

# Infrastructure Bill [HL]

---

---

[AS AMENDED IN PUBLIC BILL COMMITTEE]

## CONTENTS

### PART 1

#### STRATEGIC HIGHWAYS COMPANIES

##### *Appointment as highway authorities*

- 1 Appointment of strategic highways companies
- 2 Areas and highways in an appointment

##### *Functions*

- 3 Road Investment Strategy
- 4 General duties of a strategic highways company
- 5 Directions and guidance
- 6 Delegation of functions
- 7 Exercise of delegated functions

##### *Oversight*

- 8 Watchdog
- 9 Monitor
- 10 Monitor: compliance and fines
- 11 Monitor: general duties
- 12 Monitor: guidance

##### *Transfers of property etc*

- 13 Transfer schemes
- 14 Tax consequences of transfers

##### *Finance*

- 15 Financial assistance

##### *Supplemental and general*

- 16 Transfer of additional functions
- 17 Consequential and transitional provision etc

## 18 Interpretation of Part 1

**PART 2**

## POWERS OF BRITISH TRANSPORT POLICE FORCE

## 19 Powers of British Transport Police Force

**PART 3**

## ENVIRONMENTAL CONTROL OF ANIMAL AND PLANT SPECIES

- 20 Environment control of animal and plant species
- 21 Native and non-native species etc
- 22 Species control agreements and orders: supplementary

**PART 4**

## PLANNING, LAND AND BUILDINGS

*Nationally significant infrastructure projects*

- 23 Timing of appointment of examining authority
- 24 Two-person Panels
- 25 Changes to, and revocation of, development consent orders

*Deemed discharge of planning conditions*

- 26 Deemed discharge of planning conditions

*Mayoral development orders*

- 27 Mayoral development orders

*The Homes and Communities Agency and other bodies*

- 28 Property etc transfers to the HCA and the GLA
- 29 Easements etc affecting land

*Her Majesty's Land Registry*

- 30 Transfer of responsibility for local land charges to Land Registry
- 31 Conferral of additional powers on Land Registry
- 32 Transfer of power to nominate member of Rule Committee

*Off-site carbon abatement measures*

- 33 Provision in building regulations for off-site carbon abatement measures

**PART 5**

## ENERGY

*The community electricity right*

- 34 The community electricity right
- 35 Supplementary provision

*The Extractive Industries Transparency Initiative*

- 36 The Extractive Industries Transparency Initiative

*Recovery of UK petroleum*

- 37 Maximising economic recovery of UK petroleum
- 38 Levy on holders of certain energy industry licences

*Petroleum and geothermal energy in deep-level land*

- 39 Petroleum and geothermal energy: right to use deep-level land
- 40 Further provision about the right of use
- 41 Payment scheme
- 42 Notice scheme
- 43 Payment and notice schemes: supplementary provision
- 44 Interpretation

*Renewable heat incentives*

- 45 Renewable heat incentives

*Reimbursement of persons who have met expenses*

- 46 Reimbursement of persons who have met expenses of making electrical connections

*Consequential provision*

- 47 Consequential provision

**PART 6**

## PUBLIC WORKS LOAN COMMISSIONERS

- 48 Power to abolish Public Works Loan Commissioners

**PART 7**

## THE ELECTRONIC COMMUNICATIONS CODE

- 49 The electronic communications code

## PART 8

### GENERAL PROVISIONS

- 50 Regulations and orders
- 51 Extent
- 52 Commencement
- 53 Short title

- 
- Schedule 1 – Strategic highways companies: consequential and supplemental amendments
    - Part 1 – Highways Act 1980
    - Part 2 – Other enactments
  - Schedule 2 – Road Investment Strategy: procedure
    - Part 1 – Setting a Road Investment Strategy
    - Part 2 – Varying a Road Investment Strategy
  - Schedule 3 – Transfer schemes
  - Schedule 4 – Mayoral development orders
    - Part 1 – Main amendments
    - Part 2 – Consequential amendments
  - Schedule 5 – Transfer of responsibility for local land charges to Land Registry
    - Part 1 – Amendments to the Local Land Charges Act 1975
    - Part 2 – Amendments to the Land Registration Act 2002
    - Part 3 – Amendments to other Acts
    - Part 4 – Transitional provision
  - Schedule 6 – Community electricity right regulations
    - Part 1 – The right to buy
    - Part 2 – Operators, ownership & related matters
    - Part 3 – Information
    - Part 4 – Supplementary
  - Schedule 7 – The licensing levy
  - Schedule 8 – The electronic communications code
  - Schedule 9 – The electronic communications code: consequential amendments

[AS AMENDED IN PUBLIC BILL COMMITTEE]

A

## B I L L

TO

Make provision for strategic highways companies and the funding of transport services by land; to make provision for the control of invasive non-native species; to make provision about nationally significant infrastructure projects; to make provision about town and country planning; to make provision about the Homes and Communities Agency and Mayoral development corporations; to make provision about the Greater London Authority so far as it exercises functions for the purposes of housing and regeneration; to make provision about Her Majesty’s Land Registry and local land charges; to make provision to enable building regulations to provide for off-site carbon abatement measures; to make provision for giving members of communities the right to buy stakes in local renewable electricity generation facilities; to make provision about maximising economic recovery of petroleum in the United Kingdom; to provide for a levy to be charged on holders of certain energy licences; to enable Her Majesty’s Revenue and Customs to exercise functions in connection with the Extractive Industries Transparency Initiative; to make provision for underground access to deep-level land for the purposes of exploiting petroleum or deep geothermal energy; to make provision about renewable heat incentives; to make provision about the reimbursement of persons who have paid for electricity connections; to make provision to enable the Public Works Loan Commissioners to be abolished; to make provision about the electronic communications code; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### STRATEGIC HIGHWAYS COMPANIES

##### *Appointment as highway authorities*

#### **1 Appointment of strategic highways companies**

- (1) The Secretary of State may by order in accordance with this Part appoint one or more companies as a highway authority.
- (2) A company may only be appointed under this section if it is—

5

- (a) limited by shares, and
  - (b) wholly owned by the Secretary of State.
- (3) The appointment of a company terminates (in addition to termination by revocation of the order making the appointment) if the company ceases to be wholly owned by the Secretary of State. 5
- (4) A company appointed under this section is called a “strategic highways company”.
- (5) In this section, “company” means a company registered under the Companies Act 2006.
- (6) Schedule 1 (which contains consequential and supplemental amendments) has effect. 10

## 2 Areas and highways in an appointment

- (1) The appointment of a strategic highways company must specify –
- (a) an area, consisting of the whole or any part of England, in respect of which the company is appointed; 15
  - (b) highways in that area for which the company is to be the highway authority.
- (2) Highways may be specified under subsection (1)(b) by name or description.
- (3) Highways specified under subsection (1)(b) must be highways for which the Secretary of State or another strategic highways company is the highway authority immediately before the appointment has effect. 20
- (4) In the case of a strategic highways company appointed for an area adjacent to Wales, the highways specified under subsection (1)(b) may (subject to subsection (3)) include highways in Wales.
- (5) Where – 25
- (a) the appointment of a strategic highways company is varied, and
  - (b) by virtue of that variation the company ceases to be the highway authority for one or more highways,
- the Secretary of State becomes the highway authority for those highways (to the extent that he or she would not otherwise be so). 30
- (6) Where the appointment of a strategic highways company terminates, the Secretary of State becomes the highway authority for any highway for which the strategic highways company is highway authority (whether by virtue of the appointment or otherwise) immediately before the termination.
- (7) Subsections (5) and (6) are subject to the appointment of another strategic highways company. 35

### *Functions*

## 3 Road Investment Strategy

- (1) The Secretary of State may at any time –
- (a) set a Road Investment Strategy for a strategic highways company, or 40
  - (b) vary a Strategy which has already been set.

