary of State

Power exercised by: Order (*Statutory Instrument)*

Parliamentary Procedure: None

Context and purpose

229. The Secretary of State is already empowered to approve highway authorities to operate charging as part of a lane rental scheme (section 74A(2) of the New Roads and Street Works Act 1991). Clause 25 and Schedule 7 will retain the Secretary of State's ability to do this (in circumstances where the highway authority is not part of a mayoral strategic authority) and allow the Secretary of State to revoke existing orders (including where a highway authority is part of a mayoral strategic authority). At the same time, clause 25 and Schedule 7 will extend lane rental schemes to cover road works (works for road maintenance purposes) in addition to street works.

Justification for taking the power

230. The Secretary of State will continue to exercise this approval function in cases where the highway authority applicant is not part of a mayoral strategic authority. The Secretary of State also needs to continue to be empowered to revoke existing orders made under section 74A(2) after commencement of these new provisions. Orders may need to be revoked in cases where mayors approve a revised scheme for areas where a Secretary of State approval order is already in effect, or in any other circumstances where the Secretary of State might deem it necessary to revoke an existing order.

Justification for the procedure

231. No parliamentary procedure will attach to orders made by the Secretary of State in future, as is the case for these orders currently.

Clause 25 (Schedule 7): Power for mayors to grant or revoke approval to highway authorities within their areas to operate lane rental schemes (inserting section 74B(3), (4), (5) and (8) into the NRSWA 1991).

Power conferred on: Mayors (for the area of a mayoral strategic authority)

Power exercised by: Administrative order

Parliamentary Procedure: None

Context and purpose

232. Clause 25 and Schedule 7 will empower mayors to make approvals orders (administrative instruments) to approve highways authorities (within their areas) to operate charging as part of a lane rental scheme. This is in circumstances where highway authorities are part of a mayoral strategic authority.

233. The purpose is to devolve the approval function from the Secretary of State to mayors so that they can assess applications for lane rental schemes from highway authorities within their areas and take decisions on approving those authorities to operate those schemes.

Justification for taking the power

234. Approvals in respect of the operation of these schemes are currently executed by statutory instrument, by the Secretary of State. In order for there to be devolution of this approval function to mayors, mayors need to be empowered to make orders for this purpose.

Justification for the procedure

235. The power is to make administrative orders, which do not have parliamentary procedure (as is the case for orders currently made by the Secretary of State under section 74A(2) of the New Roads and Street Works Act 1991). When a mayor makes an administrative approval order, the mayor will be required to publish the order. Guidance may then be issued by the Secretary of State under the proposed new power which may cover the format of publication and notice of making of such orders. This will help to ensure consistency amongst different mayors.

Clause 25 (Schedule 7): Power to issue guidance to highway authorities and mayors about the approval of highway authorities to make charges (inserting section 74B(6) into the NRSWA 1991).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and purpose

236. The Secretary of State is being empowered to issue guidance about the approval, by mayors, of local highway authorities to operate lane rental schemes. Mayors must have regard to that guidance when considering the approval of local highway authorities, and local highway authorities must have regard to that guidance when seeking that approval.

237. Currently, non-statutory guidance is issued to highway authorities to take into account when preparing their proposed schemes for approval by the Secretary of State.

Justification for taking the power

238. Statutory guidance is needed to ensure consistency and fairness in how lane rental scheme applications are assessed and approved. Without this, the roll-out of lane rental schemes and how they operate would be problematic for both authorities and undertakers.

Justification for the procedure

239. There is no parliamentary procedure for the issue of this guidance. This is appropriate because any guidance will provide practical advice (to which they must have regard) to both mayors and local highway authorities regarding the approval of the operation of lane rental schemes.

Clause 27(4): Power to amend the list of consultees Transport for London must consult before seeking consent to dispose of operational land and any consultation requirements (inserting new section 163(4B) into the GLAA 1999).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

240. Clause 27 will devolve the power of the Secretary of State to consent to the disposals of operational land under section 163 of the GLAA 1999 to the Mayor of London. Transport for London (TfL) will be required to consult Network Rail, or its subsidiaries, where the land in question is used wholly or partly for the provision of network services by Network Rail and consider their objections before applying to the Mayor of London for disposal of operational land. Clause 27(4) gives the Secretary of State the power to amend section 163 of the GLAA 1999 to add further consultees and when they are to be consulted through secondary legislation.

241. Reflecting the fact that transport in London is devolved and the aim of devolving the measure is to remove barriers to swift decision making, a limited list of consultees (currently only Network Rail) will be included in the Act. However, given this list is extremely limited, and given the other changes being made in this space, Ministers have agreed to enable further consultees to be added through secondary legislation at a later point should Government consider it necessary.

242. This is a Henry VIII power as it allows Ministers to amend section 163 of the GLAA 1999 via secondary legislation. It will not be able to affect constitutional changes or other matters within section 163.

Justification for taking the power

243. The ability to amend the list of consultees set out in the Act is necessary to ensure that the power can have its intended effect in future, where the wider operating environment for railways may change.

244. Should further relevant public bodies be created or enter this space in the future, it may be necessary that they need to be consulted with regards to TfL disposal of interests in operational land. Equally, it is necessary to make sure that TfL would not be under an obligation to consult a defunct organisation.

Justification for procedure

245. To avoid potential misuse of power, which could overly fetter the Mayor of London's decision to dispose of interests in operational land where Government

disagreed, it is recommended that any changes made via secondary legislation are subject to the affirmative procedure in both Houses of Parliament.

246. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee for Henry VIII powers and this will ensure the appropriate level of parliamentary scrutiny.

Clause 28 (Schedule 9): Power to issue guidance to mayoral Combined Authorities and Combined County Authorities in relation to the preparation of Key Route Network traffic reports (inserting new section 2A(6) into the RTRA 1997).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

247. A Key Route Network is a locally agreed set of the most important locally managed roads.

248. The Bill will give mayors the duty to prepare reports on traffic on roads in the Key Route Network. They will take on this power from their existing constituent Local Highway Authorities, who will continue to manage such roads.

249. This power is designed to ensure that the Secretary of State has a power to issue guidance to mayoral CAs and mayoral CCAs on the use of their powers under the RTRA 1997.

250. It is expected that the Secretary of State would review the production of any reports made under these powers and consider whether it was appropriate to issue, or update any guidance issued.

251. This power replicates an existing power under section 2(6) of the RTRA 1997 for principal councils for roads outside the Key Route Network.

Justification for taking the power

252. This power replicates an existing power under the RTRA 1997, to provide such guidance for all other roads. If this power were not taken, it would leave Key Route Network roads as the only roads for which guidance could not be produced. Given their importance as the most integral local links for economic growth, this would be against policy aims and create an inconsistency in legislation.

Justification for procedure

253. As this clause replicates an existing power under section 2(6) of the RTRA 1997, it follows that the procedure under section 2(6) should also be replicated. If the procedure were not followed, it would leave Key Route Network roads as the only roads for which guidance could not be produced. As above, this would be counter to policy aims and create an inconsistency in legislation.

Clause 31 (Schedule 11): Power to issue a direction to a Strategic Authority where they adopt rules of eligibility for awards made by an institution to which they make grants, loans or other payments (inserting new section 114A(1) into the ASCLA 2009).

Power conferred on: Secretary of State

Power exercised by: Directions

Parliamentary procedure: None

Context and purpose

254. There is a range of existing regulations which permit the Secretary of State to confine eligibility for adult skills funding. Such eligibility includes, but is not limited to, the immigration status of individuals. The Department uses these regulations as the basis for setting non-statutory funding rules about who can have access to adult skills funding in England. The regulations enable the Secretary of State's funding rules to lawfully include or exclude students from funding based on their nationality.

255. Clause 31 and paragraph 9 to Schedule 11 of the Bill amend ASCLA 2009 by adding a new section 114A(1). This enables the Secretary of State to issue a direction to a SA where it adopts rules of eligibility for awards made by an institution to which it makes grants, loans or other payments.

256. The policy intention is for section 114A(1) to replace existing powers of direction that are currently contained in orders. The Secretary of State already has powers of direction under the statutory instruments which conferred education functions on the existing CAs. They permit the Secretary of State to direct that CA and CCAs' funding rules must contain the same eligibility requirements as the funding rules set by the Department for Education in areas without a CA or CCA.

257. The Secretary of State has the same power of direction in relation to the GLA.

258. The purpose of the direction power is to ensure that rules of eligibility for access to adult skills funding (particularly those relating to nationality and immigration status) are the same across different authority areas whether devolved or non-devolved and are consistent across the whole of England.

Justification for taking the power

259. The power is intended to replace existing powers of direction that are already in secondary legislation and subject to the affirmative procedure. Authorities and providers are familiar with the existing powers of direction, so it is reasonable to put existing arrangements into primary legislation.

260. The power is necessary to ensure that authorities are consistent in their adoption of eligibility rules and to ensure that rules are consistent with the Secretary of State's funding rules.

261. The power of direction is necessary to enable the Secretary of State to act promptly in response to global events or international agreements. For example, adults who arrived in England under the Homes for Ukraine Sponsorship Scheme were granted immediate access to adult skills funding without requiring them to comply with the usual rule that learners must first accrue three years' ordinary residence. This enabled Ukrainians to access courses such as English for Speakers of Other Languages under the adult skills fund, regardless of where in England they were based, and integrate more quickly.

Justification for procedure

262. The absence of Parliamentary procedure is justified because the power would require authorities to apply funding rules which themselves can be updated and applied administratively by the Secretary of State without any parliamentary procedure.

263. The inclusion of a Parliamentary process would make the power less agile and responsive to developments. The Secretary of State may need flexibility to require eligibility rules to address significant new issues that may arise.

264. The power also replicates the existing direction-making powers contained in secondary legislation which has been through the affirmative procedure and places them into primary legislation.

Clause 31 (Schedule 11): Power to issue guidance in relation to exercising adult education functions under ASCLA 2009 (inserting new section 114A(2) into the ASCLA 2009).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

265. Clause 31 and paragraph 9 of Schedule 11 to the Bill amend ASCLA 2009 by adding a new section 114A(2). This requires the SAs to have regard to guidance

issued by the Secretary of State when exercising their adult education functions under ASCLA.

266. The Secretary of State already has the power to issue guidance to CAs and CCAs under the statutory instruments used to transfer these functions to existing authorities. Education functions are conferred on authorities subject to a condition that they must have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document), for example see S.I. 2018/11412 art.5(2) and 2025/601 art.5(2).

267. The Secretary of State also has a similar power to issue guidance to the GLA.

268. The purpose of the guidance for CAs and for the GLA is to help them with the exercise of their new functions and enable education providers in those areas to understand what to expect when the authorities begin to exercise those functions.

269. It is also intended to ensure the funding and provider management arrangements made by CAs minimise costs and increases consistency across devolved and non-devolved areas of England.

Justification for taking the power

270. The duty on SAs to have regard to the guidance is necessary to support them in using their new functions.

271. The provision of statutory guidance also helps to support consistency of approach between authority areas. This is important because education providers often operate across different authority boundaries, meaning that a divergence of approach by different CAs would present problems for providers by increasing their costs and creating administrative burdens in complying with different requirements imposed by different authorities.

272. Authorities and providers are familiar with the existing powers and duties with regard to guidance issued by the Secretary of State, so it is reasonable to put existing arrangements into primary legislation.

273. This duty will allow for regular and routine updates to consider experiences of exercising the new education functions, to ensure that they are able to be operated as efficiently as possible.

Justification for the procedure

274. Absence of Parliamentary procedure is justified as the guidance will not create any new legal obligations, it will only describe the law and offer non-binding advice about how authorities can approach the exercise of their new education functions.

275. The new section 114A(2) of ASCLA 2009 is a codification of existing powers held by the Secretary of State and of existing duties placed on all CAs and CCAs which hold adult education functions, and the GLA. These existing powers and duties

are contained in secondary legislation that has been scrutinised by parliament under the affirmative procedure.

276. The Secretary of State has committed in the guidance to consulting with each CA and the Mayor of London before making amendments to the key part of the guidance entitled "what combined authorities should know and do". Such consultation ensures a degree of stakeholder involvement and transparency short of parliamentary scrutiny.

277. This procedure will also enable the guidance to be updated in response to feedback from authorities, if new functions are conferred on authorities or if the suggested approach changes.

Clause 32 (Schedule 12): Expanding the scope of order making powers relating to applications of potential strategic importance (amending section 2A of the TCPA 1990).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

278. Schedule 12, inserted by Clause 32, amends section 2A of the TCPA 1990 and confers the existing powers in section 2A on mayors of CAs and CCAs, in addition to the Mayor of London. These are existing powers which allow the mayor to direct that they are the local planning authority for applications of potential strategic importance.

279. The existing powers under section 2A enable the Secretary of State to prepare regulations, to "prescribe" by way of development order, to specify the following:

a) The circumstances in which, and the conditions subject to which, the mayor may direct that he is to be the local planning authority (section 2A(2))

b) The definition of "an application of potential strategic importance", a qualifying criterion for the exercise of the power (section 2A(3) and 2A(4))

c) An order may make different provision for different areas, may make provisions for exceptions or exclusions, and may prescribe matters by reference to the spatial development strategy or a development plan document (section 2A(6))

280. The proposed amendments to these powers extend the scope of the Secretary of State's powers to similarly prescribe by way of development order their exercise

by mayors across England ("a relevant mayor"), including by reference to "a" spatial development strategy.

Justification for taking the power

281. It is a long-established practice that secondary legislation is used to prescribe the detailed requirements for planning applications within the development management process. For example, an order prescribing how applications of potential strategic importance (PSI applications) are dealt with has been in place in London since 2008. These powers are a well-established part of the planning process in London, which is currently the only area of the country with a Spatial Development Strategy in place. It is expected that a similar approach to be used for mayors outside of Greater London, including specifying in secondary legislation that the powers conferred would only be available where a Spatial Development Strategy is operative within the relevant authority's area.

282. Prescribing the features of planning applications intended to be "applications of potential strategic importance" to which the mayor can become the local planning authority is a technical and area-specific exercise, and poorly suited to becoming fixed in primary legislation.

Justification for procedure

283. Any secondary legislation prepared under these powers will be subject to the negative parliamentary procedure, and consultation will be carried out where appropriate. It is considered that this procedure provides the appropriate level of parliamentary scrutiny for technical provisions of this nature.

Clause 32 (Schedule 12): Power for the Secretary of State to identify the planning applications of potential strategic importance which relevant mayors may elect to determine by written representations, rather than by mandatory oral hearing (amending section 2F of the TCPA 1990).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and purpose

284. Section 2F(2) of the TCPA 1990 as amended by Schedule 12, para 1(7), provides that, before determining a planning application of potential strategic importance (or connected consent under section 2B), the relevant mayor must give the applicant and the local planning authority to whom the application was made "*an opportunity to make oral representations at a hearing ("a representation hearing") or written representations on the application"*. For a specified class of applications

of potential strategic importance (and any connected applications for listed building consent or hazardous substances consent), mayors will therefore have the option to afford the applicant and local planning authority an opportunity to make representations in writing, rather than by way of oral hearing. For any other application of potential strategic importance (i.e. those falling outside the specified class), mayors will continue to be required to afford the applicant and local planning authority the opportunity to make oral representations.

