ENGLISH DEVOLUTION AND COMMUNITY EMPOWERMENT BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM (on moving to the House of Lords)

Introduction

1. This Memorandum addresses issues arising under the European Convention on Human Rights ("ECHR") in relation to the English Devolution and Community Empowerment Bill ("the Bill"). It has been prepared by the Ministry of Housing, Communities and Local Government with the support of the Department for Transport.

2. The Bill was introduced in the House of Commons on 10 July 2025 and transferred to the House of Lords after having completed its Common stages on 25 November 2025. Two supplementary memoranda were published in relation to amendments made during Committee and Report in the House of Commons[1]. This memorandum consolidates those supplementary memoranda and the original memorandum[2].

3. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention Rights (as defined by section 1 of that Act).

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

   "In my view the provisions of the English Devolution and Community Empowerment Bill are compatible with the Convention Rights"

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

[1] Supplementary ECHR memo and Supplementary ECHR memo No.2
[2] ECHR memorandum

6. The purposes of the Bill are:
   i. Introducing a consistent model of devolution across England, ending 'one-off' devolution deals with areas.
   ii. Creating and designating Strategic Authorities for geographical areas and introducing a 'devolution framework'.
   iii. Simplifying the local government re-organisation process and local government structures; and establishing the Local Audit Office.
   iv. Empowering communities to have a voice in local decision-making via a new community right to buy assets of community value and introducing neighbourhood governance structures.

Summary of the Bill

7. 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.
8. 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.

9. 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.

10. 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.

11. 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.

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

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

14. 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.

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

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

Summary of the Government's ECHR analysis

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

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

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

Article 1 of Protocol 1: Right to peaceful enjoyment of property

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

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

21. The following measures engage A1P1:

a. Regulation of provision of micromobility vehicles: powers to issue prohibition notices and to vary, suspend and revoke licences - **clause 23 and Schedule 5**.

b. Power to charge community infrastructure levy - **clause 34 and Schedule 15**.

c. Community right to buy assets of community value and protection of sporting assets - **clause 63 and Schedule 29**.

d. Standards relating to the suspension or revocation of a regulated licence – **clause 66**.

e. Business Tenancies: Rent reviews and arrangements for new tenancies - **clause 85 and Schedule 34**.

Regulation of provision of micromobility vehicles: powers to issue prohibition notices and to vary, suspend or revoke a licence - clause 23 and Schedule 5

22. Clause 23 and Schedule 5 insert new provisions into the Road Traffic Regulation Act 1984 ("RTRA 1984"), being Part 2A and Schedule 3A.

23. The Bill provides strategic authorities (which are created by Part 1 of the Bill) (and local authorities where there is no strategic authority) with new powers to regulate micromobility vehicle rental services.

24. Clause 23 and Schedule 5 provide a power for the Secretary of State to make regulations setting out the process for varying, suspending or revoking a licence. There are also regulation-making powers to issue a prohibition notice which prohibits a provider from carrying on activities specified in the notice; and for the Secretary of State to direct a licensing authority not to renew, or to suspend or revoke a licence where there are public safety concerns. This could engage A1P1, as a licence could be interpreted as being property under the convention. There are also strong arguments that a licence of this nature does not amount to a 'possession' under an A1P1 right. The right conferred by A1P1 is not absolute, and an interference with the right may be justified if it is subject to conditions provided for in accordance with law, is in the public interest, and proportionate having regard to the aims sought to be achieved by the measure.

25. The interference arises out of the statutory licensing framework and if the variation, suspension, revocation, issue of a prohibition notice or the power of direction complies with conditions set out for the exercise of those powers (by regulations), this will be lawful. The power is proportionate to the aim as operators will apply for a licence in full knowledge that this is subject to the conditions set by the licensing authority. Any interference is proportionate to the legitimate aim of ensuring general public safety (i.e. by ensuring only vehicles that are safe to use, and those that are being used safely, are available for use in a local area).

26. The Government's assessment is that clause 23 and Schedule 5 can be readily justified with reference to these criteria on public safety grounds. It is intended that decision to revoke a licence will be subject to a comprehensive appeals framework.

Powers to charge community infrastructure levy - clause 34 and Schedule 15

27. The Community Infrastructure levy (CIL) is a local, discretionary charge/levy (akin to a tax) which may be charged by local authorities/councils in regards to certain development within their area, to provide for the costs of infrastructure which is needed to support and mitigate the cumulative effects of development in an area, subject to the overall test of economic viability. In Greater London, CIL is also charged by the London Mayor.