- 
- (2) A Road Investment Strategy is to relate to such period as the Secretary of State considers appropriate.
- (3) A Road Investment Strategy must specify –
- (a) the objectives to be achieved by the company during the period to which it relates, and 5
  - (b) the financial resources to be provided by the Secretary of State for the purpose of achieving those objectives.
- (4) The objectives to be achieved may include –
- (a) activities to be performed;
  - (b) results to be achieved; 10
  - (c) standards to be met.
- (5) In setting or varying a Road Investment Strategy, the Secretary of State must have regard, in particular, to the effect of the Strategy on –
- (a) the environment, and
  - (b) the safety of users of highways. 15
- (6) The Secretary of State and the company must comply with the Road Investment Strategy.
- (7) If a strategic highways company does not have a Road Investment Strategy currently in place, the Secretary of State must –
- (a) lay before Parliament a report explaining why a Strategy has not been set, and 20
  - (b) set a Road Investment Strategy as soon as may be reasonably practicable.
- (8) Schedule 2 (which contains provision about the procedure for setting or varying a Road Investment Strategy) has effect. 25

#### **4 General duties of a strategic highways company**

- (1) A strategic highways company must, in exercising its functions, co-operate in so far as reasonably practicable with other persons exercising functions which relate to –
- (a) highways, or 30
  - (b) planning.
- (2) A strategic highways company must also, in exercising its functions, have regard to the effect of the exercise of those functions on –
- (a) the environment, and
  - (b) the safety of users of highways. 35

#### **5 Directions and guidance**

- (1) The Secretary of State may from time to time give a strategic highways company directions or guidance as to the manner in which it is to exercise its functions.
- (2) Directions under subsection (1) may provide, in particular, that a function is only to be exercised – 40
- (a) after consultation with the Secretary of State, or
  - (b) with the consent of the Secretary of State.

- (3) In exercising its functions, a strategic highways company must –
- (a) comply with a direction, and
  - (b) have regard to guidance, given to it under subsection (1).
- (4) Directions and guidance under subsection (1) must be published by the Secretary of State in such manner as he or she considers appropriate. 5

## 6 Delegation of functions

- (1) A strategic highways company may authorise another person to exercise a function it has under any enactment, if the function is prescribed by regulations made by the Secretary of State. 10
- (2) An authorisation may authorise the exercise of a function –
- (a) wholly or to any other extent;
  - (b) generally or only in some cases or areas;
  - (c) unconditionally or subject to conditions.
- (3) An authorisation – 15
- (a) does not prevent the company or any other person from exercising the function to which the authorisation relates,
  - (b) may be for a period not exceeding ten years, and
  - (c) may be revoked at any time.
- (4) The strategic highways company may – 20
- (a) enter into a contract with an authorised person in connection with the exercise by that person of a function;
  - (b) make payments to an authorised person in that connection.
- (5) Where an authorisation is revoked at a time when a contract in connection with the exercise of a function is subsisting, the authorised person is entitled to treat the contract as repudiated by the company (and not as frustrated by reason of the revocation). 25
- (6) Regulations under this section may not prescribe a function if it is –
- (a) a power of entry, or
  - (b) a power or duty to make subordinate legislation. 30
- (7) Where a function of the Secretary of State is transferred to a strategic highways company under this Part and is, immediately before the transfer, authorised to be exercised by another person by an order under section 69 of the Deregulation and Contracting Out Act 1994 –
- (a) the authorisation is to have effect as if it had been given by the transferee company under this section, and 35
  - (b) if the function is not prescribed under subsection (1), it is to be regarded as having been so prescribed.
- (8) Where a function of a strategic highways company is transferred to another such company under this Part and is, immediately before the transfer, authorised to be exercised by another person under this section, the authorisation is to have effect as if it had been given by the transferee company under this section. 40



## 7 Exercise of delegated functions

- (1) A function to which an authorisation under section 6 relates may be exercised by –
  - (a) the authorised person, or
  - (b) an employee of that person. 5
- (2) Anything done by, or in relation to, the authorised person or that person’s employee in connection with the exercise of a function is to be treated as done by, or in relation to, the company.
- (3) Subsection (2) –
  - (a) does not affect the rights and liabilities of the strategic highways company and the authorised person as between one another, 10
  - (b) does not make the strategic highways company liable under section 6 of the Human Rights Act 1998 in respect of any act (within the meaning of that section) of the authorised person or an employee of the authorised person if the act is of a private nature, 15
  - (c) does not prevent any civil proceedings which could otherwise be brought by or against the authorised person from being brought, and
  - (d) does not apply for the purposes of any criminal proceedings brought in respect of anything done by the authorised person or that person’s employee. 20
- (4) Schedule 15 to the Deregulation and Contracting Out Act 1994 (restrictions on disclosure of information) applies to an authorisation under section 6 as it applies to an authorisation of the Secretary of State under Part 2 of that Act (contracting out).
- (5) In this section –
  - (a) “employee”, in relation to a body corporate, includes a director or other officer of the body; 25
  - (b) references to anything done include anything omitted to be done;
  - (c) references to the exercise of a function include the purported exercise of a function. 30

### *Oversight*

## 8 Watchdog

- (1) The Passengers’ Council must carry out activities to protect and promote the interests of users of highways for which a strategic highways company is the highway authority. 35
- (2) Those activities may include investigating, publishing reports or giving advice to the Secretary of State on –
  - (a) how a strategic highways company’s exercise of its functions or achievement of its objectives under a Road Investment Strategy affects users of highways for which it is the highway authority, and 40
  - (b) any other matters –
    - (i) relating to highways for which a strategic highways company is the highway authority, and
    - (ii) which the Council considers to be of interest to users of such highways. 45

- 
- (3) The Secretary of State may by regulations provide that those activities may not relate to a matter –
- (a) to the extent specified;
  - (b) subject to compliance with specified conditions.
- (4) The Secretary of State must consult the Council before making regulations under subsection (3). 5
- (5) The Secretary of State must, in exercising functions under this Part, have regard to any advice given to him or her by the Council under this section.
- (6) The Council may by agreement with a local highway authority carry out activities to protect and promote the interests of users of highways for which the authority is the highway authority. 10
- (7) Those activities may include investigating, publishing reports or giving advice to the local highway authority on any matters –
- (a) relating to highways for which the authority is the highway authority, and
  - (b) which the authority and the Council consider to be of interest to users of such highways. 15
- (8) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general), at the appropriate place insert –  
“The Passengers’ Council.” 20

## 9 Monitor

- (1) The Office of Rail Regulation must carry out activities to monitor how a strategic highways company exercises its functions.
- (2) Those activities may include investigating, publishing reports or giving advice to the Secretary of State on –
- (a) whether, how and at what cost a strategic highways company has achieved its objectives under a Road Investment Strategy, and
  - (b) objectives for a future Road Investment Strategy. 25
- (3) The Office may direct a strategic highways company to provide such information as the Office considers necessary for the purpose of carrying out activities under subsection (1). 30
- (4) A direction under subsection (3) may specify the form and manner in which the information is to be provided.
- (5) A direction under subsection (3) may not require –
- (a) production of a document which the strategic highways company could not be compelled to produce in civil proceedings, or
  - (b) provision of information which the company could not be compelled to give in evidence in such proceedings. 35
- (6) The strategic highways company must comply with a direction under subsection (3). 40
- (7) The Secretary of State must, in exercising functions under this Part, have regard to any advice given to him or her by the Office under this section.