285. The class of applications of potential strategic importance is defined in new section 2F(1B) to which the optional written representation procedure could apply if the mayor so decides comprises of applications made under section 73 or 73B of the TCPA 1990 (both of which concern the variation or discharge of conditions relating to an existing planning permission), or an application of a description specified in regulations made by the Secretary of State. Further, a connected application for listed building consent or hazardous substances consent contingent on a planning permission application falling within this class would also be eligible to be determined under the written representation procedure if the mayor so elects.

286. Section 2F(3) of the TCPA 1990 requires mayors to prepare and publish a document setting out the persons, in addition to the applicant and the local planning authority, who may make oral representations at a representation hearing, the procedures to be followed at a representation hearing, and arrangements for identifying information which must be agreed by persons making oral representations at a representation hearing. New section 2F(2A) similarly requires mayors to prepare and publish a document setting out the persons, in addition to the applicant and the local planning authority, who may make written representations, the procedure for making written representations, and the form and period in which written representations must be made.

Justification for taking the power

287. Where a planning application is relatively uncontroversial, the mandatory requirement to hold an oral hearing can introduce unnecessary delay to the mayor's determination of it. Mayors are likely to be best placed to determine whether an application should be determined on the basis of written rather than oral representations, as they are required to consider the local planning authority's position when deciding whether or not to 'call-in' the application under section 2A TCPA 1990 at all (and therefore whether the application is likely to be contested, warranting an oral hearing for reasons of procedural fairness).

288. Equally, the discretion of mayors to choose to obtain representations in writing rather than orally will be circumscribed by regulations made by the Secretary of State. The Government intends to consult on the descriptions of development to which the new mayoral discretion should apply. Attempting to capture with a

sufficient degree of specificity the appropriate descriptions of development, which are liable to change over time, in primary legislation would be inappropriate. Further, prescribing categories of development in secondary legislation is in keeping with the general approach taken under section 2A of the TCPA 1990 which permits the Secretary of State by order to define the overarching category of applications of potential strategic importance. As all applications to which the written representation procedure could apply are applications of potential strategic importance (as section 2F only applies where the mayor has made a direction under section 2A), it is consistent for the smaller sub-class of these applications to also be identified in secondary legislation.

Justification for the procedure

289. In relation to the Secretary of State's power to identify applications of a specified description capable of being determined by written representations, the negative procedure is proposed. The power to specify a class of planning applications is a highly technical, narrow power, capable of changing over time in order to respond to developments and changes in the way land is used (e.g. novel types of development, such as data centres).

Clause 33 (Schedule 13): Expanding development orders (amending sections 61DA, 61DB, 61DC, and 61DD of the TCPA 1990).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

290. Schedule 13, inserted by clause 33 confers powers contained within sections 61DA to 61DE of the TCPA 1990 to mayors of CAs and CCAs. These powers enable the mayor to make Mayoral Development Orders (MDOs) which grant planning permission on one or more site specified in the order.

291. Under the current law, these powers only apply to the Mayor of London. The existing powers enable the Secretary of State to prepare a development order in relation to a range of provisions relating to MDOs:

(a) Section 61DA(3) enables the Secretary of State to specify by development order an area or class of development in respect of which a MDO must not be made

(b) Section 61DB(4) enables the Secretary of State to by development order regulate the procedure for approval of conditions following the grant of planning permission by a MDO

(c) Section 61DC(1) enables the Secretary of State to, by development order, make provision about the procedure for the preparation and making of a MDO

292. The existing power in section 61DD(6) enables the Secretary of State to by development order make provision about: the steps to be taken by the Secretary of State before giving a direction or making an order; and the procedure for the revision and revocation of an MDO. Section 61DD(7) sets out that provision under 61DD(6) make in particular make provision about the publicity and inspection by the public, consultation and consideration of representations. The effect of Schedule 13, paragraph 1(5) is to extend these powers in relation to any relevant mayor in England, rather than simply the Mayor of London.

Justification for taking the power

293. Provisions for MDOs as were introduced in the Infrastructure Act 2015 but have never been fully commenced, however it is a long-established practice that secondary legislation is used to prescribe the detailed requirements for development management procedures. For example, Article 38 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI:2015/595) sets the procedure used for preparing a local development order, under section 61A of the TCPA 1990. It is considered that the delegated powers in relation to MDOs reflect the technical nature of planning inquiry procedures under the TCPA 1990.

294. As MDOs come forward across England for the first time, it is important for the Secretary of State to be able to flexibly respond to the needs of local planning authorities in practice by way of regulations.

Justification for procedure

295. Adopting the procedure proposed ensures consistency of approach between the treatment of the Mayor of London and other mayors to whom MDO powers are extended. Any secondary legislation prepared under these powers will be subject to the negative parliamentary procedure, and consultation will be carried out where appropriate. The Government consider that this procedure provides the appropriate level of parliamentary scrutiny for technical provisions of this nature.

Clause 33 (Schedule 13): Expanding development orders relating to the method of dealing with planning applications (amending section 74(1B) of the TCPA 1990).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

296. Schedule 13, paragraph 1(7), inserted by clause 33 confers powers within section 74(1B) of the TCPA 1990 to mayors of CAs and CCAs. These are existing powers which allow Secretary of State to prescribe through a development order the circumstances and conditions that certain types of planning application must be referred to the mayor for consultation, and for the mayor to direct refusal of planning applications.

Justification for taking the power

297. It is already an established practice that secondary legislation is used to prescribe the circumstances and conditions to which applications should be referred to the mayor and when the mayor can direct refusal. For example, these are used currently in the treatment of potential strategic importance applications in London, which have been in place in London since 2000. The Town and Country Planning (Mayor of London) Order 2000 (SI 2000/1493), first set the conditions and circumstances to which the powers to be referred to the mayor and provisions dealing with directing refusal. The 2000 Order has since been superseded by The Town and Country Planning (Mayor of London) Order 2008 ('Mayor of London Order') (SI:2008/580).

298. Article 4(1) of the Mayor of London Order requires the local planning authority to notify the mayor where a development subject to a planning application meets the potential strategic importance (PSI) criteria set out in the Schedule.

299. Article 6 of the Mayor of London Order enables the mayor to give the local planning authority a direction under section 74(1B) of the TCPA 1990, that they refuse the development where the grant planning permission on the PSI application would be:

    a. contrary to the spatial development strategy or prejudicial to its implementation

    b. otherwise contrary to good strategic planning in Greater London

300. The Government expects a similar approach to be used for mayors outside of Greater London.

Justification for procedure

301. Any secondary legislation prepared under these powers will be subject to the negative parliamentary procedure, and consultation will be carried out where appropriate. The Government consider that this procedure provides the appropriate level of parliamentary scrutiny for provisions of this nature.

Clause 34 (Schedule 15): Power to prescribe conditions or requirements to be satisfied for a mayor of a County Authority or Combined County Authority to be a charging authority (inserting section 206(3A) into the Planning Act 2008).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

302. As part of the new devolution framework, the Bill will enable mayors of CAs and CCAs to raise a Mayoral Community Infrastructure Levy (MCIL), subject to approval of a charging schedule by a simple majority of the members of the relevant authority. The Community Infrastructure Levy (CIL) is a discretionary local charge which can be levied on developers by local authorities/councils to provide for infrastructure in a local area to support and mitigate the cumulative effects of development. MCIL is charged in addition to the CIL charged by local authorities and councils.

303. Clause 34 provides Secretary of State will have a power to prescribe conditions or requirements in regulations that must be met in order for a mayor of a CA or CCA to charge CIL. This will be used to link the ability to charge MCIL to having a Spatial Development Strategy (SDS) in place.

304. The power will build on the existing powers established in the Planning Act 2008, Part 11, and the powers already available to the Mayor of London, by making amendments to sections 206, 213 and 214 of the Planning Act 2008.

305. This requirement reflects the new duty placed on CAs and CCAs in the Planning and Infrastructure Bill, and will ensure that mayors of CAs and CCAs:

a) assess and recognise the level of housing need across their area, including affordable housing

b) consider the viability of development

c) and can explore other actual or expected sources of funding for infrastructure

306. This will help such elected mayors to decide whether or not to charge CIL and, if they do, what CIL rates would be appropriate.

307. The requirement to produce an SDS will not extend to the Mayor of London and GLA as they are already under a statutory duty to produce a SDS via the GLAA 1999 (section 41 and Part VIII). Further, the power is not designed to place any other conditions/requirements on the London Mayor regards to charging CIL as this will affect the ability of the London Mayor to manage existing finances around CIL, including borrowing against CIL receipts.

308. There may be other conditions/requirements which the Secretary of State may wish to impose on mayors of CAs/CCAs. For example, a requirement to undertake an assessment of the impact of MCIL on affordable housing provision in constituent LPA areas before imposing the levy.

309. It could also encompass compliance with the detailed procedures or requirements that apply to the CIL regime itself, or ensuring proper governance arrangements are in place. Such matters may only emerge over time and as the new MCIL beds in.

310. The conditions or requirements that may be set down can apply to all mayors, or a particular mayor(s), for a prescribed period of time, which allows flexibility to pivot the policy to suit specific circumstances and to future proof this.

311. This is a discretionary power that does not have to be exercised by the Secretary of State.

Justification for taking the power

312. A delegated power is required to enable the Secretary of State to prescribe conditions or requirements in CIL regulations, that need to be fulfilled in order for elected mayors for the area of a CA/CCA to be an additional CIL charging authority for that area.

313. This also enables the Secretary of State to revise or change such conditions or requirements as may be needed over time and as the policy develops when such mayors decide to charge CIL in their areas.

314. Once the Planning & Infrastructure Bill[3] has completed the legislative process through Parliament and taken legal affect, it will place a duty on CAs and CCAs, both mayoral and non-mayoral, to produce a SDS. Therefore, the condition which is to be placed (under the new delegated power) in the CIL regulations regarding SDSs can refer to this statutory duty and compliance with it, when it is on the statue book.

Justification for the procedure

315. The delegated power taken is placed within the existing CIL regime in Part 11 of the Planning Act 2008. It will be exercised by making provision in the CIL regulations, which are subject to the affirmative resolution procedure (Commons-only debate). As clause 34 amends the existing CIL legislation in this regard, the Government considers it appropriate to retain the affirmative resolution procedure.

[3] Planning and Infrastructure Bill - Parliamentary Bills - UK Parliament

Clause 39 (Schedule 20): Power to issue guidance in relation to Local Growth Plans (inserting new section 107M into LDEDCA 2009 and new section 32B into LURA 2023).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

316. Schedule 20 inserts new sections into the LDEDCA 2009 and LURA 2023 in order to create a statutory requirement for all mayoral SAs (except the GLA) to produce a local growth plan. Local growth plans will be developed locally to set out the long-term vision for growth in a specific region. To aid the delivery of these plans, new section 107M of the LDEDCA 2009 and new section 32B of LURA 2023 provide a power for the Secretary of State to issue guidance in relation to local growth plans as to how to meet the requirements set out within the Bill, with the authority or officer(s) preparing a local growth plan required to have regard to any such guidance. This power is consistent with other guidance making powers already in place for other plans that are prepared by CAs and other local authorities.

317. Schedule 20 also sets out the scope of this guidance, which could include, but is not limited to:

a) Who the authority might consult when preparing a local growth plan

b) The content of a local growth plan, including meeting minimum requirements

c) The process for agreeing shared priorities with the Government

d) The process for altering and replacing an existing local growth plan

e) The ways in which an authority producing a local growth plan should have regard to their own plan

Justification for taking the power

318. This power will allow the Secretary of State to supplement the requirements set out in primary legislation. It will allow the Secretary of State to set out secondary detail required to give effect to the Act and will accommodate the fact that the duty will need to be implemented in subtly different ways for different policy areas and different geographic locations.

319. The guidance will also enable a degree of flexibility in response to practical experience, given this is a novel policy area and one where authorities are to be given a degree of flexibility in meeting the requirement.

320. Precedent for similar guidance is set out in relation to other plans, for example Local Transport Plans under the Transport Act 2000.

Justification for procedure

321. The guidance is intended to support authorities to meet the requirements set out in primary legislation, by providing supplementary information on how to most effectively meet those requirements.

322. Precedent exists for issuing statutory guidance of this kind without parliamentary scrutiny.

323. The Government will engage with the mayoral SAs in developing that guidance.

Clause 39 (Schedule 20): Power to specify public authorities in relation to shared local growth priorities (inserting new section 107N(3) into the LDEDCA 2009, new section 32C(3) into the LURA 2023, and new section 333G(4) into the GLAA 1999).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

324. Clause 39, Schedule 20 creates a statutory requirement for mayoral CAs and mayoral CCAs to produce and publish a local growth plan. To give these plans additional impact, Schedule 20 creates a statutory requirement for relevant public authorities to have regard to a 'shared local growth priority' contained within local growth plans when: i) exercising, at the request of a mayoral strategic authority, a function reasonably expected to have an effect on that priority, ii) preparing a bid for public funding for an activity where the objectives of that activity align with that priority, and iii) preparing a statutory plan or strategy relating to that priority. The GLA may optionally agree shared local growth priorities and, if these are published by the Mayor of London, the statutory requirement for relevant public authorities to have regard will equally apply. In order to define 'relevant' public authorities Schedule 20 provides a new power for the Secretary of State to specify public authorities in regulations.

325. Schedule 20 also sets out the scope of the meaning of "public authority" as excluding Welsh Ministers and devolved Welsh authorities within the meaning of section 157A of the Government of Wales Act 2006. This will enable the Secretary of State to consider whether executive agencies and non-ministerial departments should be subject to the duty. Where a public authority carries out activities across

the whole of the United Kingdom, a public authority's duty to have regard to shared local growth priorities will only apply to activities carried out in England.

Justification for taking the power

326. This power will allow the Secretary of State to supplement the requirements set out in primary legislation, allowing the Secretary of State to give effect to the requirement in primary legislation. Over time there will be ongoing need to update or amend the public authorities subject to the requirement in future. For example, as new bodies are created or bodies are abolished. The use of regulations to specify the relevant public authorities is considered appropriate and proportionate, rather than setting these bodies out on the face of the Bill. The power will provide flexibility over time avoiding the need to amend primary legislation. The Government will engage with public authorities proposed for inclusion in the regulations.

327. Precedent for naming specific public bodies in secondary legislation exists, for example, statutory consultees for planning applications are named via the Development Management Procedure Order 2015 and preceding orders.

Justification for procedure

328. Parliamentary scrutiny is necessary to ensure that the public authorities specified in regulations are appropriate. However, it is expected that the "public authorities" to be specified in the regulations will regularly need to be updated as these authorities will change over time, as will mayoral strategic authorities' shared local growth priorities which the duty to have regard relates to.