28. This measure amends existing legislative provisions in Part 11 of the Planning Act 2008 to enable mayors of Combined Authorities (CAs) and Combined County Authorities (CCAs) to be CIL 'charging authorities' in addition to local councils, etc. Therefore, this Bill measure is not introducing a new levy/tax regime but simply extending the existing CIL provisions to mayors of CAs and CCAs.

29. A1P1 is engaged but that right is expressly stated to not impair the right of the state to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions/penalties. Whilst 'a fair balance test' applies and will require fair procedural guarantees as regards establishing a person's liability to make payments, the state is largely unconstrained about levels of taxation and the manner it chooses to exact taxes. Consideration of 'the fair balance' test under A1P1 may also encompass procedural safeguards such as chooses to exact taxes. Consideration of 'the fair balance' test under A1P1 may also encompass procedural safeguards such as providing an opportunity for individuals to challenge particular measures that affect their property. This is provided for in existing CIL provisions by due process through the appeals procedure set out in Part 10 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations; S.I. 2010/948), and also via scrutiny of enforcement proceedings by Magistrates courts or via debt actions through civil courts (see Part 9 of the CIL Regulations); and ultimately actions of the state or public bodies can be challenged through the courts by way of judicial review.

30. A1P1 is expressly stated to not impair the right of the state to secure the payment of taxes or other contributions/penalties. The Government considers that A1P1 is engaged as regards the CIL regime and the fair balance requirements are met. The measures in question are prescribed by law, pursue a legitimate aim and are proportionate. The Government considers this measure is compatible with A1P1 ECHR for the following reasons. Firstly, CIL is a levy (a local charge) which ensures that the costs incurred by public authorities in supporting the development of an area can be funded wholly or partly by owners or developers of land without rendering the development of an area economically unviable. This overall purpose of CIL is stated on the face of the Planning Act 2008 – see section 205(2). CIL is therefore pursuing the legitimate aim of securing developer contributions to provide for a system of land value capture in order to mitigate the impacts of development in a local area. Thus, the costs of providing local infrastructure can be met, at least in part, by the CIL charge. A fair balance is struck in pursuing this aim by ensuring that the costs of CIL do not make development of an area economically unviable. So, the rights of an individual to build/develop land are balanced against the rights of the state to secure land value capture to mitigate the impact of such development. In addition, procedural safeguards are set out in the CIL regime to ensure due process and transparency as regards both the administration and enforcement of CIL charges. Ultimately actions of the state or public authorities can be challenged through the courts by way of judicial review.

Community right to buy assets of community value and protection of sporting assets - clause 63 and Schedule 29

31. Clause 63 and Schedule 29 insert new provisions into the Localism Act 2011 as sections 86A to 86Z6 and make related minor and consequential amendments to that Act. These new provisions apply to England only.

32. These provisions amend primary legislation to introduce in England a new 'right to buy' for 'assets of community value' ('ACV') and establish a new type of asset of community value – the sporting asset of community value('SACV'). The community right to buy in England will improve on (and replace) the existing provision set out in the Localism Act 2011, which grants communities the 'right to bid' for assets of community value. The key change will be the introduction of a right of first refusal for community groups on the sale of assets of community value, and an extended period delaying any sales other than to the community group for 12 months. Another key change will be to strengthen the ACV process, including amending the definition to bring more assets within the scope of the provisions. The SACV category is a new measure that will reflect the nature of sports grounds as integral community assets that help build local pride. The aim is to increase the number of sporting assets under community ownership, by maximising opportunities for sports clubs and communities to purchase the freehold of locally important grounds, thereby protecting them against redevelopment.

33. Under the existing right to bid in the Localism Act 2011 an owner of an ACV may only sell their asset once a community group has had opportunity to bid, whereas under the new community right to buy, an owner of an ACV will be required to sell it to a community group if they would like to buy it, they make sufficient progress to buy it within 6 months and they make an offer within 12 months.