## 10 Monitor: compliance and fines

- (1) If the Office of Rail Regulation is satisfied that a strategic highways company has contravened or is contravening –
  - (a) section 3(6) (compliance with the Road Investment Strategy), or
  - (b) section 5(3) (compliance with directions and regard to guidance),the Office may take one or more of the steps mentioned in subsection (2). 5
- (2) The Office may –
  - (a) give notice to the company as to the contravention and the steps the company must take in order to remedy it;
  - (b) require the company to pay a fine to the Secretary of State. 10

## 11 Monitor: general duties

- (1) The Office of Rail Regulation must exercise its functions under sections 9 and 10 in the way that it considers most likely to promote –
  - (a) the performance, and
  - (b) the efficiency,of the strategic highways company. 15
- (2) The Office must also, in exercising those functions, have regard to –
  - (a) the interests of users of highways,
  - (b) the safety of users of highways,
  - (c) the economic impact of the way in which the strategic highways company achieves its objectives, 20
  - (d) the environmental impact of the way in which the strategic highways company achieves its objectives,
  - (e) the long-term maintenance and management of highways, and
  - (f) the principles in subsection (3). 25
- (3) The principles are that –
  - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and
  - (b) regulatory activities should be targeted only at cases in which action is needed. 30

## 12 Monitor: guidance

- (1) The Secretary of State may from time to time give the Office of Rail Regulation guidance as to the manner in which it is to carry out its activities under section 9.
- (2) The Secretary of State and the Treasury, acting jointly, must give the Office guidance as to the circumstances in which the payment of a fine under section 10 should be required. 35
- (3) The Office must have regard to guidance given to it under this section.
- (4) Guidance under this section must be published by the Secretary of State in such manner as he or she considers appropriate. 40

*Transfers of property etc***13 Transfer schemes**

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities –
- (a) from the Secretary of State to one or more of the following – 5
    - (i) a strategic highways company, or
    - (ii) a proposed strategic highways company;
  - (b) from a strategic highways company or a former strategic highways company to one or more of the following – 10
    - (i) the Secretary of State,
    - (ii) a strategic highways company, or
    - (iii) a proposed strategic highways company.
- (2) In making a transfer scheme the Secretary of State must have regard to –
- (a) the functions, or the proposed functions, of the transferee under any enactment, and 15
  - (b) the terms of appointment, or proposed terms of appointment, of a strategic highways company, or a proposed strategic highways company, to which the scheme relates.
- (3) Schedule 3 (which contains more provision about transfer schemes) has effect.
- (4) In this section and Schedule 3 – 20
- “proposed strategic highways company” means a company which the Secretary of State proposes to appoint as a strategic highways company;
  - “former strategic highways company” means a company in respect of which such an appointment has terminated. 25

**14 Tax consequences of transfers**

- (1) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect from time to time in relation to –
- (a) any property, rights or liabilities which are transferred by virtue of a transfer to which this section applies, or 30
  - (b) anything done for the purposes of, or in relation to, or in consequence of, a transfer to which this section applies.
- (2) This section applies to –
- (a) a transfer of property, rights and liabilities in accordance with a scheme under section 13, or 35
  - (b) a transfer occurring under section 263 of the Highways Act 1980 (vesting of highway in highways authority) by virtue of the appointment of a strategic highway company under section 1 or the variation or termination of such an appointment.
- (3) The provision that may be made under subsection (1)(a) includes, in particular, provision for – 40
- (a) a tax provision not to apply, or to apply with modifications, in relation to any property, rights or liabilities transferred;
  - (b) any property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision; 45

- (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities transferred. 5
- (4) The provision that may be made under subsection (1)(b) includes, in particular, provision for –
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, or in consequence of, the transfer; 10
  - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer to have or not to have a specified consequence or to be treated in a specified way;
  - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, or in consequence of, the transfer. 15
- (5) In this section –
  - (a) “relevant tax” means income tax, corporation tax, capital gains tax or stamp duty; 20
  - (b) “tax provision” means a provision of an enactment about a relevant tax.
- (6) References in this section to the transfer of property, rights or liabilities in accordance with a scheme under section 13 include references to –
  - (a) the creation of interests, rights or liabilities under the scheme, and 25
  - (b) the modification of interests, rights or liabilities under the scheme,(and “transferred”, in relation to property, rights or liabilities, is to be read accordingly).

*Finance*

- 15 Financial assistance** 30
- (1) The Secretary of State may provide financial assistance –
    - (a) to a strategic highways company, for the purpose of any of its functions, or
    - (b) to any other person, for the promotion or improvement of transport services by land in England. 35
  - (2) Financial assistance may be provided in such form and on such terms as the Secretary of State considers appropriate.
  - (3) The form in which financial assistance may be provided include in particular –
    - (a) grants,
    - (b) loans, or 40
    - (c) guarantees.
  - (4) The terms on which financial assistance may be provided include in particular –
    - (a) in the case of a grant or a loan, terms as to repayment;
    - (b) in the case of a guarantee, terms as to reimbursement. 45

- (5) Subsection (1) does not affect any other power of the Secretary of State to provide financial assistance.
- (6) Subsection (1)(b) does not authorise the Secretary of State to provide financial assistance that he or she may provide under section 6 of the Railways Act 2005 (financial assistance relating to rail services). 5
- (7) In section 17(1)(e) of the Ministry of Transport Act 1919 (power to make advances for the promotion and improvement of transport services by land or water), after “by land” insert “in Wales”.

*Supplemental and general*

**16 Transfer of additional functions** 10

- (1) The Secretary of State may by regulations provide that a transferable function of the Secretary of State, other than an excluded function, is transferred to a strategic highways company.
- (2) A transferable function is a function under any enactment which relates to—  
(a) highways; 15  
(b) planning.
- (3) An excluded function is a function which—  
(a) is exercisable by statutory instrument;  
(b) relates to giving consent (however expressed) to the proposed exercise of a function by any other— 20  
(i) highway authority (within the meaning of the Highways Act 1980);  
(ii) traffic authority (within the meaning of the Road Traffic Regulation Act 1984).
- (4) Regulations under this section may provide for the function to be exercisable— 25  
(a) concurrently with the Secretary of State;  
(b) only with the consent of the Secretary of State;  
(c) subject to such other conditions as the Secretary of State considers appropriate.
- (5) Regulations under this section may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of an Act, only if the Act was passed before the end of the Session in which this Act is passed). 30

**17 Consequential and transitional provision etc**

- (1) The Secretary of State may by regulations make— 35  
(a) consequential, supplementary or incidental provision, or  
(b) transitional or transitory provision or savings,  
in connection with an order under section 1 or any other provision made by or under this Part.
- (2) Regulations under this section may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of an Act, only if the Act was passed before the end of the Session in which this Act is passed). 40

## 18 Interpretation of Part 1

In this Part –

- “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978;
- “highway” has the same meaning as in the Highways Act 1980;
- “local highway authority” has the same meaning as in that Act;
- “users of highways” includes cyclists and pedestrians.

5

### PART 2

#### POWERS OF BRITISH TRANSPORT POLICE FORCE

## 19 Powers of British Transport Police Force

10

- (1) In section 100 of the Anti-terrorism, Crime and Security Act 2001 (jurisdiction of transport police) –
  - (a) in subsection (2)(b), after “personal injury” insert “or damage to property”, and
  - (b) omit subsection (3)(a).
- (2) In section 172 of the Road Traffic Act 1988 (duty to give information as to identity of driver etc in certain circumstances), in subsection (2)(a), after “chief officer of police” insert “or the Chief Constable of the British Transport Police Force”.

15

### PART 3

#### ENVIRONMENTAL CONTROL OF ANIMAL AND PLANT SPECIES

## 20 Environment control of animal and plant species

20

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 14 (introduction of new species etc), after subsection (4) insert –

“(4A) Schedule 9A contains provision about species control agreements and orders and related matters.”
- (3) After Schedule 9 insert –

25

#### “SCHEDULE 9A

Section 14(4A)

#### SPECIES CONTROL AGREEMENTS AND ORDERS (ENGLAND AND WALES)

### PART 1

30

#### OVERVIEW AND INTERPRETATION

##### Overview

- 1 (1) This Schedule provides for –
  - (a) species control agreements between environmental authorities and owners of premises, and
  - (b) species control orders made by environmental authorities,

35

and for related matters.

- (2) A species control agreement or species control order may relate to—
- (a) an invasive non-native species of animal or plant, or
  - (b) a species of animal that is no longer normally present in Great Britain.

5

This is subject to the other provisions of this Schedule.

- (3) The following definitions apply for the purposes of this Schedule.

*Invasive non-native species*

- 2 (1) “Species” means any kind of animal or plant.
- (2) A species is “invasive” if, uncontrolled, it would be likely to have a significant adverse impact on—
- (a) biodiversity,
  - (b) other environmental interests, or
  - (c) social or economic interests.
- (3) A species is “non-native” if—
- (a) it is listed in Part 1 or 2 of Schedule 9, or
  - (b) in the case of a species of animal, it is a species—
    - (i) whose natural range does not include any part of Great Britain, and
    - (ii) which has been introduced into Great Britain or is present in Great Britain because of other human activity.
- (4) References to a species being “present” on premises include its being present at any stage in its life-cycle (for example, as eggs or seeds).