329. The duty on public authorities to have regard has been designed to be effective but not overly burdensome and is a procedural duty only. Moreover, the duty only applies in three defined circumstances, which are set out in primary legislation, further limiting the application of the duty and the consequences which follow from a public authority being specified within regulations. It is therefore considered that the negative procedure is the most proportionate approach to such regulations, ensuring scrutiny while not occupying a significant amount of parliamentary time on an ongoing basis.

Clause 45: Power to specify the time at which the mayor for a Combined Authority or Combined County Authority is to begin exercising functions of a Police and Crime Commissioner (inserting new section 107FA(5)(a) into the LDEDCA 2009 and inserting new section 33A(5)(a) into LURA 2023).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

330. In 2016, the Secretary of State took a power to by order provide for the mayor for the area of a CA to exercise functions of a PCCs in relation to that area. This power was exercised in relation to Greater Manchester in 2017. It was subsequently exercised in relation to West Yorkshire in 2021, York and North Yorkshire in 2024 and South Yorkshire in 2024. In 2023, the Secretary of State took a similar power in respect of mayors for areas of CCAs.

331. The boundaries of several CAs and CCAs correspond to those of a single police area, but there are CAs and CCAs that do not have coterminous boundaries.

332. The existing statutory framework does not allow the Secretary of State to transfer PCC functions to a mayor where the area of the CA or CCA is not coterminous with the corresponding police area. It follows that, unless police areas are merged, have their boundaries changed or are abolished (which has not happened since 1974), there currently are obstacles to filling in the map of policing devolution. These obstacles should be lifted.

333. Further, in order to facilitate the transfer of PCC functions, it should be the case that a transfer of PCC functions must take place whenever a mayoral SA meets certain statutory eligibility conditions.

334. However, it is also necessary to retain a 'backstop' to prevent an unsuitable transfer from taking place until such time as the relevant mayor can take on PCC functions. For example, it may be that the relevant police force is in difficulty and that a change in the identity of the person responsible for maintaining it would not be conducive to public safety.

335. It follows that the Secretary of State should have the power to by 'date of transfer SI' to provide for the mayor for the area of a CA or CCA (whether new or existing) to exercise functions of a PCC (or more than one PCC) in relation to that area.

336. The principle remains that the combined area of the police areas should correspond to the area of the CA or CCA. If the combined area is not coterminous then a transfer should not be permitted.

Justification for taking the power

337. The use of secondary legislation, as opposed to primary legislation, is required in this instance to set the date of the transfer of PCC functions. This date of transfer cannot be anticipated in primary legislation.

Justification for procedure

338. Regulations or orders made under this power will be subject to the negative procedure. The Government does not consider the use of this power will be

controversial, as the secondary legislation will just set the date of the transfer of PCC functions, specifying that a transfer should take place and the effective date thereof.

339. The intention to transfer PCC functions to mayors where possible will be clear on the face of the Bill, with the SI merely providing the mechanism by which to implement that intention. As such the merits of doing so will be subject to scrutiny and debate during the passage of the bill itself. Should parliament take particular issue with the transfer of PCC functions to a particular mayoral area the relevant SI can always be prayed against as part of the ordinary negative SI procedure.

Clause 46: Power to alter police areas (amending section 32 of the Police Act 1996).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

340. Clause 46 amends section 32 of the PA 1996, expanding the power to alter police areas by order. Using this power the Secretary of State will be able to alter police areas to become coterminous with the area of a mayoral SA and thereby meet the "eligibility condition" for the transfer of PCC functions to the mayor for the area of the SA.

341. Part of the criteria for a mayor to take on PCC responsibilities is that the geographical area in which they are mayor must directly align to the police area. By allowing police force boundaries to be amended upon the transfer of PCC functions, this power will remove a barrier to mayors taking on PCC functions, strengthen the accountability of mayor for the good of all the people that live in their area.

342. The current power to alter police force boundaries is contained within section 32 of the PA 1996 and provides the Secretary of State with the power to alter police force boundaries where:

a) they receive a request to make the alterations from the local policing body for each of the areas affected by them, (section 32(3)(a)) or

b) it appears to the Home Secretary to be expedient to make the alterations in the interests of efficiency or effectiveness (section 32(3)(b)).

343. The Secretary of State also has a general duty (under section 36 of the PA 1996) to exercise their powers in relation to section 32 of that Act in a manner which they

calculate to be in the interests of efficiency and effectiveness of the police. The power to amend boundaries as provided by the PA 1996 have never been used in practice.

344. SIs to change boundaries made under section 32(3)(b) of the PA 1996 follow the affirmative procedure and those under section 32(3)(a) the negative procedure.

345. Whilst the Secretary of State already has the power to alter police boundaries and transfer PCC functions the intention here is to make it simpler to apply in specific cases, as it will require one SI as opposed to two and will not require consultation under section 33.

Justification for taking the power

346. This proposal aims to simplify existing processes to allow for police force boundaries to be amended upon the transfer of PCC functions in one SI instead of two, and without consultation. The aim is for a genuinely incidental power and for the existing boundary change mechanism under the PA 1996 to remain intact.

347. An SI made using this new power, which makes the same provision as an SI under section 32(1) of the PA 1996, will effectively be treated as if the SI were made by virtue of section 32(3)(b) without engaging the consultation duty in section 33 of the PA 1996. This will align with the Bill's wider removal of the consultation requirements for the transfer of PCC functions to mayors.

348. The power to make orders under section 32 includes the power to amend Schedule 1 to the PA 1996 and section 76 of the London Government Act 1963. This is a minor and technical provision that is necessary to keep the statute book up to date. Schedule 1 and section 76 include descriptions of all the police areas in England and Wales other than the City of London police area. If these provisions could not be amended by order then it would be impossible to alter police areas except by primary legislation.

Justification for procedure

349. Regulations or orders made under this power will be subject to the negative procedure.

350. Currently, orders under section 32 are subject to the negative procedure if they are initiated by the local policing bodies for the police areas concerned (section 32(3)(a)) or the affirmative procedure if they are initiated by the Secretary of State (section 32(3)(b)). It follows that what matters for the purposes of Parliamentary scrutiny is not the content of the order but who is proposing it.

351. The Government consider that it would be appropriate to subject orders made under the new power to the negative procedure, even if they amend Schedule 1 to the PA 1996 and/or section 76 of the Local Government Act 1963. This is in line with the current approach to 'consensual' boundary changes under section

32(3)(a) of the PA 1996. Given that the Bill aims to facilitate the transfer of PCC functions to Strategic Authority Mayors, and that the realignment of police force boundaries will often be incidental to a transfer, the Government consider that the negative resolution procedure provides sufficient scrutiny of regulations made under the new power.

Clause 46 (Schedule 22, paragraph 64): Power to modify subordinate legislation in relation to Police and Crime Commissioner functions being exercised by mayors of Combined Authorities and Combined County Authorities (inserting new Part 7 of Schedule 10A to the Police Reform and Social Responsibility Act 2011).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

352. Where PCC functions are transferred to the mayor for the area of a CA or CCA, certain PCC enactments are required to be modified or excluded in their application to the mayor.

353. Clause 46 which inserts new Part 7 of Schedule 10A to the Police Reform and Social Responsibility Act 2011, permits the Secretary of State, by way of regulations to modify and exclude subordinate legislation in relation to PCC functions being exercised by mayors of CA and CCAs.

Justification for taking the power

354. The use of secondary legislation is preferable to setting out the modifications/disapplication of subordinate legislation on the face of the Bill because it avoids mixing subordinate legislation in with primary legislation; and avoids the need for a Henry VIII power to keep the modifications and exclusions up to date as the underlying statutory instruments are amended.

355. This approach is in line with the approach taken to modifications and exclusions where PCC functions are transferred under existing provisions (sections 107F and 33 respectively) of the LDEDCA 2009 and the LURA 2023.

Justification for procedure

356. Regulations made under this power will be subject to the negative procedure. The Government do not consider the use of this power will be controversial, as the power merely allows modifications and exclusions of subordinate legislation, in relation PCC functions being exercised by mayors of CAs and CCAs, to be kept

up to date with future changes to subordinate legislation. The Government therefore consider that the negative resolution procedure provides sufficient scrutiny of the minor or technical regulations made under this power.

Clause 47: Power to designate a mayoral Combined Authority or mayoral Combined County Authority to become the Fire and Rescue Authority for the whole of its area or parts of its area (inserting section 1A into the FRSA 2004).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

357. Clause 47 includes a power for the Secretary of State to designate a mayoral CA or mayoral CCA to become the FRA for one or more fire and rescue areas where that area (or areas) are within or coterminous with the area of that CA or CCA. Where a CA or CCA becomes the FRA for a fire and rescue area the mayor of that a CA or CCA will exercise the fire and rescue functions on that CA or CCA's behalf. This power will work in tandem with changes to section 1(f) and (g) of the FRSA 2004 which will make a mayoral CA or CCA the FRA for the whole or part of its area when the Secretary of State designates it as such under section 1A power.

358. In 2017, the Secretary of State was provided a power (by way of order) under section 46 of the Cities and Local Government Devolution Act 2016 (inserting section 107D (functions of mayors: general) into the LDEDCA 2009) to provide any function by a mayoral CA to be a function exercisable by the mayor of a CA. This power (along with the power under section 105A (other public authority functions) of the LDEDCA 2009) was exercised (by way of order) in relation to making the Greater Manchester Combined Authority the FRA for its area with the fire and rescue functions being exercisable by the mayor of that CA in 2017. The same powers were subsequently exercised in relation to making the North Yorkshire Combined Authority the FRA for its area with the fire and rescue functions being exercisable by the mayor in 2024. In 2023 similar provision was legislated for under sections 19 and 30 of LURA 2023 in respect of transferring public authority functions (by way of regulations) to CCAs exercisable by their mayors.

359. The boundaries of several mayoral CAs and mayoral CCAs correspond to those of a single FRA area. But there are mayoral CAs and mayoral CCAs that do not have coterminous boundaries.

360. The existing statutory framework does not allow the Secretary of State to transfer FRA functions to a mayor where the area of the mayoral CA or CCA is not coterminous with the corresponding fire and rescue area. It follows that, unless FRA areas are merged, can be separated, or are abolished, there are currently obstacles in terms of devolving fire and rescue functions to mayoral CAs and mayoral CCAs.

361. Under the Bill mayoral CAs and mayoral CCAs will become eligible to become the FRA for one or more fire and rescue areas, with their mayors exercising the fire and rescue functions on their behalf, for FRAs which will be within or conterminous with that mayoral CA's or mayoral CCA's area. On designation of the mayoral CA or mayoral CCA, the Secretary of State may make consequential provision to abolish or amend the FRA for the area or areas in question, existing immediately prior to the designation of the mayoral CA or mayoral CCA as the FRA for the area in question.

362. Further consequential amendments incidental to the designation of the mayoral CA or mayoral CCA as the FRA for an area may be made using powers provided by clauses 54 and 55 of the Bill. This would allow 'ancillary' provision to be made relating to the assignment of rights and liabilities etc. for each particular area, in the manner of an existing transfer statutory instrument, enabling the Government to tailor the transfer so that it is appropriate to each area. This could also include making provision for the functions of a FRA to be exercisable by the mayoral CA or CCA during the shadow period, provision on who is to scrutinise the exercise of fire and rescue functions and any other consequential, transitional or supplementary provision.

Justification for taking the power

363. The use of secondary legislation, as opposed to primary legislation, is required in this instance to enable the Secretary of State to designate each mayoral CA or CCA as the FRA for its area of part of its area from a specific designation time, given that designation time and any relevant ancillary provision to facilitate that transfer cannot be anticipated in primary legislation. The transfer of an FRA area or areas to mayoral CAs and CCAs will also be required to mirror the area of those CAs and CCAs at the time they are established. The boundaries of mayoral CAs and mayoral CCAs yet to be established also cannot be anticipated in primary legislation.

Justification for procedure

364. Regulations made under this power will be subject to the negative procedure. The Government does not consider the use of this power will be controversial, as the secondary legislation will just ensure that the transfer of the fire and rescue functions to the mayoral CA or mayoral CCA will be made only in relation to the area of the mayoral CA or mayoral CCA as provided by the primary legislation.

The power cannot be used to amend primary legislation but rather will be used to enable the procedural transition of mayoral CAs and CCAs to become the FRA for their area (as set out in the primary legislation).

365. As such, the intention in principle to transfer FRA functions to mayors where possible will be clear on the face of the Bill, with the statutory instrument merely providing the mechanism by which to implement that intention. As such the merits of doing so will be subject to scrutiny and debate during the passage of the Bill itself. Should Parliament take particular issue with the transfer of FRA functions to a particular mayoral area the relevant statutory instrument can always be prayed against as part of the ordinary negative procedure.

Clause 47 (Schedule 23): Power to create a combined fire and rescue area (amending section 2 of the FRSA 2004).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

366. Schedule 23 will amend section 2 of the FRSA 2004, enabling the Secretary of State to make a scheme to merge one or more fire and rescue areas into a single fire and rescue area where that scheme is made in consequence of an order under section 1A. Where a mayoral CCA or mayoral CA is designated the FRA for its area (under section 1A) any FRA falling outside the mayoral CA's or mayoral CCA's area which was previously combined with another FRA that is within that mayoral CA's or mayoral CCA's area will no longer be part of the new mayoral CA's or mayoral CCA's FRA area. The Secretary of State will be able to use the power under amended section 2 of the FRSA 2004 to ensure that such an FRA can be combined with one or more other FRAs outside of the mayoral CA's or mayoral CCA's area.

367. Currently, section 2 of the FRSA 2004 provides the Secretary of State with a power (by order) to make a scheme merging two or more existing FRAs into a single FRA. Such a scheme may only be made where it appears to the Secretary of State that it is in the interests of economy, efficiency and effectiveness, or public safety. In order to exercise this power, the Secretary of State is required to undertake certain consultation requirements.

368. Therefore, while the Secretary of State already has the power to combine fire and rescue areas and transfer FRA functions, the intention here is to make it simpler for cases where the new combined fire authority is required as a consequence of a CA or CCA being designated the FRA for its area or part of its

area. This is because it will require one statutory instrument as opposed to two and will not require consultation under section 2 of the FRSA 2004.

Justification for taking the power

369. This proposal aims to simplify existing processes to allow for the combining of two or more existing fire and rescue areas into a single fire and rescue area occurring as a consequence of a CA or CCA being designated the FRA for its area in one statutory instrument instead of two, and without consultation. The aim is for a genuinely incidental power and for the existing FRA combining mechanism under the FRSA 2004 to remain intact.

370. A statutory instrument made using this power will still be made in accordance with section 2 of the FRSA 2004 but without engaging the consultation duty as currently provided for in that section. This will align with the Bill's wider removal of the consultation requirements for the transfer of FRA functions to mayoral CAs and mayoral CCAs.

Justification for procedure

371. In future orders made under this power will be subject to the negative procedure, as is the case currently, with orders made under section 2 of the FRSA 2004.