34. An ACV is defined as a building or other land that is of community value. 'Community value' means that, in the opinion of the local authority, an actual current use of the building or land (that is not an ancillary use) furthers the economic or social wellbeing or economic or social interests (that is cultural, recreational, or sporting interests) of the local community, and it is realistic to think that a use of this kind can continue, or where there was previously such a use and it is realistic to think that a use of this kind could resume in the next five years. This could include buildings such as local pubs, shops, village halls and community centres. The definition of an asset of community value in the Localism Act 2011 is amended by the Bill so that it will include assets of economic interest. The second part of the definition will cover any past use, expanding the more limited approach in the Localism Act 2011 which looked only at 'recent' past uses. These changes are intended to expand the scope

and increase the number of assets of community value. They will bring in assets such as shops, banks and post offices or buildings that were used in a relevant way in the past (but not recently). Owners of ACVs will be impacted because once a local authority has listed their asset, they may only sell it once a community group has had opportunity to buy it if they meet the requirements. This impact is necessary to achieve the policy aims to bring significant benefits to communities by protecting and maintaining valued local assets.

35. SACVs are sports grounds and are defined (in section 17 of the Safety of Sports Grounds Act 1975) as any place where sports or other competitive activities take place in the open air and where accommodation has been provided for spectators, consisting of artificial structures or of natural structures artificially modified for the purpose. Alongside this, a building or other land, an actual current use of which provides support for the use of other land as an SACV, will also be listed as land of community value. SACV status aims to increase the number of sporting assets under community ownership by maximising opportunities for sports clubs and communities to take on the freehold of locally important grounds and facilities, thereby protecting them against loss. To achieve this, the Bill aims to: (1) facilitate the automatic listing of all sports grounds into the SACV category; (2) indefinitely ascribe SACV status to listed assets so long as certain conditions are met; and (3) expand the eligible footprint so that facilities important to the proper functioning of a sports ground such as accessways and car parks or training facilities are also protected within an SACV listing. Once an SACV is listed, the community right to buy provisions apply to it so owners may only sell their asset once a community group has had the opportunity to buy it if they meet the requirements. Again, this impact is necessary to achieve the policy aims to bring significant benefits to communities by protecting and maintaining valued local assets.

36. The way that the community right to buy provisions in this Bill work is that there is a right of first refusal, granting firstly the community groups who nominated an ACV 6 weeks to decide if they would like to purchase it. If they choose not to, an alternative community group can express an interest in purchasing it. If there is more than one group, or for SACVs which are automatically registered, then the local authority determines who can purchase it. If no community group wishes to purchase it then the owner can sell to anyone within 18 months from the notification of their wish to sell. If a community group decides to purchase an ACV or an SACV then they have 12 months to make an offer. Within this time a price is agreed, or an independent valuation is undertaken to confirm the market value.

37. Asset owners can request a review by the local authority at six months after their notification of their wish to sell and the community group will have to show that they have made sufficient progress towards a sale. If the local authority decides that the community group have not made sufficient progress, then their

right to buy is terminated and the asset owner can sell to anyone within 18 months from the notification of their wish to sell.

38. The provisions affect the substantive rights of owners of ACVs or SACVs who might reasonably have expected to have been able to sell their assets on the open market at below or above market price without these provisions. The provisions operate so that owners are still able to sell at market value as agreed or set by an independent valuer from the Valuation Office Agency, which is the price any purchaser is willing to pay, but the owner will be restricted to selling to a community group if they wish to buy and are able to do so within 12 months.

39. When the current community right to bid provisions were before Parliament in 2011, the government recognised that they were an interference with asset owners' A1P1 rights. This issue has been raised in some appeals to the First-tier Tribunal (for example *Firoka (Oxford University Stadium) Ltd v Oxford City Council [2014] UKFTT CR/2013/0010 (GRC) or St. Gabriel Properties Ltd v London Borough of Lewisham [2015] UKFTT CR/2014/0011 (GRC))* but it was not considered in detail because the justification for the interference was accepted. The community right to buy provides a greater degree of interference but as set out below the Government's analysis is that it is justified.

40. In the case of *Newton v Derbyshire Dales District Council and another (Re Community right to Bid) [2024] UKFTT 435 (GRC)* it was acknowledged that decisions on appeals and compensation engage A1P1 rights but Judge Neville confirmed that appeals for the community right to bid could adopt a narrow approach in deciding if the local authority's review decision was wrong rather than the broad approach of a new hearing and that met the requirements of compatibility with asset owners A1P1 rights.