10

15

20

*Species that are no longer normally present in Great Britain*

25

- 3 A species of animal is “no longer normally present in Great Britain” if—
- (a) it is a species listed in Part 1B of Schedule 9, or
  - (b) it is a species—
    - (i) whose natural range includes all or any part of Great Britain, and
    - (ii) which has ceased to be ordinarily resident in, or a regular visitor to, Great Britain in a wild state.

30

*Environmental authorities*

- 4 (1) “Environmental authority”, in relation to premises in England, means—
- (a) the Secretary of State,
  - (b) the Environment Agency,
  - (c) Natural England, and
  - (d) the Forestry Commissioners.
- (2) “Environmental authority”, in relation to premises in Wales, means—

35

40



- (a) the Welsh Ministers, and
- (b) the Natural Resources Body for Wales.

*Owners and dwellings*

- 5 (1) “Owner”, in relation to premises consisting of land, means –
- (a) a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, or
  - (b) a person in possession under a lease. 5
- (2) “Dwelling” means a building or structure, or part of a building or structure, occupied wholly or mainly as a dwelling. 10

*Operations*

- 6 (1) “Species control operations” are operations to do one or more of the following –
- (a) eradicate a species from premises;
  - (b) control a species on premises; 15
  - (c) prevent a species from returning to premises.
- (2) References to “carrying out” operations include arranging for operations to be carried out.

## PART 2

## SPECIES CONTROL AGREEMENTS 20

*Making of species control agreements*

- 7 (1) An environmental authority may enter into a “species control agreement” with an owner of any premises where the authority considers that there is present on the premises –
- (a) an invasive non-native species, or 25
  - (b) a species of animal that is no longer normally present in Great Britain.
- (2) Under a species control agreement the parties agree to the carrying out of species control operations.
- (3) Before entering into a species control agreement with an owner, an environmental authority must be satisfied that – 30
- (a) the provisions of the agreement are proportionate to the objective to be achieved, and
  - (b) in a case where there is more than one owner, the owner with whom the agreement is entered into is the most appropriate one. 35
- (4) Before entering into a species control agreement relating to animals of a species that is no longer normally present in Great Britain, the environmental authority must also be satisfied that – 40
- (a) the animals are present on the premises otherwise than under and in accordance with the terms of a licence under section 16(4)(c),

- (b) the animals on the premises are having a significant adverse impact on—
    - (i) biodiversity,
    - (ii) other environmental interests, or
    - (iii) social or economic interests, and
  - (c) there is no appropriate alternative way of obviating that impact. 5
- (5) A species control agreement may not be entered into in relation to premises consisting of a dwelling except where the environmental authority is the Secretary of State or the Welsh Ministers. 10

#### *Content of species control agreements*

- 8 (1) A species control agreement must provide for—
- (a) the species control operations to be carried out,
  - (b) the party who is to carry them out, and
  - (c) the time by which they are to be carried out. 15
- (2) A species control agreement may contain such supplementary provision as the parties consider appropriate.
- (3) That may include provision as to—
- (a) how species control operations are to be carried out,
  - (b) payment to be made by either party to the other, or to another person, in respect of the species control operations to be carried out, or
  - (c) any species control operations that must not be carried out. 20

#### *Liability*

- 9 An environmental authority is not liable to a person with an interest in the premises, other than the owner with whom a species control agreement is entered into, for anything done by the authority pursuant to the agreement. 25

### PART 3

#### SPECIES CONTROL ORDERS 30

#### *When a species control order may be made*

- 10 (1) An environmental authority may make a species control order in relation to premises if—
- (a) it considers that there is present on the premises—
    - (i) an invasive non-native species, or
    - (ii) a species of animal that is no longer normally present in Great Britain, and
  - (b) any of the following circumstances apply. 35
- (2) The circumstances are—
- (a) the environmental authority considers that an owner has failed to comply with a species control agreement entered into with the environmental authority and, having been 40

- given notice to that effect and a reasonable opportunity to rectify the failure, has not done so;
- (b) the environmental authority has offered to enter into a species control agreement with an owner but—
    - (i) the owner has refused to enter into any kind of species control agreement, or 5
    - (ii) no species control agreement has been entered into in respect of the premises by the end of the period of 42 days beginning with the day after the offer was made and the authority considers it unlikely that the owner will enter any kind of such agreement; 10
  - (c) the environmental authority considers that the making of the order is urgently necessary;
  - (d) the environmental authority has been unable to identify an owner, having— 15
    - (i) placed on the premises a conspicuous notice of its desire to enter into a species control agreement, and
    - (ii) waited for 5 days after the day on which the notice was placed.
- (3) Before making a species control order, an environmental authority must be satisfied that the provisions of the order are proportionate to the objective to be achieved. 20
- (4) Before making a species control order relating to animals of a species that is no longer normally present in Great Britain, the environmental authority must also be satisfied that— 25
- (a) the animals are present on the premises otherwise than under and in accordance with the terms of a licence under section 16(4)(c),
  - (b) the animals on the premises are having a significant adverse impact on— 30
    - (i) biodiversity,
    - (ii) other environmental interests, or
    - (iii) social or economic interests, and
  - (c) there is no appropriate alternative way of obviating that impact. 35
- (5) A species control order may not be made in relation to premises consisting of a dwelling except by the Secretary of State or the Welsh Ministers.

*What an order must do*

- 11 (1) A species control order under paragraph 10(2)(a) or (b) (failure to comply with or enter into agreement) must contain provision— 40
- (a) requiring the owner specified in that paragraph to carry out species control operations, or
  - (b) stating that the environmental authority proposes to carry out species control operations, 45
- or both.
- (2) A species control order under paragraph 10(2)(c) (emergency) must contain provision—

- (a) requiring any owner of the premises specified in the order to carry out species control operations, or
- (b) stating that the environmental authority proposes to carry out species control operations,
- or both. 5
- (3) A species control order under paragraph 10(2)(d) (no identifiable owner) must contain provision stating that the environmental authority proposes to carry out species control operations.
- 12 (1) A species control order must – 10
- (a) specify the species to which the order relates,
- (b) specify the species control operations to be carried out,
- (c) specify the time by which the species control operations must be carried out or (as the case may be) the time by which they are proposed to be carried out by the authority, and
- (d) if appropriate, include a map of the premises to which the order relates. 15
- (2) Unless it is made under paragraph 10(2)(c) (emergency), a species control order –
- (a) may not require an owner of premises to carry out species control operations, or provide for an environmental authority to carry out species control operations, before the end of the period in which an appeal may be made (see paragraph 16), and 20
- (b) must provide that if an appeal is made within that period, the owner need not carry out the operations, or the environmental authority shall not carry out the operations, before the appeal is withdrawn or finally determined. 25

*What an order may do*

- 13 (1) A species control order may contain provision supplementary to that specified in paragraphs 11 and 12. 30
- (2) That may include provision as to –
- (a) how species control operations are to be carried out;
- (b) payment to be made by the environmental authority to – 35
- (i) an owner, in respect of the reasonable costs of operations to be carried out by the owner, or
- (ii) another person, in respect of the reasonable costs of operations to be carried out by an owner;
- (c) payment that an owner must make in respect of the reasonable costs of species control operations to be carried out by the environmental authority; 40
- (d) species control operations that an owner must not carry out;
- (e) who will carry out species control operations for the environmental authority.

*Notice*

- 14 (1) After making a species control order, an environmental authority must forthwith give notice of it to – 45

- (a) all owners of the premises of whom the environmental authority is aware,
  - (b) the Secretary of State, if the environmental authority is the Environment Agency, Natural England or the Forestry Commissioners, and 5
  - (c) the Welsh Ministers, if the environmental authority is the Natural Resources Body for Wales.
- (2) In the case of an order under paragraph 10(2)(d) (no identifiable owner), the environmental authority must also give notice of the order by placing it on the premises conspicuously. 10
- (3) Notice under this paragraph must include –
- (a) reasons for making the species control order, and
  - (b) reasons for any requirement imposed by it on an owner.