372. The Government consider that it would be appropriate to subject orders made under the extension of the section 2 power to also be made under the negative procedure. Given that the Bill aims to facilitate the transfer of FRA functions to mayors of CAs and CCAs, and that the combining of FRAs will often be incidental to a transfer, the Government consider that the negative resolution procedure provides sufficient scrutiny of regulations made under the new power.

Clause 50 (Schedule 24): Duty on the Mayor of London to determine a policy in relation to the carrying out of relevant licensable activities in Greater London (inserting new section 8A into the LA 2003).

Power conferred on: Mayor of London

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

373. The Government has committed to explore new functions in relation to strategic licensing for the Mayor of London ("the Mayor") to promote economic growth and the vitality of the hospitality sector, while upholding the four licensing objectives set out in the LA 2003. Section 4(2) of the LA 2003 provides that the licensing objectives are as follows:

" (a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm.

374. The Government considers licensing to be both an essential regulatory framework and a driver of economic and cultural opportunity. While licensing decisions are best made locally, it is necessary to test whether creating a more strategic role for the Mayor can help licences be granted with less cost, risk, complexity and bureaucracy than the current system allows.

375. The Bill establishes new, revocable functions to enable the Mayor to establish a London-wide framework and set of strategic objectives and legally requires licensing authorities to have regard to these in order to promote a more enabling, proportionate and growth-focused approach to licensing in Greater London.

376. New section 8A of the LA 2003 creates a duty on the Mayor to determine a policy in relation to the carrying out of relevant licensable activities in Greater London, and to publish a statement of that policy (and of any revised policy, revisions to the policy or replacement policy). It also creates a duty on the Mayor to consult before determining, revising or replacing the policy. New section 4(4) of the LA 2003 will require London licensing authorities, in carrying out their licensing functions, to have regard to the Mayor's policy statement.

377. The new section 8A(13)(a) creates a power for the Mayor to trigger the first five year period covered by the policy earlier than the starting point of six months after the measure comes into force, as otherwise stipulated in that subsection, This allows the Mayor to publish early if ready to do so.

<u>Justification for taking the power</u>

378. The establishment of a London-wide licensing framework aims to enable the Mayor to establish a strategic policy for licensing authorities in London to have regard to when exercising their functions under the LA 2003. It is anticipated this will improve the consistency of licensing decision-making across London, while preserving the local discretion of licensing authorities – who will still be bound by the statutory licensing objectives – to deploy their judgement on individual cases.

379. The new policy will be established on an equal legal footing to the other statutory documents that licensing authorities are required to have regard to when carrying out their licensing functions – guidance issued by the Secretary of State under section 182 of the LA 2003 ('the Section 182 guidance') and their own individual statement of licensing policies. Under the existing legislation, section 4(1) of the LA 2003 provides that, when carrying out its functions under the LA 2003, a licensing authority must do so "with a view to promoting the licensing objectives"

(the licensing objectives are set out within section 4(2) of the LA 2003 – see above). Section 4(3) of the LA 2003 provides that a licensing authority, in carrying out its licensing functions, "must also have regard to -

(a) its licensing statement published under section 5, and

(b) any guidance issued by the Secretary of State under section 182"

380. Section 182 of the LA 2003 provides that the Secretary of State must issue guidance to licensing authorities on the discharge of their licensing functions under the LA 2003.

381. Paragraph 2 of Schedule 24 will insert a new section 4(4) into the LA 2003 which provides that, in carrying out its licensing functions, a London licensing authority must also have regard to the licensing policy statement published by the Mayor under the new section 8A. On that basis, a London licensing authority will be required to have regard to the Mayor's policy alongside the Section 182 Guidance and the licensing authority's own licensing statement.

382. The Schedule will also insert a new section 8A(7)which requires the Mayor, when determining a policy under section 8A, to have regard to the primary importance of promoting the licensing objectives and to any requirements imposed on licensing authorities when carrying out their licensing functions.

Justification for procedure

383. The Mayor's statement of licensing policy will not be subject to any Parliamentary procedure, and in determining the policy the Mayor will be required to have regard to the primary importance of promoting the licensing objectives, and also any requirements imposed on licensing authorities when carrying out their licensing functions (including their duty to have regard to the statutory guidance issued under section 182 of the LA 2003) (see above). The Mayor will be required to consult on the statement.

Clause 50 (Schedule 24): Power to make provision about the determination and revision of policies, and the preparation and publication of policy statements (inserting new section 8A(10) into the LA 2003).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and purpose

384. Clause 50 and paragraph 4 of Schedule 24 to the Bill include a new section 8A(10) to be inserted into the LA 2003, which provides a power for the Secretary

of State to make regulations about the determination and revision of the Mayor's strategic licensing policy, as well as provisions relating to the preparation and publication of that policy. This power will allow the Secretary of State to establish further requirements relating to how the Mayor's policy is determined, revised, prepared and published as appropriate in the future.

Justification for taking the power

385. Establishing a power for the Secretary of State to make regulations about the determination and revision of the Mayor's policy, as well as provisions relating to the preparation and publication of the Mayor's policy, is intended to enable the Secretary of State to specify in greater detail how those steps are carried out.

386. This is needed to ensure that appropriate processes are in place to determine, revise, and publish the Mayor's policy, such as details of where the policy should be published. The Government anticipates these details being liable to change from time to time and is therefore taking a power to ensure that Parliamentary time is not taken up unduly on minor and technical matters.

Justification for the procedure

387. The powers under the new section 8A(10) of the LA 2003 will be subject to the negative procedure on the basis that Parliamentary scrutiny is necessary to ensure that the provisions within any such regulations are appropriate but that, given the possibility that details regarding the Mayor's policy may change over time, it is considered that the negative procedure would be the most proportionate response, i.e.: ensuring scrutiny without the need to occupy a significant amount of Parliamentary time.

Clause 50 (Schedule 24): Power under paragraph 5 of Schedule 24 to repeal the amendments to the LA 2003 made by paragraphs 2 to 4 of the Schedule.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and purpose

388. A new delegated power is required to allow the Secretary of State to repeal the provisions outlined above. This power is required to allow the Secretary of State to assess the efficacy of the measures as implemented within the existing licensing regime in Greater London only and, if considered necessary, to repeal them. The power can only be exercised within the first five years after it comes into force

Justification for taking the power

389. The Bill will introduce new functions for the Mayor within the existing licensing regime as provided by the LA 2003. While these measures are expected to improve the licensing regime and promote growth, it is necessary to make suitable provisions for the functions to be revoked – and the status quo in licensing restored – if the Secretary of State subsequently judges the new arrangements to be ineffective. Working in partnership with the GLA and the Mayor, the Government will design a strategy to evaluate the success of the new licensing functions being conferred upon the Mayor.

Justification for the procedure

390. The powers allowing the Secretary of State to repeal the amendments to the LA 2003 will be exercisable under the affirmative procedure. This is on the basis that they comprise Henry VIII powers and, as such, the affirmative procedure is considered an appropriate level of scrutiny.

Clause 50 (Schedule 24): Power under paragraph 6 of Schedule 24 to make provision for the purpose of conferring on the Mayor of London the function of determining relevant licence applications in certain circumstances.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and purpose

391. Paragraph 6 of Schedule 24 provides a delegated power to allow the Secretary of State to make provision for the purpose of conferring on the Mayor of London the function of determining relevant licence applications in certain circumstances.

392. However, paragraph 6 is intended as a placeholder for substantive provisions, and the Government intends to replace some (if not all) of this placeholder provision with substantive provisions at the Bill's Lords Stage.

393. The Government's intention is to replace the placeholder provision in paragraph 6 with substantive provisions which will make provision for a new function to allow the Mayor of London to "call in" decisions made by London licensing authorities in respect of licensing applications which meet the criteria of "strategic importance".

Justification for taking the power

394. The power as set out within paragraph 6 of the Schedule is a placeholder and the Government intends to replace some (if not all) of the placeholder provision

with substantive provisions which will make more detailed provision for the Mayor's "call in" power.

395. The proposed "call in" power is a fundamental aspect of the new functions to be given to the Mayor of London and the GLA within the existing licensing regime under the LA 2003. Further work needs to be completed regarding the specific procedural requirements and general operation of this new function of the Mayor to "call in" decisions made by London licensing authorities.

396. The inclusion of this placeholder in the interim, will allow for a new Mayoral call-in process to be designed in a way that avoids conflicting with reforms to the national licensing regime that are being developed by a cross-government Licensing Taskforce, following the closure of a Call for Evidence on 6 November 2025. It will build on the Licensing Taskforce's pro-growth recommendations, deliver on public commitments made earlier this year as part of this work, and enable the Mayor to determine strategically important applications across the capital.

Justification for the procedure

397. The power within the placeholder provision at paragraph 6 of the Schedule will be exercisable under the affirmative procedure. Parliament will therefore have an opportunity to scrutinise any proposals that could, in principle, be brought forward using this power. As further work is being carried out on the substantive provision intended to replace some (if not all) of the provision within paragraph 6, it may be appropriate to remove the delegated power entirely or to replace it with a more specific delegated power that may be subject to a different parliamentary procedure.

Clause 51: Power to issue guidance relating to requests by mayors of established mayoral Strategic Authorities for further powers to deliver their area of competence.

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Content and purpose

398. Clause 51 enables the Secretary of State to issue guidance on the process and consideration for proposals from the mayors of established mayoral SAs which mayors are to consider when making proposals.

Justification for taking the power

399. Clause 51 requires Secretary of State to respond to any proposals for further powers in the areas of competence from mayors of established mayoral SAs. The ability to set out criteria and processes for discussing these proposals will allow more productive transparent discussion.

Justification for the procedure

400. The guidance does not create new requirements for authorities to follow. Rather, it will deal with practical advice to the relevant mayors of established mayoral SAs in exercising their notification powers in under clause 51. The relevant mayor of the established mayoral SA must have regard to any guidance issued under this power.

Clause 52 (Schedule 25, paragraphs 1, 2 and 3): Power to confer additional public authority functions and modify framework functions.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

401. The Bill establishes a devolution framework and confers functions automatically on relevant categories of Strategic Authorities. Clause 50 together with Schedule 25, provides the Secretary of State with the power to make regulations conferring further public authority functions relating in some way to any of the 'areas of competence' (set out in clause 2) on categories of Strategic Authorities, or to modify how framework functions are exercised. As the Government continues to deepen devolution across England and as new Strategic Authorities grow in capacity and coverage, the framework will need to expand to include additional functions. As such, the Secretary of State requires the power to confer new public authority functions on Strategic Authorities, extend eligibility for existing functions to other levels of Strategic Authority or amend how those functions are exercised including voting arrangements and the role of the mayor.

402. Clause 7 inserts new section 24C into the LURA 2023 and new section 104CC into the LDEDCA 2009 to make clear that secondary legislation conferring functions on individual CCAs and CAs is still possible under those Acts, which will override the provision made by the Act or by regulations made under this provision. This may be needed if a function needs to be conferred on less than a whole category of CCAs/CAs or if there are particular reasons why area specific provision is needed. So, any regulations made by clause 50 will not override subordinate legislation made under the 2009 or 2023 Acts, in future or which is retained.

403. Clause 56 provides that secondary legislation cannot be used to remove a function conferred on all SAs or a category of SAs. This does not apply in relation to piloting regulations under clause 52 or in relation to certain permitted provision – for example, it will be possible to remove a function from all or a category of SAs where the function itself is abolished.

404. Paragraph 13 of Schedule 25 makes further provision in relation to the exercise of powers under Schedule 25, to confer or modify functions of Strategic Authorities or categories of Strategic Authorities. Where a public authority will no longer have any functions, as a result of the exercise of this power, the regulations may abolish the public authority. Paragraph 17 of Schedule 25 enables regulations under schedule 25 to amend, apply (with or without modifications), disapply, repeal or revoke any legislation whenever passed or made.

Justification for taking the power

405. Without a power to amend the functions by secondary legislation, further primary legislation would be needed every time that a change in the devolution framework is required or provision would need to be made by secondary legislation on an area-by-area basis. This would take up unnecessary Parliamentary time.

406. The Government has however limited the power with clear constraints both in terms of scope and process. Within the legislation there are constraints that include:

a) A requirement for the Secretary of State to consult the affected Strategic Authorities and their mayor if they have one, those bodies whose powers are being transferred or copied (with or without modifications), the constituent councils of the relevant Strategic Authorities (or for London, the London borough councils, the Common Council and the London Assembly) and any other stakeholders which the Secretary of State thinks appropriate prior to bringing forward legislation

b) That the Secretary of State cannot remove functions from the framework via secondary legislation, subject to limited exceptions – ensuring the framework can only evolve over time

c) Regulations conferring framework functions will specify which categories of Strategic Authority will receive the new function

d) The prohibition of the addition of functions through which a Strategic Authority would regulate a function that it delivers itself

e) That functions which may be added to the framework must in some way be within the areas of competence set out in clause 2

f) That certain health service functions are prohibited from devolution – which reflects the Government's longstanding position

g) It will only be possible to confer functions which are already exercised by a public authority or local authorities

Justification for the procedure

407. Regulations made under this power will amend the primary legislation where the existing function is conferred on one or more public authorities and so this will be a Henry VIII power. The regulations will be subject to the affirmative procedure. This will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the DPRRC.

Clause 52 (Schedule 25, paragraphs 5, 6 and 7): Power to move functions between mayors and Strategic Authorities.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

408. Secretary of State requires the power to make regulations to amend the governance arrangements for framework functions in terms of the roles of the mayor and the SA. Where a function is initially conferred on the SA the regulations can provide for it to be exercisable by the mayor of the SA; where it is initially conferred on the mayor of the SA, the regulations can provide for it to be a function which is exercisable by the SA instead. The regulations can change who exercises GLA functions too between the GLA, the Mayor of London and GLA functional bodies.

409. Clause 17 amends section 30 of the LURA 2023 and section 107D of the LDEDCA 2009 to make clear that if a function is conferred on the mayor of a CA or CCA it is to have the effect of being conferred on the CA or CCA to be exercised solely by the mayor.

410. Section 35 of the GLAA 1999 states that any function conferred or imposed on the Mayor of London shall be taken to be a function of the Authority exercisable only by the mayor acting on behalf of the Authority.

411. When moving the exercise of a function between bodies/mayors using this power, the regulations can set out whether the SA (or mayor/functional body (in the case of the GLA) is to exercise the function solely or whether they are to exercise it concurrently or jointly with another body which holds the function (other public authorities). In the case of joint exercise of functions, the regulations can also provide for the other authority to still be able to exercise the power solely.

412. Clause 7 inserts new section 24C into the LURA 2023 and new section 104CC into the LDEDCA 2009 to make clear that secondary legislation conferring functions on individual CCAs and CAs is still possible under those Acts. Any regulations made under clause 52 and schedule 25 will not override any retained or future subordinate legislation made under the 2009 or 2023 Acts which makes contrary provision in relation to a particular SA.

413. Paragraph 17 of Schedule 25 makes further provision in relation to the exercise of powers under clause 52 and Schedule 25. This includes the power to amend, apply (with or without modifications), disapply, repeal or revoke any legislation whenever passed or made.