41. The compensation provisions in section 99 of the Localism Act 2011 have been replicated in the new community right to buy provisions in the new section 86W. The right of review in section 92 of the Localism Act 2011 has been replicated in new section 86H. This enables asset owners to ask the local authority to review their decision to include the land in the list. Both sections 86W and 86H include a power for the Secretary of State to make regulations to make provisions for appeals. The Government's intention is to use this power to make provision for appeal to the First-tier Tribunal (similar to that for the current community right to bid). There is no appeal process for the valuation part of the community right to buy provisions set out in new section 86T, but the valuation is independent and carried out by an expert valuer and the asset owner is able to make representations as part of the process. The compensation and appeal rights are sufficient to safeguard asset owners' A1P1 rights, and they replicate the current rights under the community right to bid.

42. These provisions for community right to buy and SACVs are an interference with asset owners' A1P1 rights; however, the Government considers that this interference can be justified because the protection of these assets will enhance the social and mental wellbeing of the community, and the provisions are proportionate. There is evidence to show that the current community right to bid provisions are not sufficient to protect community assets. Without Government intervention to create a more streamlined and accessible protection framework (including a specifically designed category for sporting assets), more communities risk losing these essential spaces that contribute to local wellbeing, community cohesion and sporting heritage. A more robust and tailored approach is needed to ensure these vital community resources can be preserved for future generations. The community right to buy is likely to reduce the number of vacant or underused spaces and support the creation of more vibrant high streets and town centres. The Government expects the new provisions to result in an increase in the number of local assets that are listed as ACVs or SACVs and that ultimately come into community ownership.

43. It is the Government's position that these measures are compliant with A1P1, as any interference is justified and pursues a legitimate aim of giving protection to community assets by bringing them into community ownership. The interference with asset owners' A1P1 rights is limited to what is necessary and there are rights of appeal and to compensation.

Standards relating to the suspension or revocation of a regulated licence – clause 66

44. From a reading of the standard textbook *Button on Taxis*, it would appear that there is a distinction between the two types of licences relating to hackney carriages and private hire vehicles ('PHVs') that local authorities grant:

    a. vehicle licences (both hackney carriage/taxi and PHV) that can be transferred to another party (often at a premium); and

    b. hackney carriage/taxi and private hire drivers' licences, and private hire operators' licences, which are personal and therefore have no transfer value.

45. Unfortunately, there is no single English authority on the point, with a variety of cases arriving at different conclusions. For example, in *Cherwell DC v Anwar [2011] EWHC 2943 (Admin),* it was a secondary question as to whether a driver's licence was a possession. The Administrative Court held that a driver's licence was not a possession for the purposes of Article 1 Protocol 1.

46. This reveals a contrast with a licence which can be transferred and which can generate goodwill. Vehicle licences fall into this category and do appear to be possessions following the reasoning in the case law above. It can, therefore, be seen that if a local authority is considering action against a driver's licence, there is no need to consider the impact of Article 1 Protocol 1. However, from the above analysis, in relation to a goodwill-generating, transferable licence such as a vehicle licence, Article 1 Protocol 1 will come into play, and the authority will then have to be able to demonstrate that its decision did not unjustifiably infringe the human rights of the licensee.

47. If a vehicle licence is a possession for the purposes of Article 1 Protocol 1 and if sanctions under National Minimum Standards ("NMS") interfere with, or deprive the owner of their property or control the use of the property by the State, this can be justified on the basis of legitimate public interest: that of protecting public safety in the wake of the Casey report, and that it is proportionate to the aim.

48. The retrospective provisions referred to above, which potentially extinguish existing claims to property, can be justified again on the basis of legitimate public interest, being public safety and protection from defective or inadequate vehicles used as taxis or PHVs. If an appeal system is built into the legislation, as intended, that interference is proportionate to the aim and creates a fair balance between the individual interests affected and the general interests of the community. An effective appeal system will also go to address concerns about potential interference with rights under Article 6 (see below).

Business Tenancies: Rent reviews and arrangements for new tenancies - clause 85 and Schedule 34

49. Clause 85 and Schedule 34 insert new provisions into the Landlord and Tenant Act 1954, being section 54A and Schedule 7A and 7B.

50. Part 1 of Schedule 7A deals with key terms used in the Schedule. It explains the terms "business tenancy" and a "business tenancy with a rent review". The Schedule ensures that a tenant who is still bound by their lease does not lose the protection of the upwards only rent review ("UORR") ban simply because they are not physically in occupation, for example because they have vacated or not yet occupied.