*Revocation*

- 15 (1) An environmental authority may at any time revoke a species control order made by it. 15  
This does not stop it from making another one in respect of the same premises.
- (2) Notice of revocation must be given as specified in paragraph 14 (but reasons need not be given). 20

*Appeals*

- 16 (1) An owner of premises in relation to which a species control order is made may appeal to the First-tier Tribunal against – 25
- (a) the making of the order, or
  - (b) any provision of the order.
- (2) The First-tier Tribunal may –
- (a) affirm the order,
  - (b) direct the environmental authority which made the order to revoke or amend it,
  - (c) in the case of an order under paragraph 10(2)(c) (emergency), suspend the order, or 30
  - (d) make such other order as the Tribunal thinks fit.

*Notice of compliance*

- 17 Where an environmental authority considers that an owner of premises has complied with all the requirements in a species control order to carry out species control operations, the authority must give the owner notice to that effect. 35

*Enforcement*

- 18 (1) This paragraph applies where an environmental authority considers that an owner of premises required by a species control order to carry out a species control operation has not done so by the date or in the way specified in the order. 40

- (2) The authority must give the owner notice to that effect.
- (3) Sub-paragraphs (4) to (6) apply if, after a week after giving notice under sub-paragraph (2), the authority considers that the owner has still not carried out the species control operation in the way specified in the order. 5
- (4) The authority may carry out the operation itself or carry out such further work as is necessary to ensure that the operation is carried out in the way specified in the order.
- (5) The authority may recover from the owner any expenses reasonably incurred by it in doing so (less any payment which the authority would apart from this paragraph have been required to make to the owner in respect of the carrying out of the operations by the owner). 10
- (6) The authority is not required to make any payment provided for under paragraph 13(2)(b) in relation to the operation (and may recover any payment made under that paragraph). 15

### *Offences*

- 19 (1) A person who, without reasonable excuse, fails to comply with a requirement imposed on that person by a species control order commits an offence.
- (2) A person who intentionally obstructs a person from carrying out an operation required or proposed under a species control order commits an offence. 20
- (3) A person guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or a fine, or both. 25
- (4) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in sub-paragraph (3) to 51 weeks is to be read as a reference to 6 months.
- (5) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in sub-paragraph (3) to a fine is to be read as a reference to a fine not exceeding £40,000. 30

### *Liability*

- 20 (1) An owner of premises is not liable to any other person for doing anything required to be done by a species control order. 35
- (2) An environmental authority is not liable to a person with an interest in premises for anything done –
- (a) by an owner pursuant to a requirement included in a species control order, or
- (b) by the authority pursuant to – 40
- (i) provision included in a species control order under paragraph 11(1)(b), (2)(b) or (3), or
- (ii) paragraph 18(4).

PART 4

POWERS OF ENTRY

*Powers of entry*

- 21 (1) A person who is authorised to do so may enter any premises to –
- (a) assist an environmental authority to determine whether to offer to enter into a species agreement with a person, 5
  - (b) assist an environmental authority to determine whether to make or revoke a species control order,
  - (c) investigate suspected non-compliance with a species control agreement or a species control order, 10
  - (d) carry out species control operations for an environmental authority under a species control order,
  - (e) place a notice as specified in paragraph 10(2)(d)(i) or 14(2) (no identifiable owner), or
  - (f) carry out species control operations or work pursuant to paragraph 18(4). 15

This is subject to the other provisions of this Schedule.

- (2) A person may not enter premises under sub-paragraph (1)(a) or (b) with a view to establishing whether a species is present unless the environmental authority has reasonable grounds for suspecting that it is. 20

*Authorisation by justice of the peace*

- 22 (1) To enter premises under paragraph 21 a person must be authorised by a warrant issued by a justice of the peace where –
- (a) the premises consist of a dwelling or a garden, yard, outbuildings or other land used or enjoyed wholly with a dwelling, 25
  - (b) admission to the premises has been refused by an owner or refusal is reasonably apprehended,
  - (c) the premises are unoccupied, 30
  - (d) the owner is temporarily absent,
  - (e) giving notice would defeat the purpose of entry,
  - (f) entry is to carry out species control operations for an environmental authority under an order under paragraph 10(2)(c) (emergency), 35
  - (g) entry is to carry out species control operations for an environmental authority under an order under paragraph 10(2)(d) (no identifiable owner),
  - (h) entry is to place a notice as specified in paragraph 10(2)(d)(i) or 14(2), or 40
  - (i) entry is to carry out operations or work pursuant to paragraph 18(4) which the environmental authority considers to be urgently necessary.
- (2) A justice of the peace may not grant a warrant –
- (a) in the circumstances in sub-paragraph (1)(a) to (d) unless satisfied that reasonable notice of the proposed entry has 45

- been given to all owners of the premises of whom the environmental authority is aware, or
- (b) in the circumstances in paragraph (1)(g) unless satisfied that the requirement in paragraph 14(2) (notice) has been met.
- (3) For the purposes of sub-paragraph (2)(a) less than 48 hours' notice is not reasonable. 5
- (4) A warrant may authorise a person to use reasonable force if necessary, but a person so authorised –
- (a) must be accompanied by a constable when doing so, and
- (b) may not use force against an individual. 10

*Authorisation by environmental authority*

- 23 (1) To enter premises under paragraph 21 in circumstances other than those specified in paragraph 22(1), a person must be authorised in writing by the environmental authority.
- (2) A person authorised by an environmental authority may not demand admission as of right to any premises unless reasonable notice has been given to all owners of the premises of whom the authority is aware. 15
- (3) For these purposes less than 48 hours' notice is not reasonable.

*Exercise of right of entry* 20

- 24 (1) A right of entry under paragraph 21 is exercisable at any reasonable time.
- (2) A person authorised under paragraph 22 or 23 to enter premises must, if so required before entering, produce evidence of his or her warrant or other authorisation and state the purpose of entry. 25
- (3) A person entering premises under paragraph 21 may –
- (a) take on to the premises such other persons as may be necessary;
- (b) take any equipment, machinery or materials on to the premises; 30
- (c) take samples of anything in or on the premises.
- (4) A person who enters premises under paragraph 21 which are unoccupied or from which the owner is temporarily absent must, on departure, leave them as effectively secured as they were on entry.

PART 5 35

SUPPLEMENTARY

*Compensation*

- 25 (1) The Secretary of State and the Welsh Ministers may (separately or jointly) make arrangements for the payment of compensation to an owner of premises in respect of financial loss resulting from – 40
- (a) a species control agreement or order, or



(b) the exercise of the powers of entry under this Schedule.

(2) The arrangements may secure that compensation is payable only for financial loss above a specified amount.

*Codes of practice*

- 26 (1) The Secretary of State must issue a code of practice in relation to species control agreements and orders in England. 5
- (2) A code under this paragraph must in particular provide guidance to environmental authorities in England on—
- (a) when to offer to enter into a species control agreement;
  - (b) how to go about entering into a species control agreement; 10
  - (c) what a species control agreement should contain (and in particular what it should contain by way of provision about payment of costs);
  - (d) when to make a species control order;
  - (e) what a species control order should contain (and in particular what it should contain by way of provision about payment and recovery of costs); 15
  - (f) standards of animal welfare to be met in connection with species control agreements and orders.
- (3) A code under this paragraph may be revised or replaced. 20
- (4) Before issuing (or revising or replacing) a code under this paragraph the Secretary of State must carry out a public consultation.
- (5) The Secretary of State must—
- (a) ensure that a code under this paragraph is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it, and 25
  - (b) lay a copy of a code under this paragraph before Parliament.
- 27 (1) The Welsh Ministers must issue a code of practice in relation to species control agreements and orders in Wales.
- (2) A code under this paragraph must in particular provide guidance to environmental authorities in Wales on—
- (a) when to offer to enter into a species control agreement;
  - (b) how to go about entering into a species control agreement;
  - (c) what a species control agreement should contain (and in particular what it should contain by way of provision about payment of costs); 35
  - (d) when to make a species control order;
  - (e) what a species control order should contain (and in particular what it should contain by way of provision about payment and recovery of costs); 40
  - (f) standards of animal welfare to be met in connection with species control agreements and orders.
- (3) A code under this paragraph may be revised or replaced.
- (4) Before issuing (or revising or replacing) a code under this paragraph the Welsh Ministers must carry out a public consultation. 45