Justification for taking the power

414. Without a power to make regulations changing framework functions from being exercisable by mayors of SAs to being exercisable by the SAs (or, in the case of the GLA, the SA or a GLA functional body), and vice versa, such changes would require further primary legislation every time that a change in the devolution framework is required. This would take up unnecessary Parliamentary time.

415. The Government has however limited the power with clear constraints in terms of process. Before making regulations to change whether the mayor or the SA (or a GLA functional body, in the case of the GLA), exercises a framework function, the Secretary of State must consult the affected SAs and their mayors if they have them, those persons with the same functions if their ability to exercise it would be affected by the regulations, constituent councils of the SAs (and in the case of London, the London Boroughs, Common Council and London Assembly) and any other stakeholders which the Secretary of State thinks appropriate prior to bringing forward legislation.

Justification for the procedure

416. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee.

417. This is a Henry VIII power, that enables the Government to modify or alter provision made in primary legislation by delegated legislation, the affirmative procedure is therefore appropriate.

Clause 52 (Schedule 25, paragraphs 8, 9 and 10): Power to prescribe how framework functions are conferred on one or more categories of Strategic Authority.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

418. Clause 52 together with Schedule 25, paragraph 8 enables the Secretary of State to make regulations setting out how functions conferred on one or more categories of Strategic Authority, whether conferred by clause 52 or by any other enactment, are exercised. This includes CAs and CCAs, Single Foundation Strategic Authorities, GLA and GLA functional bodies such as Transport for London and London Fire Commission. Paragraph 9 of Schedule 25 enables such provision to be made in relation to the exercise of functions by the mayors of categories of Mayoral Strategic Authorities (excluding the GLA) on behalf of the Strategic Authorities.

419. Clause 7 inserts new section 24C into the LURA 2023 and new section 104CC into the LDEDCA 2009 to make clear that secondary legislation conferring functions on individual CCAs and CAs is still possible under those Acts. Any regulations made under clause 52 and Schedule 25, which specify how a function is to be exercised will not override subordinate legislation made under the LDEDCA 2009 or LURA 2023, which makes contrary provision in future, or which is retained.

420. Paragraph 17 of Schedule 25 makes further provision in relation to the exercise of powers under clause 52 and Schedule 25. This includes the power to amend, apply (with or without modifications), disapply, repeal or revoke any legislation whenever passed or made.

421. Provision for how a function can be exercised includes:

a) Whether consent, consultation or the meeting of particular conditions are required before it can be exercised

b) Whether the function is to be exercised solely the Strategic Authority (or by the mayor or GLA functional body on behalf of the SA) or concurrently or jointly with another person for whom the function is already exercisable.

Justification for taking the power

422. Without a power to specify or amend how a framework function is exercised by regulations, further primary legislation would be needed every time that such provision needs to be made. This would take up unnecessary Parliamentary time.

423. The Government has however limited the power with clear constraints in terms of process. Before making regulations to specify or amend how a framework function is exercised, the Secretary of State must consult the affected SAs, those persons with the same functions if their ability to exercise it would be affected by

the regulations, constituent councils of the relevant SAs (and in the case of London, the London Boroughs, Common Council and London Assembly) and any other stakeholders which the Secretary of State thinks appropriate prior to bringing forward legislation.

Justification for the procedure

424. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee.

425. This is a Henry VIII power, that enables Government to modify or alter primary legislation by delegated legislation, the affirmative procedure is therefore appropriate.

Clause 52 (Schedule 25, paragraph 12): Power to specify voting arrangements for functions conferred on one of more categories of Strategic Authority.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

426. New sections 13A of the LURA 2023 and 104CA of the LDEDCA 2009 make provision to standardise the decision-making arrangements for CAs and CCAs to ensure consistency of decision making in these bodies.

427. As the Government continues to deepen devolution across England and as new SAs grow in capacity and coverage, the framework will need to expand to include additional functions. As such, the Secretary of State requires the power to specify the voting arrangements for functions conferred on one or more categories of SA. The Government may need to change voting arrangements for some functions that have already been conferred in future, where appropriate. In either case, provision may need to be made which deviates from standard decision making where it is considered that relevant functions require more or less consensus in decision making. This will not affect functions exercisable by the mayors of CAs and CCAs (except where the need for CA or CCA involvement is specified in legislation– e.g. for the approval of a Local Transport Plan drawn up by the mayor of a CA or CCA). The power also doesn't apply in relation to the GLA or SFSAs.

428. Clause 7 inserts new section 24C into the LURA 2023 and new section 104CC into the LDEDCA 2009 to make clear that secondary legislation conferring functions on individual CCAs and CAs is still possible under those Acts. So any

regulations made under Schedule 25 will not override subordinate legislation made through the 2009 or 2023 Acts that specifies non-standard voting arrangements for individual CAs or CCAs.

429. Paragraph 17 of Schedule 25 makes further provision in relation to the exercise of powers under Schedule 25. This includes the power to amend, apply (with or without modifications), disapply, repeal or revoke any legislation whenever passed or made.

Justification for taking the power

430. Without a power to amend the voting arrangements for framework functions by secondary legislation, further primary legislation would be needed every time that a change in the devolution framework is required for categories of Strategic Authorities or provision would need to be made in regulations under the 2009 and 2023 Acts for each area. This would take up unnecessary Parliamentary time.

431. The Government has however limited the power with clear constraints in terms of process. Before making regulations to provide for or change voting arrangements for a function for categories of Strategic Authority, the Secretary of State must consult the affected Strategic Authorities, those persons with the same functions if their ability to exercise it would be affected by the regulations, constituent councils of the relevant Strategic Authorities and any other stakeholders which Secretary of State thinks appropriate prior to bringing forward legislation.

Justification for the procedure

432. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee (DPRRC).

433. This is a Henry VIII power, that enables Government to modify or alter primary legislation by delegated legislation, the affirmative procedure is therefore appropriate.

Clause 52 (Schedule 25, paragraph 18(1)): Power to confer further public authority functions on one or more Strategic Authorities on a time-limited pilot basis.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

434. Clause 52 provides the Secretary of State the power to confer further public authority functions on one or more SAs on a time-limited, pilot basis. This is in addition to the functions to be conferred permanently by the Bill's devolution framework.

435. As the Government continues to deepen devolution across England and as new SAs grow in capacity and coverage, the framework will need to expand to include additional functions.

436. In some instances, it may be appropriate for the Secretary of State to run a pilot across one or more SAs, before deciding whether to add the function to the devolution framework. Pilots may be run following a request from a SA, or on the Secretary of State's initiative without a prior request. Pilots will only be run with the consent of the SAs involved.

Justification for taking the power

437. Being able to pilot a function will allow the Government to test the impact of devolving new functions without having to make further secondary legislation if testing of the conferral of new functions proves to be unsuccessful, which would take up unnecessary Parliamentary time.

438. The Government however has considered it necessary to limit the power with clear constraints both in terms of scope and process. Within the legislation there are constraints which include:

a) Prohibiting the addition of function(s) through which a SA would regulate a function that it delivers itself

b) Functions which may be added to the framework must in some way be within the areas of competence in the new Mayoral Power of Competence.

c) Pilots must be for a maximum of 3 years with a further SI sought if an extension is required

d) Participating SAs are required to send an impact report by a date set in the SI to inform Secretary of State's decision on whether to add the function to the framework.

e) Certain health service functions being prohibited from devolution, in line with longstanding Government policy

439. It will only be possible to confer functions which are already exercised by a public authority or local authorities.

Justification for the procedure

440. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee.

441. This is a Henry VIII power, that enables Government to modify or alter primary legislation by delegated legislation, the affirmative procedure is therefore appropriate.

Clause 52 (Schedule 25, paragraph 18(3)): Power to extend a pilot period.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

442. Clause 52 and Schedule 25 provide the Secretary of State the power to confer further public authority functions on one or more Strategic Authorities on a time-limited, pilot basis. This is in addition to the functions to be conferred permanently by the Bill's devolution framework.

443. Paragraph 18(3) of Schedule 25 provides for the Secretary of State to extend a pilot for an additional period beyond its current piloting period or, alternatively, to replace the existing pilot scheme with a further pilot scheme with the same or similar provision. As with the initial regulations these extensions require the consent of the participating Strategic Authorities.

Justification for taking the power

444. Sometimes the initial period will not be sufficient time to accumulate the necessary evidence to make a final decision on whether the function should be extended permanently to the piloting Strategic Authorities or a wider category of Strategic Authorities.

Justification for the procedure

445. The initial regulations to introduce a pilot scheme are subject to an affirmative resolution. The negative resolution procedure is appropriate for regulations which extend or replace an already agreed pilot. These regulations would still require the consent of the participating Strategic Authorities.

Clause 54: Power to make incidental, consequential, transition or supplementary provision in relation to the functions of Strategic Authorities.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative if amending primary legislation/Negative

Context and purpose

446. Clause 52 and Schedule 25 allow the Secretary of State to make regulations either conferring functions on one or more categories of SA and where needed making provision for how the functions are exercised or changing how existing functions are exercised by one or more categories of SA or how decisions on them are made. These can be permanent or for a time limited period.

447. Clause 54 enables the Secretary of State to make related incidental, consequential, transitional, transitory or supplementary provision. Such legislation will often be needed to amend primary legislation.

Justification for taking the power

448. It is necessary to have provisions to make incidental etc. provision to ensure that legislation functions as intended.

Justification for procedure

449. Regulations made under this power will be subject to the affirmative procedure where they amend primary legislation, and negative resolution procedure otherwise. This will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee (DPRRC).

450. The affirmative procedure is appropriate for use of this power to amend or modify primary legislation (a Henry VIII power).

Clause 55: Power to make provision for the transfer of property, rights and liabilities.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

451. When functions are conferred on categories of SAs under the Bill or other legislation, it is sometimes necessary to transfer property, liabilities and rights from public authorities which had previously been exercising the relevant function to Strategic Authorities.

452. Clause 55 allows the Secretary of State to provide for the transfer of property, rights and liabilities, where needed to support changes made by regulations under Schedule 25. The regulations can provide for the transfer or they can provide for a transfer scheme to be set up by the Secretary of State or another person under the regulations.

Justification for taking the power

453. Where SAs take on new functions, it will sometimes be necessary to transfer property, rights and liabilities from a public authority who had previously been exercising the function to ensure that the recipient SAs have what they need to exercise the function and that any public authority which no longer has the function does not retain liability, property or rights, where it is no longer appropriate for them to. This may be appropriate where a public authority will no longer exercise a particular function and it will instead be exercised by relevant categories of SAs.

454. This power is in line with similar powers in the LDEDCEA 2009 and LURA 2023, where regulations are made conferring functions on CAs and CCAs.

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

Justification for procedure

456. Regulations made under this power will be subject to the affirmative procedure, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with the procedure applicable under the 2009 and 2023 Acts, when making provision for the transfer of property etc in connection with the conferral of functions under that legislation.

Part Three: Other measures about local government and PCCs

Clause 57 (Schedule 26): Invitations, Directions and Proposals: Supplementary (amending to section 3 of the LGPIHA 2007)

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary procedure: None

Context and purpose

457. The provision amends the LGPIHA 2007 to increase the options available for implementing the Government's ambition for local government reorganisation.

458. The English Devolution White Paper sets out the Government's ambition to deliver local government reorganisation for the remaining 21 two-tier areas and for those unitary councils where there is evidence of failure or where their small size or boundaries may be hindering their ability to deliver sustainable and high-quality services for their residents.

459. The proposed amendment is to reinstate a power of direction in the LGPIHA 2007 which had been subject to a sunset provision to ensure that the Government has the appropriate tools to enable delivery, in circumstances where all councils in an area are resistant to these reforms.

460. Currently, if councils fail to submit a proposal following an invitation, the Secretary of State could not take forward re-organisation. The Government would envisage that this power would be used where there was complete resistance from an area to respond to an invitation to submit a proposal. The Secretary of State could then issue a direction to councils in an area to require them to submit a proposal to take forward reforms.

Justification for taking the power

461. This power is required to allow the Secretary of State to direct specific local government areas to issue a proposal for local government reorganisation. The proposals would vary depending on the local government area's individual circumstances.

462. A direction power is appropriate because it creates a duty on the relevant councils to submit a proposal. This reinserts a direction power that was in the original 2007 Act, which was seen as the appropriate means to deliver the power.

463. A statutory instrument would not be an appropriate means to inform a council that they need to submit a proposal. If the Secretary of State took forward reorganisation, that would require an order to implement the proposal under section 7 LGPIHA 2007, and that statutory instrument would be put before Parliament for consideration.

Justification for the procedure

464. No procedure is required for directions as secondary legislation made pursuant to a direction under this power will be subject to the affirmative procedure under section 240(6) LGPIHA 2007, which will ensure there is appropriate parliamentary scrutiny of any change made using this power. This is in line with convention and the recommendations of the Delegated Powers and Regulatory Reform Committee.

Clause 57 (Schedule 26): Implementation Orders (amending section 7 and 11 of the LGPIHA 2007).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

465. The amendments enable mergers of single-tier local government areas to be implemented via an order made under section 7 of the LGPIHA 2007. Previously, a merger of single-tier areas could only be done using section 15 of the Cities and Local Government Devolution Act 2016, which required the consent of all authorities involved in the merger. Through this new pathway, consent will not be required from all involved authorities, as long as the Secretary of State has agreed to a proposal which can be implemented by an order made under section 7 of the LGPIHA 2007.

466. The amendments will also enable the Secretary of State to abolish a CA/CCA as part of the implementation of a proposal via an order made under section 7 of the LGPIHA 2007. The Government anticipates that making provision to abolish a CA/CCA would be exercised in circumstances where merging single-tier authorities would result in the CA/CCA no longer meeting the constituent council membership requirements set out in section 103(2) of the LDEDCA 2009, which requires a CA to comprise at least two county councils or district councils, or section 9(2) LURA 2023, which requires a CCA to comprise at least one two-tier county council and another two-tier county council or single-tier county council or district council, because the merging of single-tier areas has led to one single-tier area covering the entire geography of the CA/CCA.

Justification for taking the power

467. This power follows on from the amendments to the proposals which may be directed, or invited by, the Secretary of State. Once a proposal is made for local government reorganisation, the Secretary of State will need the power to implement the proposal. As proposals for merging of single-tier local government areas are a new type of proposal through this process, the 2007 Act does not currently contain the power to implement them.

468. The power to abolish CAs/CCAs as part of proposal is needed to avoid a scenario where otherwise viable proposals for merging could result in CAs/CCAs not being able to function properly.

Justification for procedure

469. An affirmative procedure is proposed as this is already the procedure used to lay and make a section 7 order under the LGPIHA 2007. The Government consider that it affords an appropriate level of Parliamentary scrutiny for the establishment of a new local government body.

Clause 57 (Schedule 26): Power to amend Strategic Authorities once local government reorganisation has taken place (inserting new section 11A into LGPIHA 2007).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

470. The purpose of the power is to enable SAs to continue to function where there has been local government reorganisation undertaken to some or all of the constituent councils.