51. Part 2 of Schedule 7A gives tenants the right to trigger rent reviews, even if their lease does not allow them to do so. The Schedule broadens the scope of the

trigger provisions so that they apply to rent reviews generally, not just where there is an UORR clause contained within a lease. The Schedule also ensure that the trigger provisions apply if the lease is granted in a compliant manner but is later varied to include non-compliant terms.

52. Part 3 of Schedule 7A sets out the details of rent review terms in leases which will be of no effect to the extent that they require an upwards only rent review, to ensure the intended clauses are captured by the UORR ban. The Schedule ensure that the UORR ban also applies where a lease is granted in a compliant manner but is later varied to include non-compliant terms.

53. Part 4 of Schedule 7A disapplies any requirement in a pre-commencement superior lease for a tenant to include rent review terms when subletting, to the extent that such terms would be in contravention of the UORR ban. The Schedule will disapply such terms and permit post-commencement subleases to include compliant rent review terms.

54. Part 5 of Schedule 7A includes anti-avoidance and interpretation provisions.

55. Schedule 7B deals with arrangements for the renewal of tenancies and will be broadened in scope by these arrangements, ensuring that arrangements such as options and rights of first refusal are also within scope of the UORR ban. The clauses also mean that where a tenant is required to take a new lease, or exercises an option to take a new lease, they do not lose the protection of the UORR ban simply because they are not physically in occupation, for example because they have vacated or not yet occupied.

56. The Government considers that Article 1 Protocol 1 is engaged by these measures, as they will prohibit certain types of rent review clauses from being included in commercial tenancies. However, the government considers that these measures are proportionate and strike a fair balance between the interests of commercial landlords and tenants. Any interference pursues a legitimate aim of making commercial leases fairer by addressing a common lease term that can benefit landlords over tenants, especially where there is a power imbalance during negotiations. The ban seeks to allow the market to set rental levels more efficiently, ultimately helping the high street and boosting economic growth. Therefore, the measures are justified because the Government considers that these measures are proportionate and strike a fair balance between the interests of commercial landlords and the public or general interest.

57. The Government considers that Article 1 Protocol 1 is engaged by the disapplication of terms in existing superior leases that require subleases to include UORR clauses. However, the clause and Schedules are required in order to ensure that subletting can continue effectively, provide clarity and

ensure that the legitimate aim of the UORR ban is not undermined. Therefore, any impact on landlords is considered to be proportionate as a means to achieving the legitimate aim of the ban.

58. The Government also considers that Article 1 Protocol 1 is engaged by the broadening of scope of Schedule 7B to ensure that option agreements and rights of first refusal cannot be used to circumvent the UORR ban. However, without this provision, the effectiveness of the ban would be undermined. Therefore, it is considered necessary and proportionate in order to meet the legitimate aim of the ban.

Article 6: Right to a fair trial

59. Article 6 provides that:

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

60. The following measures engage Article 6:

a. Regulation of provision of micromobility vehicles: Criminal and civil sanctions for operating a micromobility vehicle service without a licence; and appeals framework, **clause 23 and Schedule 5**.

b. Planning applications of potential strategic importance and Development orders **- clauses 32 – 33 and Schedules 12 - 14**.

c. Powers to charge community infrastructure levy - **clause 34 and Schedule 15**.

d. Standards relating to the suspension or revocation of a regulated licence – **clause 66**.

Regulation of provision of micromobility vehicles: criminal and civil sanctions for operating a micromobility vehicle service without a licence; and appeals framework - clause 23 and Schedule 5

61. The shared mobility service framework introduces a new criminal sanction for providing passenger or non-passenger micromobility vehicles for use on a public road or place, without a licence; and a regulation making power to bring forward new offences of knowingly or recklessly providing false information to obtain a licence; in response to a request for information; or in the appeals process, and the ability to issue civil sanctions for the offences of providing a

service without a licence and a breach of a condition of a licence. The clauses also provide that a director; officer or responsible individual or partner of an organisation could be held personally liable for an offence if they are found directly responsible for the offence or that it is directly attributable to neglect on their part.

62. While the clauses include a new criminal offence and provide for regulating making powers to bring forward other new offences, the Government considers the provisions are compliant with Article 6, given the comprehensive appeals powers and avenues for the decisions of the licensing authority to be subject to review.