- (5) The Welsh Ministers must –
- (a) ensure that a code under this paragraph is published in a way that is appropriate for bringing it to the attention of persons likely to be affected by it, and
  - (b) lay a copy of a code under this paragraph before the National Assembly for Wales. 5
- 28 (1) A person’s failure to comply with a provision of a code under paragraph 26 or 27 does not make the person liable to civil or criminal proceedings.
- (2) A code under paragraph 26 or 27 – 10
    - (a) is admissible in evidence in any civil proceedings, and
    - (b) must be taken into account by a court in any civil proceedings in which it appears to the court to be relevant.”
- (4) In section 19 (enforcement), at the end insert –
- “(9) This section does not apply in relation to offences under Schedule 9A.” 15
- (5) In section 25 (functions of local authorities), at the end insert –
- “(3) Nothing in this section applies in relation to Schedule 9A or orders or offences under it.”
- (6) In section 26 (regulations, orders, notices etc), at the end insert –
- “(7) In this section references to orders do not include species control orders under Schedule 9A.” 20

## 21 Native and non-native species etc

- (1) Schedule 9 to the Wildlife and Countryside Act 1981 (animals and plants to which section 14 of that Act applies) is amended as follows.
- (2) In the heading to Part 1, at the beginning insert “NON-NATIVE”. 25
- (3) In Part 1, omit the entries relating to the wild boar, capercaillie, chough, corncrake, common crane, white-tailed eagle, goshawk, red kite and barn owl.
- (4) After Part 1 insert –

### “PART IA

#### NATIVE ANIMALS 30

<i>Common name</i>	<i>Scientific name</i>	
Capercaillie	<i>Tetrao urogallus</i>	
Chough	<i>Pyrrhocorax pyrrhocorax</i>	
Corncrake	<i>Crex crex</i>	
Crane, Common	<i>Grus grus</i>	35
Eagle, White-tailed	<i>Haliaeetus albicilla</i>	

<i>Common name</i>	<i>Scientific name</i>
Goshawk	Accipiter gentilis
Kite, Red	Milvus milvus
Owl, Barn	Tyto alba.

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.” 5

- (5) After Part 1A (as inserted by subsection (4) above) insert –

“PART IB

ANIMALS NO LONGER NORMALLY PRESENT 10

<i>Common name</i>	<i>Scientific name</i>
Boar, Wild	Sus Scrofa.

NOTE. The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names shall not be taken into account.” 15

**22 Species control agreements and orders: supplementary**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) In section 14 (introduction of new species etc), in subsection (1)(b), after “Part I” insert “, IA or IB”.
- (3) In the heading to section 14ZA (sale etc of invasive non-native species), for “invasive non-native species” substitute “certain animals and plants included in Schedule 9”. 20
- (4) In the heading to section 14ZB (codes of practice in connection with invasive non-native species), for “invasive non-native species” substitute “species which are non-native or included in Schedule 9”. 25
- (5) In section 22 (power to vary Schedules), in subsection (5)(a), after “Part I” insert “, IA or IB”.

**PART 4**

PLANNING, LAND AND BUILDINGS

*Nationally significant infrastructure projects* 30

**23 Timing of appointment of examining authority**

In section 61 of the Planning Act 2008 (decision as to whether application for order granting development consent should be handled by Panel or single

appointed person) for subsection (1) substitute –

- “(1) Subsection (2) applies where the Secretary of State has accepted an application for an order granting development consent.”

## 24 Two-person Panels

- (1) In section 65 of the Planning Act 2008 (appointment of Panel to examine application for order granting development consent) in subsection (1)(a) (Panel to consist of three, four or five persons) before “three” insert “two,”. 5
- (2) In section 68(3) of that Act (duty of Secretary of State to appoint additional members if Panel comes to have two members or a single member) – 10
- (a) omit “two members or”, and
- (b) for “three” substitute “two”.
- (3) In section 73(1)(b) of that Act (Panel’s continuing identity not affected by its coming to have two members or a single member) omit “two members or”.
- (4) In section 75 of that Act (decision-making by Panel) – 15
- (a) before subsection (1) insert –
- “(A1) If the members of a Panel with two members disagree as to a proposed decision by the Panel, the view of the lead member is to prevail.”, and
- (b) in subsection (1) (decision by Panel requires the agreement of a majority) for “the Panel” substitute “a Panel with three or more members”. 20

## 25 Changes to, and revocation of, development consent orders

- (1) Schedule 6 to the Planning Act 2008 (changes to, and revocation of, orders granting development consent) is amended as follows.
- (2) In paragraph 2 (non-material changes to orders) – 25
- (a) in sub-paragraph (8) (duty for Secretary of State to comply with prescribed consultation and publicity requirements) after “Secretary of State” insert “and the person who has made the application under sub-paragraph (4)”, and
- (b) after that sub-paragraph insert – 30
- “(8A) The power to make regulations under sub-paragraph (8) includes power to allow the Secretary of State or the person who has made the application under sub-paragraph (4) to exercise a discretion.”
- (3) In paragraph 3 (changes to, and revocation of, orders) after sub-paragraph (5) insert – 35
- “(5A) The Secretary of State may refuse to exercise the power on an application made under sub-paragraph (4) or (5) if, in particular, the Secretary of State considers that the development that would be authorised as a result of the change should properly be the subject of an application under section 37 for a development consent order.” 40
- (4) In paragraph 4 (supplementary provisions about changes to, and revocation of,

orders) after sub-paragraph (5) insert –

“(5A) The power to make regulations under sub-paragraph (4) includes power to allow a person to exercise a discretion.”

*Deemed discharge of planning conditions*

**26 Deemed discharge of planning conditions** 5

After section 74 of the Town and Country Planning Act 1990 insert –

**“74A Deemed discharge of planning conditions**

- (1) The Secretary of State may by development order make provision for the deemed discharge of a condition to which this section applies.
- (2) This section applies to a condition which – 10
  - (a) has been imposed on the grant of planning permission for the development of land in England, and
  - (b) requires the consent, agreement or approval of a local planning authority to any matter.
- (3) Deemed discharge of a condition means that the local planning authority’s consent, agreement or approval to any matter as required by the condition is deemed to have been given. 15
- (4) A development order which makes provision for deemed discharge of a condition must provide that the condition is deemed to be discharged only if – 20
  - (a) a person (“the applicant”) has applied to the local planning authority for the consent, agreement or approval required by the condition,
  - (b) the period for the authority to give notice of their decision on the application has elapsed without that notice having been given, and 25
  - (c) the applicant has taken such further steps (if any) as are prescribed under subsection (5).
- (5) The Secretary of State may by development order make provision about the procedure for the deemed discharge of a planning condition and, in particular, provision – 30
  - (a) allowing or requiring steps to be taken by the applicant or the local planning authority;
  - (b) as to the time at which or period within which a step may or must be taken; 35
  - (c) as to the time at which the deemed discharge takes effect (including for this to be determined by the applicant, subject to such limitations as may be prescribed);
  - (d) for a time or period within paragraph (b) or (c) to be modified by agreement between the applicant and the local planning authority; 40
  - (e) as to the form or content of any notice which may or must be given as part of the procedure, and as to the means by which it may or must be given.