471. The aim of the provision is to allow the Secretary of State to make changes to an existing SA once this reorganisation has taken place, following the submission of a proposal which the Secretary of State considers is appropriate to implement via an order made under section 7 of the LGPIHA 2007.

472. Where the SA is a CA, the provision would enable adjustments to the CA's establishment order to reflect changes in membership and governance resulting from local government reorganisation.

473. Where the SA is a CCA, the provision will enable the conversion of the CCA to a CA that will exist over the same geography, with constitutional changes to reflect changes in membership and governance resulting from local government reorganisation, whilst also ensuring continuity of matters, and transfer of any property, rights and liabilities.

474. This aims to streamline existing processes, enabling the evolution of the existing SA if there is local government reorganisation of the existing constituent councils, which if no action was taken would otherwise mean the SA could not then function.

475. Adjustments to the constitution would only go as far as to ensure continuity, alongside the proper functioning of the SA. The impact of these changes in real terms would be limited and expected by the authority upon reorganisation.

476. As the principle of a SA across the geography has already been consulted upon and implemented, which is why a CA or CCA exists, there is no need for the same

level of consultation or consent required as to initial establishment of a SA Indeed, the latter risks the continuation of a functioning SA, if there was displeasure as a result of the reorganisation.

477. Therefore, a broad power for the Secretary of State to make secondary legislation including amending voting and governance provision in existing secondary legislation would enable the existing CA or CCA to continue to function as the result of the local government reorganisation changes arising from an order made under section 7 LGPIHA 2007.

Justification for taking the power

478. This power is required to allow the amendment of constitutional provisions contained in secondary legislation which have been tailored to reflect the local needs of the CCA which is being converted, which would vary depending on their individual composition (for example, the number of members, their remuneration and the voting powers of members of the CCA). The Government will therefore need to use a statutory instrument to be able to amend these provisions where necessary to enable CCAs/CAs to continue to function and access the devolution framework as a functioning Strategic Authority whilst local government reorganisation takes place.

479. The Government anticipate that this power will be needed for CCAs established before May 2027 and potentially other areas depending on local proposals and the progress of Local Government Reorganisation.

Justification for the procedure

480. The Government proposes an affirmative procedure to be consistent with the existing procedure used to lay and make a section 7 order under the LGPIHA 2007. The Government considers this to offer an appropriate degree of parliamentary scrutiny. The changes are limited to ensure the outcome of the reorganisation is reflected in the existing orders so that a CA or CCA institution can properly function.

Clause 58: Power to disapply certain functions of predecessor councils where an area is undergoing local government reorganisation (inserting new sections 12(3A) and 12(5A) into LGPIHA 2007).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

481. This provision amends section 12 the LGPIHA 2007 to make further provision for orders made under sections 7 and 10 of that Act to implement proposals or recommendations for local government reorganisation. These orders may include provision to confer functions on a new local authority, and on a 'shadow authority', a body which may be created by orders made under sections 7 and 10 LGPIHA 20-07 for the performance of specified functions the functions of the new local authority for a transitional period between the coming into force of the order and the fourth day after elections to the new local authority take place. The amended provision enables the order which confers functions on the shadow authority to also provide that, during the transitional period, those functions are to be no longer held by the existing (or 'predecessor') local authority. This includes the conferral of functions in relation to a CA or CCA, such as the function to prepare and submit proposals relating to the establishment or changing of boundaries of a CA (under Part 6 LDEDCA 2009) or CCA (under Chapter 1 of Part 2 LURA 2023). In these instances, consent will no longer need to be sought from the predecessor councils.

Justification for taking the power

482. This power is required to ensure that during any transitional period following local government reorganisation, only the shadow authority may exercise the functions of preparing and submitting proposals (including consenting) to the establishment or changing of boundaries of a CA or CCA. This may apply to areas undergoing local government reorganisation simultaneously with establishing a new CA or CCA, or changing the boundaries of an existing CA or CCA, which include these areas.

483. This power is considered necessary to facilitate the Government's ambition to achieve universal coverage of Strategic Authorities across England, ensuring that areas are not unnecessarily blocked from accessing devolved powers by authorities which are set to be abolished or replaced.

Justification for the procedure

484. The affirmative procedure is consistent with the existing procedure when making orders under the LGPIHA 2007 and considered to provide an appropriate degree of Parliamentary scrutiny.

Clause 60: Power to prescribe appropriate arrangements to ensure effective governance of neighbourhood areas.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

485. Clause 60 introduces a duty on local authorities in England to make appropriate arrangements for effective governance of any ‘neighbourhood area‘. It provides the Secretary of State with the power, by way of regulations, to define a neighbourhood area and to specify the parameters of what arrangements will be appropriate to meet this duty.

Justification for taking the power

486. The Government considers it appropriate that the Secretary of State is able to make provision to define neighbourhood areas in regulations in such a way that will allow for the differences between local authorities across England. The regulations may set out detail on the arrangements that LAs will need to put in place. Details may include the number of organisational structures that may or must be established, how these are to be set up and run, the membership and funding of such structures and the functions they may or must discharge. The regulations will also be able to set out requirements for arrangements to ensure local engagement and require arrangements to be reviewed. This will allow for the development of models of effective governance which provide local areas with maximum flexibility through which to work in partnership with others at a local level, and which have the greatest ability to deliver on delegated LA functions and decisions.

487. This is a new approach which is to be applied across England for the first time, and it is important to ensure that there is flexibility which allows for arrangements to be adapted, should the need arise. The Government wants to avoid mandating a fixed model in primary legislation that transpires to be ineffective or that works very well for some areas, but not for others. It is therefore appropriate to use secondary legislation so that there is a way for these arrangements to be modified to ensure that they remain effective, are not duplicative and that they work for the individual LA area.

488. This regulation making power allows sufficient flexibility to make different regulations that can apply to different types of LA and different local contexts, and that can be amended when and if there are other changes in the local government landscape. This will enable the Secretary of State to adopt an approach that allows for continued good practice where neighbourhood governance arrangements are effective without being forced into a “one size fits all” universal requirement. It will also enable areas that are yet to develop good practice of local engagement and neighbourhood governance to consider good practice elsewhere and engage with the Secretary of State to ensure that the regulations will enable them to create a system of governance that is effective in their area.

Justification for procedure

489. Secondary legislation made under this process would be subject to the affirmative parliamentary procedure. This will ensure that the measures that are brought forward are subject to appropriate Parliamentary oversight.

Clause 63 (Schedule 29): Powers exactly replicated from the LA 2011.

490. There are an additional 14 delegated powers within Schedule 29 relating to ACV measures that are exact copies of the powers currently within the LA 2011 and therefore are not considered in detail within this memorandum. This drafting approach has been taken because existing provisions are being retained for Wales, whereas new provisions will apply in England only. For completeness this includes: section 87(4) which is replicated in new section 86A(5); section 87(5) which is replicated in new section 86A(7); section 88(3) which is replicated in new section 86B(4); section 89(1) which is replicated in new section 86D(1); section 89(4) which is replicated in new section 86D(4); section 89(5) which is replicated in new section 86D(5); section 91(2)(d) which is replicated in new section 86F(2)(d); section 95(5) which is replicated in new section 86K(2)(e); section 96(7) which is replicated in new section 86L(7); section 98(3) which is replicated in new section 86N(4); section 99(2)(c) which is replicated in new section 86W(1); section 98(3) which is replicated in new section 86Z(1); section 101 which is replicated in new section 86Z4(2); and section 107(6) which is replicated in new section 86Z5(6).

Clause 63 (Schedule 29): Power to establish the procedure to be followed in connection with a review of list related decisions (inserting new section 86H(9) into the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

491. New section 86H in the LA 2011 will amend existing provisions in England in relation to the ability to ask local authorities to review decisions on listing ACVs. Currently, the owner of an asset can request that a local authority reviews its decision to include that asset on its list of ACVs. This ability will be extended to the owner of an SACV to ask for a review of the local authority's decision to include it in the list or to include in that category of the list. It will also be extended to the community group who nominated the asset, where the local authority's decision

was not to include the asset on its list of ACVs. There is already a power to make further provisions about the procedure to be followed in relation to a review in the LA 2011. There will be a continued need for a clear procedure for local authorities to follow when a review is requested, by both asset owners and now also by community groups, to ensure consistency between local authorities and a high-quality response for both asset owners and community groups.

Justification for taking the power

492. The Assets of Community Value (England) Regulations 2012 SI 2012/2421 support the existing provisions in the LA 2011. They already set out the procedure for the review of listing decisions and will need to be updated to reflect the fact that community groups will also be able to request a review. The Government recognise that this is a specific procedure that may need amending in future to ensure it remains relevant and provides asset owners and community groups with the level of response they need, and therefore it is most appropriate to include it in regulations.

Justification for procedure

493. The negative procedure is proposed as the regulations will set out the specific details of the process that will need to be followed when a review is requested, and the Government judge this to be the appropriate level of parliamentary scrutiny.

Clause 63 (Schedule 29): Power to set further provisions in regard to meetings with owners of land and preferred community buyers (inserting new section 86S(3) into the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

494. New section 86S in the LA 2011 will mean that, where a community buyer has been identified for an ACV or an SACV that has been put up for sale, there must be an opportunity for that buyer to negotiate a price with the asset owner. As part of this, the local authority must, as far as reasonably practicable, organise an initial meeting between the community buyer and the owner to facilitate this negotiation and ensure both parties understand the community right to buy process. This power intends to establish a consistent approach between local authorities in arranging and delivering this meeting by allowing further provisions about the

meeting to be set out in regulations. It should therefore ensure a consistent experience for community buyers and asset owners.

Justification for taking the power

495. The power will allow the specific requirements for the meeting to be set out in regulations, including in relation to attendees, its conduct, and the information that the local authority must provide to attendees. The Government recognises that these requirements might change over time once the policy is in operation, and including them in regulations means that they can be updated as necessary.

Justification for procedure

496. The negative procedure is proposed as the regulations will set out more practical details of how the meeting will work, which will support local authorities to effectively deliver their duty to hold a meeting. The Government consider this to be the sufficient level of parliamentary scrutiny for that.

Clause 63 (Schedule 29): Power to set further provisions about the determination of the market value of estate in land (inserting new section 86T(4) into the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

497. New section 86T in the LA 2011 introduces an independent valuation process to determine the purchase price of an ACV or an SACV that is up for sale, where the asset owner and community buyer are not able to reach an agreement on this price through negotiation. In such circumstances, the local authority must appoint an independent valuer who must assess the market value of the asset. This power allows the Secretary of State to make further provision in regulations in relation to determining the market value of the asset, such as the method that is used, the matters that must be taken into account, and the ability of the asset owner and community buyer to make representations to the valuer.

Justification for taking the power

498. The valuation process is a technical element of the community right to buy policy and it is most appropriate for the details of the process to be set out in regulations, allowing these to be updated efficiently in the future.

Justification for procedure

499. The negative procedure is proposed as the regulations will set out technical details of the valuation process that do not require the same level of parliamentary scrutiny as the core policy, given they will support this to work as intended.

Clause 63 (Schedule 29): Power to specify the circumstances in which another independent person appointed by the local authority may carry out a valuation in place of a Revenue and Customs Officer (inserting new section 86T(10)(c) into the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

500. As part of establishing a new independent valuation process, new section 86T sets out that the person appointed by the local authority to carry out the valuation of the asset should be a Revenue and Customs officer. It gives the Secretary of State power to specify in regulations the circumstances in which another independent person appointed by the local authority may carry out this valuation in place of the Revenue and Customs officer. This recognises that there may be circumstances where it is not possible or not appropriate for a Revenue and Customs officer to carry out this role.

Justification for taking the power

501. The Government recognise that there may be specific circumstances where a Revenue and Customs officer will not be able to fulfil this role. These circumstances will need to be established with HM Revenue and Customs, and the Government expect they may evolve once the policy is in operation. The ability to add to or amend these circumstances by regulations is therefore important.

Justification for procedure

502. The negative procedure is proposed as the regulations are intended to set out the detail of the circumstances where the local authority may appoint another independent person, and the Government therefore judge this level of scrutiny is appropriate.

Clause 63 (Schedule 29): Power to specify "progress requirements" (inserting new section 86U(5) into the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

503. New section 86U in the LA 2011 replaces the provision for a six-month moratorium period with a six-month first review period and a further six-month second review period. The asset owner can request that the local authority reviews the progress made by the community buyer towards purchasing an ACV at the end of the first six-month review period, with the ability to terminate the right to buy if the progress requirements are not met. Local authorities will also have the power to terminate the right to buy at the second review period, if the progress requirements are not met. This power allows the Secretary of State to specify, in regulations, the progress requirements for the first and second review period.

Justification for taking the power

504. The first review period helps to protect asset owners from delays caused by speculative community buyers who have no realistic prospect of purchasing the asset, allowing for the early termination of the right to buy should the community buyer fail to meet the progress requirements. The second review period also provides the ability to terminate the process if the progress requirements are not met. It is appropriate that these progress requirements are set out in regulations as they will need to be developed in conjunction with community groups and local authorities and may need to be added to or amended once the policy is in operation.

Justification for procedure

505. The negative procedure is proposed as the regulations will set out detailed information about the progress requirements for the first and second review period, covering the practical aspects of how the policy will work. The Government judge this level of scrutiny is appropriate for the progress requirements.

Clause 63 (Schedule 29): Power to issue guidance on community right to buy and sporting assets of community value (inserting new section 86X into the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

506. Currently there is non-statutory guidance that provides a legislative overview of the ACV policy. However, this is limited in scope and there is significant variation between local authorities in interpretation and consequently delivery of the policy, which means that the experience of community groups varies depending on their location. To ensure the community right to buy is as successful as possible, it is necessary to create a consistent approach across local authorities, limiting any potential for different interpretations of the legislation. To do this, new section 86X in the LA 2011 will give the Secretary of State power to issue statutory guidance for local authorities on exercising their relevant functions in relation to ACVs, SACVs, and community right to buy. The intention is for the guidance to set out clear expectations for local authorities, including detailing the types of assets that might normally be considered to meet the definition of an ACV. There will also be a requirement for the Secretary of State to consult appropriate persons in developing the guidance and to publish the guidance.

Justification for taking the power

507. This power is needed to issue statutory guidance. Primary legislation would be too prescriptive for this purpose, as the intention is to set clear expectations for how local authorities should administer the policy, recognising that there may be different circumstances or factors that may need to be taken into account. The Government are of the view that statutory guidance will be most effective in influencing the behaviour of local authorities, allowing extensive consultation and the inclusion of best practice.

Justification for procedure

508. No parliamentary procedure is required for guidance, but there will be a requirement to consult appropriate persons before issuing the guidance.

Clause 65: Power for the Secretary of State to set NMS in relation to the licensing in England of taxi and PHV drivers, taxi vehicles and PHVs, and PHV operators ('regulated licences') relating to the grant of a regulated licence.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative when first made; negative subsequently

Context and purpose

509. This is the first of three clauses which confer powers on the Secretary of State to prescribe NMS by regulations. It relates to the grant in England of regulated licences for taxi and PHV drivers, vehicles and PHV operators.