63. The provisions require that the regulations must provide that before imposing a civil penalty, the regulations will require that the licensing authority give the person written notice and an opportunity to make representations about the proposed financial penalty. The civil sanctions will also be subject to a comprehensive appeals process involving an initial internal review, with the option of appealing to the first-tier tribunal. Other decisions of the licencing authority will also be subject to the appeals process, such as the decision to revoke or suspend a licence, the detail of which will be contained in the regulations.

64. A licensing operator will have the option of challenging other decisions by judicial review. The framework therefore provides several avenues to challenge the decision-making of a licensing authority. The Government's view is that these provisions are therefore compatible with the ECHR.

Planning applications of potential strategic importance and Development orders - clauses 32 and 33 and Schedules 12 - 14

65. These measures amend the primary legislative regime for consent to the development of land, namely, the Town and Country Planning Act 1990 and Planning Act 2008, and would remove the requirement for a Mayoral development order under the Town and Country Planning Act 1990 to be approved by all relevant local planning authorities or the Secretary of State. Such a decision would be taken by a mayor and subject to judicial review in the same manner as any other administrative decisions.

66. The Government considers that consenting regimes regarding the use and development of land are presently compliant with Article 6. It is long-established that planning decisions, including decisions to grant or refuse planning permission, generally involve the determination of civil rights including the property rights of those with an interest in the relevant land (see *Byran v UK (1995 21 EHRR)*). Article 6 is engaged by the legislative mechanism through

which planning consent is determined and therefore must comply with the substantive and procedural obligations required by Article 6.

67. The determination about whether to grant planning permission is a paradigm example of an administrative discretion (*Alconbury Developments v Secretary of State for the Environment, Transport and the Regions [2003] 2 AC 295*); accordingly, the availability of judicial review is sufficient for Article 6 purposes. Furthermore, the availability of judicial review has long been held to provide Article 6 compliance in planning decisions (see *ISKCON v United Kingdom, App. No. 20490/92, 8 March 1994;* applied in *Chapman v United Kingdom, App. No. 27238/95, 18 January 2001*).

68. Schedule 12, paragraph 1(7) removes the mandatory requirement for mayors of strategic authorities contained in section 2F(2) of the Town and Country Planning Act 1990 to offer applicants and relevant local planning authorities the opportunity to make oral representations before determining applications of potential strategic importance following a direction under section 2A of the Town and Country Planning Act 1990. Instead, for planning applications of a specific description prescribed in regulations or which are made under sections 73 or 73B of the 1990 Act, mayors will have a discretion to instead invite written representations in lieu of an oral hearing. Mayors will be required to publish a document setting out the form and procedure for representations, as well as the persons (in addition to the applicant and the local planning authority) who may make written representations. Applications subject to a direction that the mayor be the local planning authority for the purpose of determining the application under section 2A of the Town and Country Planning Act 1990 are subject to the right of appeal to the Secretary of State in section 78 of the 1990 Act. The appeal decision in turn is subject to the High Court statutory review procedure contained in Part XII of the 1990 Act, by virtue of section 284. Government considers, therefore, that the Schedule 12 are consistent with the existing analysis of the interference with Article 6 ECHR above.

69. Further, the courts carrying out their review are required to act in a manner that is compatible with section 6 of the Human Rights Act 1998.

Powers to charge community infrastructure levy - clause 34 and Schedule 15

70. This measure amends existing legislative provisions in Part 11 of the Planning Act 2008 to enable mayors of CAs and CCAs to be CIL “charging authorities” in addition to local councils, etc. Therefore, this Bill measure is not introducing a new levy/tax regime but simply extending the existing CIL provisions to mayors of CAs and CCAs. The extension of the ability to charge mayoral CIL by mayors of CAs and CCAs will not engage Article 6 of its own.

71. In so far as Article 6 is engaged by the existing CIL regime, detailed provision is made within Part 11 of the Planning Act 2008 and the CIL Regulations (see Parts 5, 6, 8 and 9) as regards the calculation of CIL payments, payment of CIL and the administration of the system (including how CIL is to be paid, and how a person who is liable to pay CIL must be notified), and provisions for appeals and enforcement (e.g. surcharges and interest payments and other enforcement action). These matters provide for a detailed legislative regime which is procedurally fair, transparent and proportionate as required by Article 6. Moreover, any decisions taken by CIL charging authorities or other public authorities with CIL functions may be subject to challenge by appeal under the appeals procedure set out in the CIL regulations (see Part 10) and ultimately by judicial review proceedings through the courts.