- (6) The Secretary of State may by development order provide that provision for deemed discharge of a condition does not apply –
- (a) in relation to a condition of a prescribed description;
  - (b) in relation to a condition imposed on the grant of planning permission of a prescribed description; 5
  - (c) in relation to a condition imposed on the grant of planning permission for development of a prescribed description;
  - (d) in other prescribed circumstances.
- (7) The power in subsection (6)(d) includes power to provide that provision for deemed discharge of a condition does not apply where an applicant for planning permission and the local planning authority to whom the application is made agree, before or after planning permission is granted, that it should not apply in relation to a condition imposed on the grant of permission. 10
- (8) The Secretary of State may by development order make provision for section 78(2) (appeals to the Secretary of State) not to apply, or to apply with modifications, where – 15
- (a) a person has applied for the consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, 20
  - (b) the local planning authority have not given notice to that person of their decision on the application within the period mentioned in section 78(2), and
  - (c) the person has taken such further steps (if any) as are prescribed to bring about the deemed discharge of the planning condition. 25
- (9) A development order which makes provision for deemed discharge of a condition must limit the application of that provision to a condition imposed on the grant of planning permission following an application made after the development order comes into force.
- (10) In this section – 30
- “condition” includes a limitation;
  - “prescribed” means prescribed by development order made by the Secretary of State.”

*Mayoral development orders*

- 27 Mayoral development orders** 35
- (1) Schedule 4 (Mayoral development orders) has effect.
  - (2) The Secretary of State may by regulations make consequential provision in connection with any provision made by that Schedule.
  - (3) Regulations under this section may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of an Act, only if the Act was passed before the end of the Session in which this Act is passed). 40
  - (4) In this section “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.

*The Homes and Communities Agency and other bodies*

**28 Property etc transfers to the HCA and the GLA**

(1) The Housing and Regeneration Act 2008 is amended in accordance with subsections (2) to (4).

(2) After section 53 (and after the italic heading before section 54) insert – 5

**“53A Other property etc transfers to the HCA**

(1) The Secretary of State may at any time make one or more schemes for the transfer to the HCA of designated property, rights or liabilities of a specified public body.

(2) In subsection (2) “specified public body” means a public body which is for the time being specified, or of a description specified, by regulations made by the Secretary of State. 10

(3) On the date specified by a scheme as the date on which the scheme is to have effect, the designated property, rights or liabilities are transferred and vest in accordance with the scheme. 15

(4) Schedule 6 applies to a scheme under this section.

(5) The Secretary of State may not make a scheme under this section unless the specified public body to which the scheme relates has consented to its provisions.

(6) A scheme under this section may not make provision in relation to land which is held by the Secretary of State and was acquired, or is treated as having been acquired, under section 39 of the Forestry Act 1967 (power to acquire land which is suitable for afforestation or purposes connected with forestry). 20

(7) In this section – 25  
“designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;  
“public body” means a person or body with functions of a public nature.

(8) This section and section 53B bind the Crown, but do not have effect in relation to property, rights or liabilities belonging to – 30

- (a) Her Majesty in right of the Crown,
- (b) Her Majesty in right of Her private estates,
- (c) Her Majesty in right of the Duchy of Lancaster, or
- (d) the Duchy of Cornwall. 35

(9) The reference in subsection (8) to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

**53B Tax consequences of transfers under section 53A**

(1) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect from time to time in relation to – 40

- (a) any property, rights or liabilities transferred in accordance with a transfer scheme under section 53A, or

- (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer of any property, rights or liabilities in accordance with such a transfer scheme.
- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision for – 5
- (a) a tax provision not to apply, or to apply with modifications, in relation to any property, rights or liabilities transferred;
- (b) any property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision;
- (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities transferred. 10
- (3) The provision that may be made under subsection (1)(b) includes, in particular, provision for – 15
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, or in consequence of, the transfer;
- (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer to have or not have a specified consequence or be treated in a specified way; 20
- (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, or in consequence of, the transfer. 25
- (4) In this section –
- “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax; 30
- “tax provision” means a provision of an enactment about a relevant tax.
- (5) References in this section to the transfer of property, rights or liabilities in accordance with a transfer scheme under section 53A include references to – 35
- (a) the creation of interests, rights or liabilities under the scheme, and
- (b) the modification of interests, rights or liabilities under the scheme, 40
- (and “transferred”, in relation to property, rights or liabilities, is to be read accordingly).”
- (3) In section 51 (property etc transfers) after subsection (3) insert –
- “(3A) A scheme under this section may not make provision in relation to land which is held by the Secretary of State and was acquired, or is treated as having been acquired, under section 39 of the Forestry Act 1967 (power to acquire land which is suitable for afforestation or purposes connected with forestry).” 45
- (4) In section 320 (orders and regulations) –



- (a) in subsection (7) (instruments subject to annulment in pursuance of a resolution of either House of Parliament) after paragraph (c) insert –
    - “(ca) regulations under section 53A(2),”, and
  - (b) after that subsection insert –
    - “(7A) An instrument containing regulations under section 53B is subject to annulment in pursuance of a resolution of the House of Commons.”
- (5) The Greater London Authority Act 1999 is amended in accordance with subsections (6) to (9). 5
- (6) After section 333D insert – 10
  - “333DA Transfer schemes**
  - (1) The Secretary of State may at any time make one or more schemes for the transfer of designated property, rights or liabilities of a specified public body to –
    - (a) the Authority, or 15
    - (b) a company or body through which the Authority exercises functions in relation to housing or regeneration.
  - (2) In subsection (1) “specified public body” means a public body which is for the time being specified, or of a description specified, by regulations made by the Secretary of State. 20
  - (3) On the date specified by a scheme as the date on which the scheme is to have effect, the designated property, rights or liabilities are transferred and vest in accordance with the scheme.
  - (4) The Secretary of State may not make a scheme under this section unless the specified public body to which the scheme relates has consented to its provisions. 25
  - (5) A scheme under this section may not make provision in relation to land which is held by the Secretary of State and was acquired, or is treated as having been acquired, under section 39 of the Forestry Act 1967 (power to acquire land which is suitable for afforestation or purposes connected with forestry). 30
  - (6) In this section –
    - “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
    - “public body” means a person or body with functions of a public nature. 35
  - (7) This section and sections 333DB and 333DC bind the Crown, but do not have effect in relation to property, rights or liabilities belonging to –
    - (a) Her Majesty in right of the Crown,
    - (b) Her Majesty in right of Her private estates, 40
    - (c) Her Majesty in right of the Duchy of Lancaster, or
    - (d) the Duchy of Cornwall.
  - (8) The reference in subsection (7) to Her Majesty’s private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862. 45

**333DB Further provisions about transfer schemes**

- (1) A transfer scheme may –
  - (a) create for the transferor interests in, or rights over, property transferred by virtue of the scheme,
  - (b) create for a transferee interests in, or rights over, property retained by the transferor or transferred to another transferee, 5
  - (c) create rights or liabilities between the transferor and a transferee or between transferees.
- (2) A transfer scheme may provide for the transfer of property, rights or liabilities that would not otherwise be capable of being transferred or assigned. 10
- (3) In particular, a transfer scheme may provide for the transfer to take effect regardless of a contravention, liability or interference with an interest or right that would otherwise exist by reason of a provision having effect in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, in question. 15
- (4) It does not matter whether the provision referred to in subsection (3) has effect under an enactment or an agreement or in any other way.
- (5) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a transfer scheme is conclusive evidence for all purposes of that fact. 20
- (6) A transfer scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.
- (7) A transfer by virtue of a transfer scheme does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect. 25
- (8) Anything which –
  - (a) is done by the transferor for the purposes of, or otherwise in connection with, anything transferred by virtue of a transfer scheme, and 30
  - (b) is in effect immediately before the transfer date, is to be treated as done by the transferee.
- (9) There may be continued by or in relation to the transferee anything (including legal proceedings) – 35
  - (a) which relates to anything transferred by virtue of a transfer scheme, and
  - (b) which is in the process of being done by or in relation to the transferor immediately before the transfer date.
- (10) Subsection (11) applies to any document – 40
  - (a) which relates to anything transferred by virtue of a transfer scheme, and
  - (b) which is in effect immediately before the transfer date.
- (11) Any references in the document to the transferor are to be read as references to the transferee. 45

- (12) A transfer scheme may include supplementary, incidental, transitional and consequential provision.
- (13) In this section –
- “enactment” includes subordinate legislation within the meaning of the Interpretation Act 1978; 5
  - “transfer scheme” means a transfer scheme under section 333DA;
  - “transfer date” means a date specified by a transfer scheme as the date on which the scheme is to have effect.