510. The Government seeks regulation making powers to allow the setting of NMS for the grant of licences to taxi and PHV drivers, vehicles and PHV operators.

511. The Government seeks to implement a clear framework which sets NMS to mandate high but proportionate standards for licensing authorities in England, in order to improve public safety. It is also considered there could be wider benefits in setting NMS such as reducing the incentives for taxi and PHV drivers from working outside the area in which they are licensed, known as 'out of area working'.

Justification for taking the power

512. The need for rigorous statutory standards was highlighted in Baroness Casey's National Audit on Group-based Child Sexual Exploitation and Abuse. Baroness Casey recommended that 't*he Department for Transport should take immediate action to … bring in more rigorous statutory standards for local authority licensing and regulation of taxi drivers'.*

513. The Department for Transport responded that it will legislate as soon as possible to address the important public safety issues raised in the report, tackling inconsistent standards of taxi and PHV driver licensing. There are currently 263 taxi / PHV licensing authorities in England, which each apply different standards.

514. Enabling consistent and minimum standards for licensing authorities through primary legislation (whether district councils, unitary authorities or strategic authorities) would deliver the best outcome for passenger safety and support the Department for Transport's strategic enabler of "Safety and Security' as well as the wider Government's 'Safer Streets Mission'.

Justification for the procedure

515. The Government considers that the regulations should be subject to the affirmative procedure when the power is first exercised in case controversial issues arise initially and then be subject to the negative procedure when subsequently exercised on the basis that controversial issues will most likely have been aired when NMS are first designed. Exercise of the power will be subject to a statutory duty to consult.

Clause 66: Power for the Secretary of State to set NMS relating to the suspension or revocation of taxi and PHV regulated licences, including retrospective effect for existing regulated licences.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative when first made; negative subsequently

Context and purpose

516. This is the second of three clauses which confer powers on the Secretary of State to prescribe NMS by regulations. It relates to the suspension or revocation in England of regulated licences for taxi and PHV drivers, vehicles and PHV operators.

517. The Government seeks a regulation making power relating to whether it is appropriate for a regulated licence to continue in force. The power will provide for the circumstances in which a licensing authority must determine whether NMS are met, and for which permitted response (suspension and/or revocation) will be available if the licensing authority is not satisfied that the standard is met.

518. The regulations may include provision for a licensing authority to be required, or have a power, to give opportunity to a licence holder to remedy a failure to meet the standard.

519. This new clause makes provision for regulations made under this power to have retrospective effect, unlike those relating to the grant of a licence. This means that the NMS could be applied by the licensing authority to a licence which had already been granted when the regulations are made, to address any claim that such provision is ultra vires on the grounds of retrospectivity.

Justification for taking the power

520. As mentioned above, the Government seeks to raise the minimum standard for the licensing of taxi and PHV drivers, vehicles and operators across all licensing authorities in England, in response to the Casey report.

521. Some criteria will only be relevant at the time of granting a licence. However, the Government needs the ability to make sure that licensees maintain certain standards, for example a requirement for a driver to wear a badge, throughout the life of a licence. This power is designed to enable that requirement and to sanction breaches from time to time during the life of the licence.

522. The reason for seeking retrospective effect is to address the issue of existing licences which may still have a number of years to run at the time when regulations come into force. The Government believes that where regulations are made to protect public safety in the wake of the Casey report, it would be unreasonable (if not unjustifiable) for existing licences to fall outside a new regime of NMS during the period of years which they may have left to run.

Justification for the procedure

523. As above, the Department considers that the regulations should be subject to the affirmative procedure when the power is first exercised in case controversial issues arise initially, and then be subject to the negative procedure when subsequently exercised on the basis that controversial issues will most likely have

been aired when NMS are first designed. Exercise of the power will be subject to a statutory duty to consult.

Clause 67: Power for the Secretary of State to set NMS relating to the renewal of taxi and PHV regulated licences, including retrospective effect for existing regulated licences.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative when first made; negative subsequently

Context and purpose

524. This is the third of three clauses which confer powers on the Secretary of State to prescribe NMS by regulations. It relates to the renewal in England of regulated licences for taxi and PHV drivers, vehicles and PHV operators.

525. The Government seeks regulation making powers to allow the setting of NMS for the renewal of licences to taxi and PHV drivers, vehicles and PHV operators.

Justification for taking the power

526. As mentioned above, the Government seeks to raise the minimum standard for the licensing of taxi/PHV drivers, vehicles and operators across all licensing authorities in England, in response to the Casey report.

527. As with the power relating to the grant of licences, it is important that the Secretary of State can make regulations which provide for the NMS which should apply at the time of renewal of an existing regulated licence, for the purpose of protecting public safety and implementing the recommendation in the Casey report.

528. This new clause makes provision for regulations made under this power to have retrospective effect, unlike those relating to the grant of a licence. This means that the NMS could be applied by the licensing authority at the time when a licence, which had previously been granted before the regulations are made, comes up for renewal, to address any claim that such provision is ultra vires on the grounds of retrospectivity.

529. The reason for seeking retrospective effect is to address the renewal of licences existing at the time when regulations come into force. The Government believes that where regulations are made to protect public safety in the wake of the Casey report, it would be unreasonable (if not unjustifiable) for existing licences to fall outside a new regime of NMS as they come up for renewal.

Justification for the procedure

530. As above, the Department considers that the regulations should be subject to the affirmative procedure when the power is first exercised in case controversial issues arise initially, and then be subject to the negative procedure when subsequently exercised on the basis that controversial issues will most likely have been aired when NMS are first designed. Exercise of the power will be subject to a statutory duty to consult.

Clause 69: Power for the Secretary of State to issue guidance to licensing authorities in connection with the exercise of their licensing functions when setting NMS.

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and purpose

531. The Secretary of State has the power to issue and revise guidance in connection with the exercise of their functions in applying the NMS which the Secretary of State intends to prescribe for granting, suspending or revoking and renewing regulated licences. The new provisions will sit alongside the discretions currently available to licensing authorities, so the guidance may among other things explain how the two regimes will fit together.

532. Licensing authorities will be obliged to have regard to such guidance.

Justification for taking the power

533. The guidance is intended to assist licensing authorities in exercising their powers alongside the proposed NMS regime.

Justification for the procedure

534. Any guidance issued under this new clause is not subject to Parliamentary procedure. This is appropriate because if the power is used, this guidance will provide practical advice to licensing authorities when determining applications for the granting, suspending or revoking and renewing regulated licences.

Clause 71: Power for the Secretary of State when making regulations under this Chapter to amend or repeal provision made by an Act of Parliament (whenever passed).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Affirmative

Context and purpose

535. The Government is concerned that, because of the complexity of the legislation which governs taxi and PHV licensing and operation, there may be links to existing regimes governing taxi and PHV licensing which may not yet have been identified. Additionally, some of the legislation is very old (dating from as far back as 1843). London has one taxi regime, Plymouth another and the rest of England still another. PHVs are governed separately from taxis, but again the legislation differs between London, Plymouth and the rest of England.

Justification for taking the power

536. The Government therefore seeks to take a power to make supplementary and incidental provision, including provision that can amend primary legislation. That power would be in addition to the power to make consequential provision conferred by clause 88 of the Bill (which can also be used to amend primary legislation). This additional power to amend primary legislation is required, given that necessary provision may not be consequential.

Justification for the procedure

537. The procedure under which such regulations would be made is affirmative, which is considered to afford an appropriate level of parliamentary scrutiny for Henry VIII powers.

Clause 73 (Schedule 30): Extension of general power of competence to English National Park Authorities and the Broads Authority (amending section 5 of the LA 2011).

Power conferred on: Secretary of State

Power exercised by: Order (Statutory Instrument)

Parliamentary Procedure: Negative/Affirmative/Super Affirmative (as provided for in sections 15 to 18 of the Legislative and Regulatory Reform Act 2006)

Context and purpose

538. The LA 2011 established the GPC, which applies to local authorities and denotes the power to do “anything that individuals generally do” unless specifically prohibited. This will apply to English National Park Authorities and the Broads Authority as designated by this legislation.

539. To ensure that the GPC can operate as intended as regards English National Park Authority and the Broads Authority, the Secretary of State has the power to make amendments and repeal provisions which are adversely impacting the exercising of the GPC. This includes restricting or putting conditions on the exercise of the GPC via secondary legislation. The Secretary of State may only exercise the power where its effect is proportionate, strikes a fair balance between the public interest and the interests of any person adversely affected by it, not constitutionally significant and that it will not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

540. Before exercising this power, the Secretary of State must consult the relevant National Park Authorities or the Broads Authority if relevant and any other persons that the Secretary of State considers appropriate. If, after the consultation, the Secretary of State considers it appropriate to make an order the Secretary of State must lay before Parliament a draft of the order, any consultation undertaken and response made in relation to that consultation, an explanation of the provision and on how its effect is proportionate, strikes a fair balance between the public interest and the interests of any person adversely affected by it, that it does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise and that it is not of constitutional significance. The Secretary of State must also make a recommendation as to whether the negative, affirmative or super affirmative procedure should apply to the draft.

Justification for taking the power

541. The Bill will amend the LA 2011, enabling National Park Authorities and the Broads Authority to use the GPC. As the GPC is being extended to National Park Authorities and the Broads Authority, it is necessary for the Secretary of State to have the power to make supplementary provision as outlined above.

Justification for the procedure

542. As this is an extension of scope to the Henry VIII power under section 5 of the LA 2011, the same consultation requirements (as set out in section 5(7)) and limitations on the power (as set out in section 6) will apply in to the use of the power in relation to the National Park Authorities and the Broads Authority. The same Parliamentary procedure for the explanatory document and draft order (as set out in section 7 of the LA 2011 and allow for the Secretary of State to choose a negative, affirmative or super affirmative procedure in accordance with sections 15 to 19 of the Legislative and Regulatory Reform Act 2006) will also apply.

Part Four: Local Audit

Clause 74: Power to issue guidance and directions to the Local Audit Office (inserting new section 1D into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Guidance and Directions

Parliamentary procedure: None

Context and purpose

543. Clause 74 introduces a power for the Secretary of State to issue guidance and directions to the LAO. This is intended to support effective oversight and accountability in local audit arrangements, ensuring that the functions of the LAO are exercised consistently with government policy objectives and in response to emerging challenges in the local audit system.

Justification for taking the power

544. Given the critical role of local audit in maintaining financial transparency and governance standards, it is important that the Secretary of State can intervene where necessary to safeguard public interest.

Justification for procedure

545. As the power relates to the issuing of directions and guidance, rather than the making of legislation, it is not subject to Parliamentary procedure. The main details of the policy are in primary legislation and will receive full parliamentary scrutiny.

Clause 75 (Schedule 32): Power to provide for a qualification to be an appropriate qualification (inserting new Schedule 1D, Part 1, paragraph 3 into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

546. Currently, section 18 and Schedule 5 of the LAAA 2014, apply Part 42 of the CA 2006 to local audit, with modifications to reflect the differences between local audit and 'statutory' audit (the audit of companies). Section 18 and Schedule 5 of the LAAA 2014 apply section 1219 of the CA 2006 to local audit, with modifications to make provisions for the 'appropriate qualifications' that individuals are required to hold in order to conduct audits of relevant local authorities. Paragraph 9(2) of

Schedule 5 to the LAAA 2014 gives the Secretary of State the power to make regulations for a qualification to be recognised as an appropriate qualification if the criteria in 9(2)(a), (b) and (c) are met. Paragraph 9(4) of Schedule 5 provides the Secretary of State with the ability to make a recognition order recognising a qualification offered by a qualifying body.

547. Schedule 33 will remove the existing section 18 of and Schedule 5 to the LAAA 2014. However, clause 75 prescribes new requirements in connection with eligibility and regulations. Specifically, Part 2 to new Schedule 1B inserted by clause 75 and Schedule 32, sets out the requirements as to professional qualifications. Paragraph 3 of new Schedule 1D inserted by Schedule 32 of the Bill retains the delegated power for the Secretary of State to provide for a qualification to be an appropriate qualification if it meets the criteria set out in paragraph 3(1)(a), (b) and (c). Paragraph 3(3)(a) retains the power for the Secretary of State to make a recognition order recognising qualifications offered by a qualifying body.

Justification for taking the power

548. The LAAA 2014 currently provides the Secretary of State with the power to make regulations for a qualification to be an appropriate qualification. The Government considers retaining these powers appropriate to ensure that the system for recognising qualifications continues to operate effectively.

Justification for procedure

549. Given the administrative nature of these powers, the Government considers that the negative resolution procedure is appropriate.

Clause 75 (Schedule 32): Power to provide for the payment of fees by recognised qualifying bodies (inserting new Schedule 1D, Part 2, paragraphs 7 to 9 into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative/Affirmative (regulations under paragraph 9)

Context and purpose

550. Currently, section 18 of and Schedule 5 to the LAAA 2014 apply Part 42 of the CA 2006 to local audit, with modifications to reflect the differences between local audit and 'statutory' audit (the audit of companies). Paragraph 19 of Schedule 5 to the LAAA 2014 currently applies section 1251 and 1252 of the CA 2006 to local audit, with modifications to make provisions regarding fees payable to the

Secretary of State for every recognised supervisory body and every recognised qualifying body (RQB) and (in respect of section 1252) to allow for sub delegation of the Secretary of State's functions. While Schedule 33 will repeal existing section 18 and Schedule 5 to the LAAA 2014, Schedule 32 of the Bill will insert new Schedule 1D, paragraphs 7 to 9 into the LAAA 2014. This will replicate the existing delegated power for the Secretary of State to, by regulations, collect fees from RQBs, and under paragraph 9(1) will allow for sub delegation of this function (and sub delegation of the Secretary of State's power under paragraph 8 to direct bodies to take action to secure compliance with international obligations).

Justification for taking the power

551. The power is a retained power. RQBs for local audit should still pay fees as normal to the Secretary of State (or a body to whom the Secretary of State has delegated this power) as appropriate. A delegated power will, as now, provide an appropriate degree of flexibility to account for future circumstances. Where the power to by regulations collect fees from RQBs is subdelegated under paragraph 9(1) the safeguards under paragraph 9(3) will apply.

Justification for procedure

552. The current power (equivalent to paragraph 7) is subject to the negative resolution procedure. This is considered appropriate, noting the administrative nature of the matters that could be prescribed under these powers. In contrast, where paragraph 9(1) is relied upon to subdelegate the power to make regulations under paragraph 7 (or functions under paragraph 8) to another person designated in regulations, affirmative procedure is deemed to be appropriate to allow for enhanced parliamentary scrutiny.

Clause 78: Local Audit Office Codes of Practice (amending Schedule 6, paragraph 1 to the LAAA 2014).