72. Whilst Article 6(1) has consistently been held to not apply to tax proceedings, and the levy is akin to a tax/fiscal measure, European Court of Justice case law has set out the limits of this basic principle and means that Article 6(1) could apply to proceedings for damages for losses sustained as a result of unlawful deprivation of certain tax concessions/reliefs. In such cases Article 6(1) can apply if there is a right to such compensation. Thus, while it can be argued that Article 6(1) is not engaged in respect of tax proceedings, Article 6(1) can nonetheless be engaged as a 'secondary' issue if compensation is sought for unlawful deprivation of tax relief/concessions and there is a right to claim such compensation against a public authority. In the context of the levy it is difficult to envisage how this may materialise unless proceedings were brought for compensation for a CIL relief/exemption which an applicant claims to have been deprived of. If such an action were brought it would likely be brought as part of a judicial review action before the High Court brought against a charging authority or other public authority challenging a decision of the authority which it alleges to be unlawful. However, there is no right to compensation provided for in the CIL Regulations.

73. The availability of judicial review proceedings to challenge both the decisions of (i) charging authorities and other public authorities with functions in relation to the charging and collection of CIL, and/or (ii) appeal bodies/persons responsible for appeal decisions – provides an 'effective remedy' as required under the ECHR. Where an administrative body which does not comply with Article 6(1) takes a decision affecting civil rights and obligations there must be scope for a review or appeal to a court or tribunal which does. Where factual issues are in dispute that means that the reviewing body must have power to determine them. Where the only issue is one of law or policy Judicial Review proceedings will satisfy Article 6(1) requirements particularly where the initial decision was taken by a quasi-judicial body with fact finding functions (e.g. the Planning Inspectorate).

74. The existing CIL Regulations (see Part 10) provide a comprehensive statutory system of reviews and appeals which are aimed at providing a quick and less expensive resolution than formal court proceedings on narrow issues of fact. The current available key statutory reviews are set out as follows:

- *Reg 113 and 114 – a review by the charging authority may be requested on the calculation of the chargeable CIL amount –– with an appeal on that decision to the Valuation Office Agency (VOA) to an appointed person (a valuation officer or district valuer).*

- *Reg 115 – apportionment of liability - a person with a material interest in land subject to development may appeal a decision regarding the apportionment of CIL liability to the appointed person (i.e. the VOA).*

- *Reg 116 – charitable relief - a person may appeal against a decision of a collecting authority to grant charitable relief on the ground that the authority has incorrectly determined the value of the interest in land in respect of which the claim was allowed.*

- *Reg 116A – residential annex appeal- an appeal may be made on the ground that the collecting authority has wrongly determined that the development is not wholly within the curtilage of the main dwelling.*

- *Re 116B – exemption for self-build housing - a person may appeal on the ground that the collecting authority has incorrectly determined the value of the exemption allowed.*

- *Reg 117 - appeal against surcharge – a person can appeal to the Planning Inspectorate a decision to impose a surcharge on the ground that the claimed breach did not occur – or no liability notice was served in respect of the chargeable development to which the surcharge related, or the surcharge calculation is incorrect.*

- *Reg 118 – incorrect determination of a deemed commencement date- when a demand notice is served stating a deemed commencement date - an appeal may be made to the Planning Inspectorate on the ground that the date is incorrect.*

- *Reg 119 – appeal against CIL stop notice – a person can appeal to the Planning Inspectorate against a decision to impose a CIL stop notice – on the grounds that the authority did not serve a warning notice or that the chargeable development in respect of which the stop notice was served has not commenced.*

75. The existing statutory reviews do not cover refusals to grant exemptions or reliefs save in limited circumstances – so outside of these cases – any other challenge would be made through the courts via Judicial Review.

76. In conclusion, the existing CIL Regulations are Article 6 compliant by providing for a comprehensive review and appeals system - and in all other cases legal challenge by way of judicial review on ordinary public law grounds may be pursued. The extension of mayoral CIL to mayors of CAs or CCAs does not change or alter the existing CIL regimes' compatibility with Article 6, as set out above.

Standards relating to the suspension or revocation of a regulated licence – clause 66

77. It is considered that Article 6 applies to civil sanction procedures including revocation and suspension of taxi & PHV licences. No criminal sanctions are envisaged. It is envisaged that the current system of civil sanctions embedded in the existing legislative framework, giving a right of appeal to the magistrates' court, will apply to the process created by the proposed NMS regulations. This will ensure a fair system of civil sanctions with a right of appeal, with reasonable time limits, by an independent and impartial tribunal in the magistrates' court.

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

78. Article 8 provides that:

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence."

"(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

79. The following measures engage Article 8:

a. Regulation of provision of micromobility vehicles: powers of inspection - **clause 23 and Schedule 5**.

b. Powers to charge community infrastructure levy - **clause 34 and Schedule 15.**

Regulation of provision of micromobility vehicles: powers of inspection - clause 23 and Schedule 5

80. The licensing framework for micromobility services provide the Secretary of State with a regulation-making power to enable licensing authorities to inspect a site, facility, equipment or vehicles, for the purposes of deciding an application and reviewing ongoing compliance with licence conditions. The Bill provides a safeguard, by expressly prohibiting regulations from giving licensing authorities any power to enter.

81. While it is expected that in most cases this power will be used to inspect commercial business premises, it cannot be ruled out that this may potentially be used to inspect domestic business premises, where an operator is based at a home address. The courts have recognised that Article 8 rights are to be interpreted broadly and can be relied on to protect the privacy of a business when it relates to business premises. However, the courts have found that:

"an interference by a public authority (of someone's Article 8 rights) could go further for professional or commercial premises or activities that in other cases" see Société Colas Est and Others v. France, para20.

82. The power to inspect sites, facilities, equipment or vehicles for the purposes of deciding an application or confirming compliance with conditions, could interfere with someone's article 8 rights, however this is not a power of entry, just a power to enable a licencing authority to undertake an inspection for specified reasons. Article 8 is a qualified right. An interference will be justified where it is necessary in a democratic society and pursues a legitimate objective. In this case, the Government considers the inclusion of this power to meet the legitimate public policy aim of ensuring road safety. The Government's view is that the power is proportionate and necessary to achieve the intended aim.

83. The power to inspect premises for the purposes of making an application and confirming compliance with conditions, could interfere with someone's Article 8 rights, however there are limits on this power, as this is not a power of entry and any interference is legitimate and proportionate to the aim of ensuring public safety.

Powers to charge the community infrastructure levy - clause 34 and Schedule 15

84. This measure amends existing legislative provisions in Part 11 of the Planning Act 2008 to enable mayors of CAs and CCAs to be CIL 'charging authorities' in addition to local councils, etc. Therefore, this Bill measure is not introducing a

new levy/tax regime but simply extending the existing CIL provisions to mayors of CAs and CCAs.

85. The Community Infrastructure levy (CIL) is a local, discretionary charge/levy (akin to a tax) which may be charged by local authorities/councils in regards to certain development within their area, to provide for the costs of infrastructure which is needed to support and mitigate the cumulative effects of development in an area, subject to the overall test of economic viability. In Greater London, CIL is also charged by the London Mayor.

86. CIL itself does not prevent access, occupation or enjoyment of a person's home and therefore it is not considered that Article 8 is engaged in this context. The extension of the ability to charge mayoral CIL by mayors of CAs and CCAs will not engage Article 8 of its own. In practice purchasers of new-build homes seek evidence from the developer that the relevant amount of CIL has been paid, and this information should be provided during the conveyancing process. So, the homes are not sold until the CIL liability is paid (i.e. before it has been disposed of to an occupier such that any Article 8 interference can arise in respect of the occupation of a person's home). A building that is not inhabited, empty or under construction is not a 'home' for Article 8 purposes nor does Article 8 extend to guaranteeing the right to buy a house.

87. Governments are afforded wide powers to control property/possessions to secure the payment of taxes or other contributions/penalties under the ECHR. Enforcement provision made in the CIL regime is within that wide margin. The European Court of Human Rights has acknowledged that "it will sometimes be necessary for the State to attach and sell property, including an individual's home, in order to secure the payment of taxes due to the State through enforceable debts" subject to a consideration of the individual's right to their home. But the CIL Regulations do not authorise entry to a private dwelling without scrutiny by the courts – see CIL regulation 109(4). It should also be noted that the existing CIL Regulations provide for an exemption from levy liability for self-build housing (see regulations 54A-54D). The Government considers that the existing provisions in the CIL regime are compatible with Article 8 rights and the Bill measure which extends CIL charging powers to mayors of CAs or CCAs does not alter this position.

Ministry of Housing, Communities and Local Government

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