Power conferred on: Local Audit Office

Power exercised by: Code of Practice

Parliamentary procedure: Negative

Context and purpose

553. Currently, the Comptroller and Auditor General has responsibility for producing a Code or Codes of Audit Practice in accordance with section 19 and Schedule 6 of the LAAA 2014. The Code sets out what local auditors of relevant local public bodies are required to do to fulfil their statutory responsibilities under the LAAA 2014 Act. 'Relevant authorities' are set out in Schedule 2 of the LAAA 2014 and include local councils, fire authorities, police bodies and NHS bodies. Schedule 6

also includes various procedural safeguards, including consultation requirements, and stipulates that the Code must be laid in draft before Parliament. If either House, within a 40-day period, resolves not to adopt the code, it cannot be published. A similar procedure applies to any alteration or replacement code. A Code cannot be in force for longer than five years.

554. Under the measures in clause 78, the new LAO will assume responsibility for Codes of Audit Practice from the Comptroller and Auditor General. The intention is to ensure that LAO will be responsible for determining the standards to be followed by local auditors in carrying out their audit functions. This aligns with the broader intention to bring together currently disparate elements of the system and enable a more coordinated approach led by a body focused solely on local audit. The requirements for Codes of Audit Practice will remain largely the same.

Justification for taking the power

555. In line with the current approach in the LAAA 2014, the Government considers it appropriate to provide the detail of how an audit should be carried out through a statutory code of practice, rather than on the face of the Bill. This allows for an appropriate degree of flexibility, enabling the LAO to adapt the Code to meet changing circumstances. As the key oversight body in the local audit system, the LAO will be best placed to develop the Code.

Justification for procedure

556. In line with the approach currently set out in the LAAA 2014, the Government considers that the negative resolution procedure provides the appropriate level of Parliamentary scrutiny for any Code or revised Code. This approach is also consistent with wider practice in relation to statutory codes of practice produced by bodies external to central government, including, for example, data sharing codes of practice developed by the Information Commissioner's Office under Section 121(1) of the Data Protection Act 2018.

Clause 79: Power to apply an enactment that applies to a relevant authority or a committee of a relevant authority to individuals appointed as an audit committee (inserting section 33A(4) into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

557. The local audit strategy set out government's commitment to ensure that relevant authorities appoint an audit committee to allow for the effective scrutiny of public

spending. These committees are recognised as good practice for transparency and accountability but are not legally mandated for all authorities. As it is not currently mandatory, some local authorities may choose not to establish an audit committee or may have committees with limited scope or effectiveness. This can lead to variations in the quality of financial oversight.

558. Mandating audit committees will strengthen local audit arrangements and improve oversight of financial reporting and governance in local authorities. Audit committees do not currently fall within existing legislative regimes that govern relevant authorities (defined in Schedule 2 of the LAAA 2014) and their committees. This power will provide for an enactment through regulations laid by the Secretary of State to mandate audit committees to support their effective operation within the wider local audit framework. This will ensure consistency in governance, accountability, and transparency requirements.

Justification for taking the power

559. The power is framed broadly to provide for modifications to ensure that enactments can be adapted appropriately to suit the specific role and structure of audit committees. Primary legislation would not provide sufficient flexibility to address the technical nature of the modifications that may be required. This approach ensures that audit committees can be effectively integrated into the statutory framework without requiring piecemeal primary legislation each time a new provision needs to be applied.

Justification for procedure

560. The Government are of the view that the affirmative procedure is appropriate and proportionate in this case as it provides Parliament with the opportunity to scrutinise the scope and content of any regulations, ensuring appropriate oversight.

Clause 79: Power to make provision about the membership of an audit committee and the appointment of members (inserting new section 33A(5)(a) and (b) into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

561. Clause 79 places a requirement on relevant authorities (within the meaning of section 2 of and Schedule 2 to the Local Audit and Accountability Act 2014) to

appoint an audit committee to scrutinise the authority's financial affairs, governance, risk control and value for money arrangements. At present, the LDEDCA 2009 and LURA 2023 mandate this requirement for CAs and CCAs only. The powers under new section 33(5)a) and (b) will enable the Secretary of State to make regulations about the composition of audit committees and the process for appointing their members. This is part of broader reforms to strengthen the local audit framework by ensuring that audit committees are appropriately constituted, have an independent member, and can provide effective oversight of local bodies' financial reporting and governance.

Justification for taking the power

562. There is a need for flexibility to set detailed requirements for audit committee membership, including potential criteria for independence, qualifications, or appointment procedures. This power allows the Government to address concerns about variability in governance standards across local bodies.

Justification for procedure

563. The negative resolution procedure is appropriate given the technical and procedural nature of the regulations.

Clause 79: Power to make provision about the payment of allowances to members of audit committees of relevant authorities (inserting a new section 33A(5)(c) into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

Context and purpose

564. Clause 79 provides the Secretary of State with a power to make regulations about allowances and other sums payable to audit committee members, and provides that regulations in respect of the payment of members of an audit committee of a relevant authority may make provision equivalent to or different from that applicable to other committees of relevant authorities.

Justification for taking the power

565. This power ensures that the Secretary of State can set clear and fair rules on payment of audit committee members, allowing for adjustments over time in

response to changing expectations or governance arrangements, ensuring that remuneration does not become a barrier to effective audit committee participation.

Justification for the procedure

566. The negative resolution procedure is considered appropriate, given that the power concerns administrative and financial matters of a limited and technical nature.

Clause 79: Power to issue guidance in relation to about audit committees (inserting new section 33A(10) into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

567. Audit committees have been mandated to assist in the effective scrutiny of public spending and to ensure greater transparency and accountability in local government. This power enables the Secretary of State to issue guidance relating to their constitution and operation and places a duty on relevant authorities to have regard to that guidance. The purpose of this provision is to support the effective and consistent implementation of audit committees across relevant authorities. As audit committees may vary in structure and function depending on local arrangements, guidance will help provide clarity and consistency in how they are established and operate in practice.

Justification for taking the power

568. The power to issue guidance provides a flexible mechanism for the Secretary of State to set out expectations and best practice in relation to audit committees. It will allow the Government to respond to developments in the local audit system and support local authorities in implementing audit committees in a proportionate and effective way. It would not be appropriate or practical to set out detailed provisions for the constitution and operation of audit committees within primary legislation, as this would reduce the ability to apply appropriate minor or technical amendments as necessary.

Justification for procedure

569. Guidance issued by the Secretary of State for the purpose of paragraph 33A(8) is not subject to Parliamentary procedure. This is considered appropriate because the guidance is setting out best practice rather than law. Moreover, the main

details of the policy are in primary legislation and will receive full parliamentary scrutiny.

Clause 82: Power to provide for treatment as a smaller authority in previous years where an audit is outstanding.

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

570. Smaller authorities are currently defined in Section 6 of the LAAA 2014 Smaller authorities are subject to less extensive requirements in relation to their financial accounts than other relevant authorities subject to the principal audit regime. They are subject to a limited assurance review, rather than a full audit, in accordance with the Code of Audit Practice, due to their size and level of risk. Clause 82 gives the Secretary of State the power to make regulations to retrospectively treat a public body as a smaller authority for a particular financial year, even if it does not normally meet the criteria to be a smaller authority under the existing rules. This will ensure that certain relevant authorities can undergo a limited assurance review where otherwise no audit or assurance review had been possible for financial years 2022/23, 2023/24 and 2024/25.

Justification for taking the power

571. This power has been taken to ensure that affected authorities in respect of financial years 2022/23, 2023/24 and 2024/25, can be brought within the scope of limited assurance review, where they would otherwise have no form of audit or assurance due to exceptional circumstances. This power will help uphold transparency and accountability in public finances, while also offering a pragmatic solution for ensuring that relevant authorities are not left without any external financial scrutiny.

Justification for procedure

572. The Government consider the negative procedure is appropriate and proportionate in this case as any modifications made under the power will operate within the established framework of the LAAA 2014 and will not alter its fundamental principles.

Clause 84 (Schedule 33, paragraph 3): Power to make further provision about the appointment of local auditors to audit the accounts of specified health bodies (amending section 7 of the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

573. The Bill amends the LAAA 2014 to place a duty of the LAO to appoint auditors to most relevant authorities on an annual basis, but excludes Health Service Bodies, which will continue to appoint their own auditors as now. Clause 84, Schedule 33, paragraph 3 allows the Secretary of State to add Health Service Bodies to the list of organisations that must have auditors appointed by the LAO. The regulations will also allow the Secretary of State to apply some or all of the provisions in the Bill that relate to appointing auditors and setting fees dependent on their relevance to Health Service Bodies.

Justification for taking the power

574. The current arrangements for audit for health bodies are functioning more effectively than other parts of the local audit market, meaning that it is not necessary to add Health Service Bodies to the list of bodies that will have auditors appointed by the LAO. This will also allow the LAO time to establish its arrangements for appointing auditors without the need to add additional bodies to the list of organisations that are currently opting into the arrangements managed by Public Sector Audit Appointments Ltd. At a future point, if there is agreement that adding Health Service Bodies to the list of organisations to which the LAO appoints auditors (for instance, to make better use of market capacity), this clause will allow for application of the relevant clauses in this Bill to Health Service Bodies.

Justification for procedure

575. The affirmative procedure is appropriate and proportionate in this case as it provides Parliament with the opportunity to scrutinise the scope and content of any regulations, ensuring appropriate oversight.

Clause 84 (Schedule 33, paragraph 20): Power to prescribe connection between a person and a relevant authority for the purposes of independence requirements (inserting new Part 5A, section 32B(7) into the LAAA 2014).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

Context and purpose

576. Clause 84, Schedule 33, paragraph 20 enables the Secretary of State to make regulations specifying the independence criteria for an auditor. For example, this may build on the requirements that an auditor cannot be an officer or elected as a member of an authority. The purpose is to ensure that auditors avoid conflicts of interest which could compromise their independence or objectivity

Justification for taking the power

577. Taking this power allows the Government to establish clear, uniform criteria to safeguard auditors' independence such as new roles which may conflict with auditor responsibilities.

Justification for procedure

578. A negative resolution procedure is appropriate as the power concerns technical definitions supporting an existing independence requirement, rather than creating new obligations.

Part Five: Rent Reviews in Business Tenancies

Clause 85 (Schedule 34): Power to provide exceptions to the ban on Upwards Only Rent Reviews (inserting new Schedule 7A, paragraph 10 and new Schedule 7B, paragraph 9) into the LTA 1954).

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

Context and purpose

579. This Secretary of State will have a power to provide exceptions to the ban on upwards only rent review clauses in in new (and renewal under the LTA 1954) commercial leases in England and Wales (power 1) and in put options (power 2).

580. An upwards only rent review ban will ensure that rent reviews result in the rent being able to move up or down, where the mechanism for review would otherwise result in this absent of an upwards only rent review clause.

581. As part of this ban, the Government seeks to remove as many loopholes that may result in landlords circumventing the ban, as are reasonable and possible.

582. One loophole the Government wish to close is the use of a rent 'collar' which is a clause in the lease that puts a lower limit on the new rent identified at rent review.

A rent collar could therefore be used by landlords to circumvent the ban if they were to set this collar either above the current rent payable, or at a small amount (e.g. 10p) below the current rent payable. Both these scenarios the rent would either guarantee to increase or stay the same at rent review and therefore have the effect of a UORR clause.

583. The Government do not wish to outlaw the use of collars, because when negotiated properly, they can often be mutually beneficial for the landlord and tenant. This is especially true as collars and (rent) caps may often be tied together. For example, in an upwards and downwards rent review, a landlord and tenant may both benefit from an agreement that the rent will not increase or fall by more than a pre-agreed amount at each rent review. This therefore provides greater certainty for both parties.

584. The Government need to conduct a formal public consultation on the parameters for using collars and caps in commercial leases, and the delegated power will be used to set out the parameters determined following consultation. Some examples of the parameter options that may be consulted on include:

a) A flat rule that states a rent collar cannot be any less than either 10% / 15% / 20% of the rent payable

b) A rule whereby the collar cannot be any less than e.g. 20% of the rent payable. However, a smaller collar can be agreed if there is a corresponding rent cap set at the same level (i.e. both collars and caps are set at 10% of the rent payable)

Justification for taking the power

585. This power is needed to allow time for a consultation to take place on this technical detail. A formal consultation is needed to ensure that the parameters strike the right balance between closing the loophole, whilst not limiting the use of mutually beneficial clauses in commercial leases. To do this, the Government will need to gather and carefully consider expertise from across the sector. This is a detail of the policy design that will not be known at the point the primary legislation will be passed.

Justification for the procedure

586. Establishing new rules around the content of commercial leases, and limiting the use of rent caps and collars, is controversial. The affirmative procedure will therefore be used to ensure sufficient scrutiny before being made.

Part Six: Final provisions

Clause 88: Power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative / Affirmative (where amending an Act of Parliament)

Context and purpose

587. Clause 88 of the Bill provides a power to the Secretary of State to make regulations which make provision that is consequential of this Bill. Such provision may amend or repeal provisions within primary legislation passed before or in the same Session as the Bill is passed.

Justification for taking the power

588. The Bill includes a significant number of amendments to existing primary legislation which relate to a complex legislative framework for local government, and it is possible that some further consequential amendments including of primary legislation may need to be made. Taking a power to make such consequential amendments by regulations is well precedented.

Justification for procedure

589. Where the regulation making power is to be used to amend or repeal provision in primary legislation, the affirmative procedure is considered appropriate. This is in accordance with normal practice where powers are capable of amending primary legislation. In all other cases, it is considered that the negative procedure is appropriate.

Clause 92: Power to commence provision and make transitional or saving provision

Power conferred on: Secretary of State

Power exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: None

Context and purpose

590. Clause 92 of the Bill makes provision about when provisions of the Bill come into force. For provisions which are not otherwise commenced on Royal Assent or at the end of the period two months after Royal Assent, subsection (7) provides for regulations to appoint a day or days for provisions of this Bill to be commenced.

Subsection (9) allows those regulations to appoint different days for different purposes or areas.

591. Subsection (10) provides that regulations can make transitional or saving provision in connection with the coming into force of any provision of this Bill. Under subsection (11) transitional or saving provision may also include different provision for different purposes or areas.

Justification for taking the power

592. It is standard procedure to make provision for commencement by way of regulations. Parliament will approve the provisions of the Bill, and the power affords the necessary flexibility to bring them into force at the appropriate time. This allows the Government to make any necessary secondary legislation, put the necessary systems and procedures in place or undertake any other required preparation for implementation in advanced of provisions coming into force. This also allows for the flexibility for the Government to await for any other relevant primary legislation to come into force ahead of commencing relevant Bill provision (for example the Planning and Infrastructure Bill).

593. The power to make transitional 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 make such provision in order to ensure the orderly transition between the previous position in legislation, and the new position in legislation once provisions that are to be commenced by regulations come into force.

594. It is necessary for regulations to be able to make different provision for different purposes or areas, given that Bill provisions to be commenced by regulations will include provisions that apply to certain levels of SA only.

Justification for procedure

595. As is usual with commencement, transitional and saving powers, regulations made under clause 92 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 a suitable time.

Ministry of Housing, Communities and Local Government

27 November 2025