### **333DC Tax consequences of transfers under section 333DA**

- (1) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect from time to time in relation to – 10
- (a) any property, rights or liabilities transferred in accordance with a transfer scheme, or
  - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer of any property, rights or liabilities in accordance with such a transfer scheme. 15
- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision for –
- (a) a tax provision not to apply, or to apply with modifications, in relation to any property, rights or liabilities transferred; 20
  - (b) any property, rights or liabilities transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities transferred. 25
- (3) The provision that may be made under subsection (1)(b) includes, in particular, provision for –
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, or in consequence of, the transfer; 30
  - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer to have or not have a specified consequence or be treated in a specified way; 35
  - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, or in consequence of, the transfer. 40
- (4) In this section –
- “enactment” includes subordinate legislation within the meaning of the Interpretation Act 1978;
  - “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax; 45
  - “tax provision” means a provision of an enactment about a relevant tax;
  - “transfer scheme” means a transfer scheme under section 333DA.

(5)	References in this section to the transfer of property, rights or liabilities in accordance with a transfer scheme include references to –	
(a)	the creation of interests, rights or liabilities under the scheme, and	
(b)	the modification of interests, rights or liabilities under the scheme,	5
	(and “transferred”, in relation to property, rights or liabilities, is to be read accordingly).”	
(7)	In section 408 (transfers of property, rights or liabilities to the Greater London Authority etc) after subsection (8) insert –	10
	“(8A) An order under subsection (1) above may not make provision in relation to land which is held by the Secretary of State and was acquired, or is treated as having been acquired, under section 39 of the Forestry Act 1967 (power to acquire land which is suitable for afforestation or purposes connected with forestry).”	15
(8)	In section 409 (transfer schemes for transfers to the Greater London Authority etc) after subsection (8) insert –	
	“(8A) A scheme under subsection (1) or (2) above may not make provision in relation to land which is held by the Secretary of State and was acquired, or is treated as having been acquired, under section 39 of the Forestry Act 1967 (power to acquire land which is suitable for afforestation or purposes connected with forestry).”	20
(9)	In section 420 (regulations and orders) –	
(a)	in subsection (7) (instruments subject to annulment in pursuance of a resolution of either House of Parliament) after the entry for section 243(7) insert –	25
	“section 333DA(2);”, and	
(b)	after subsection (8) insert –	
	“(8A) A statutory instrument which contains regulations under section 333DC shall be subject to annulment in pursuance of a resolution of the House of Commons.”	30
<b>29 Easements etc affecting land</b>		
(1)	The Housing and Regeneration Act 2008 is amended in accordance with subsections (2) to (4).	
(2)	In section 11 (which introduces the provision made about land of the HCA in Schedule 3) for “land of the HCA” substitute “land acquired by the HCA”.	35
(3)	In the title to Schedule 3 (main powers in relation to land of the HCA) for “land of the HCA” substitute “land acquired by the HCA”.	
(4)	In paragraph 1 of that Schedule (powers to override easements etc in undertaking works on, or using, land of the HCA) in each of sub-paragraphs (1) and (3) for “land of the HCA” substitute “land which has been vested in or acquired by the HCA”.	40
(5)	Section 333ZB of the Greater London Authority Act 1999 (powers in relation to land held for housing or regeneration purposes) is amended in accordance with subsections (6) to (9).	45

- 
- (6) In the heading after “land” insert “acquired or”.
- (7) For subsection (1) (application of Schedule 3 to the Housing and Regeneration Act 2008 to land held by the GLA) substitute –
- “(1) Schedule 3 to the Housing and Regeneration Act 2008 (powers in relation to land acquired by the Homes and Communities Agency) applies in relation to the Authority and land which has been vested in or acquired by the Authority for the purposes of housing or regeneration as it applies in relation to the Homes and Communities Agency and land which has been vested in or acquired by the Agency.” 5
- (8) In subsection (2) for the “and” at the end of paragraph (a) substitute – 10
- “(aa) references to land which has been vested in or acquired by the Homes and Communities Agency are to be read as references to land which has been vested in or acquired by the Authority for the purposes of housing or regeneration, and”.
- (9) After subsection (4) insert – 15
- “(5) In this section references to the Authority include a company or body through which the Authority exercises functions in relation to housing or regeneration.
- (6) Subsection (5) does not affect the application of Parts 3 and 4 of Schedule 4 to the Housing and Regeneration Act 2008 – 20
- (a) in relation to the acquisition of land by the Authority under this Part, or
- (b) in relation to land in respect of which functions of the Authority relating to housing or regeneration are being or have been exercised.” 25
- (10) In section 208 of the Localism Act 2011 (powers in relation to land acquired by a Mayoral development corporation) for subsection (1) substitute –
- “(1) Schedule 3 to the Housing and Regeneration Act 2008 (powers, in relation to land acquired by the Homes and Communities Agency, to override easements etc, to extinguish public rights of way, and in relation to burial grounds and consecrated land) applies in relation to an MDC and land which has been vested in or acquired by an MDC as it applies in relation to the Homes and Communities Agency and land which has been vested in or acquired by the Agency.” 30
- (11) The amendments made by this section do not apply in relation to land which is disposed of by the Homes and Communities Agency, the Greater London Authority, a company or body through which the Authority exercises functions in relation to housing or regeneration or a Mayoral development corporation before the day on which this section comes into force. 35
- (12) The reference in subsection (11) to land disposed of by the Greater London Authority does not include land disposed of to a company or body through which the Authority exercises functions in relation to housing or regeneration. 40

*Her Majesty's Land Registry*

- 30 Transfer of responsibility for local land charges to Land Registry**
- (1) Schedule 5 (transfer of responsibility for local land charges to Land Registry) has effect.
- (2) In that Schedule—
- (a) Part 1 amends the Local Land Charges Act 1975,
  - (b) Part 2 amends the Land Registration Act 2002,
  - (c) Part 3 amends other Acts, and
  - (d) Part 4 contains transitional provision.
- 31 Conferral of additional powers on Land Registry**
- (1) In section 105 of the Land Registration Act 2002 (power of registrar to provide or arrange for the provision of consultancy or advisory services about the registration of land in England and Wales or elsewhere) in subsection (1) for the words from “, consultancy or advisory services” to the end substitute “—
- (a) consultancy or advisory services about land or other property in England and Wales or elsewhere,
  - (b) information services about land or other property in England and Wales, or
  - (c) services relating to documents or registers which relate to land or other property in England and Wales.”
- (2) For the title to that section substitute “Services relating to land or other property”.
- 32 Transfer of power to nominate member of Rule Committee**
- (1) In section 127(2)(h) of the Land Registration Act 2002 (power of Lord Chancellor to nominate consumer affairs member of Rule Committee) for “Lord Chancellor” substitute “Secretary of State”.
- (2) This section applies in relation to the nomination of a member of the Rule Committee on or after the day on which this section comes into force.
- Off-site carbon abatement measures*
- 33 Provision in building regulations for off-site carbon abatement measures**
- (1) The Building Act 1984 is amended as follows.
- (2) In section 1(1A) (matters that may be covered by building regulations) after paragraph (c) insert “;
- (d) the action to be taken as a result of a building’s contribution to or effect on emissions of carbon dioxide (whether or not from the building itself).”
- (3) Schedule 1 (building regulations) is amended as follows.

(4) After paragraph 7 insert –

- “7A (1) This paragraph applies if building regulations impose a requirement in relation to a building as respects its contribution to or effect on emissions of carbon dioxide (whether or not the requirement relates to emissions from the building itself). 5
- (2) Building regulations may make provision for a person to whom the requirement applies to meet it (in whole or in part) by taking action otherwise than in relation to the building.
- (3) Such action may include –
- (a) doing things which consist of, or cause or contribute, directly or indirectly to – 10
    - (i) reductions in emissions of carbon dioxide, or
    - (ii) the removal of carbon dioxide from the atmosphere;
  - (b) agreeing with another person that the person will do things within paragraph (a); 15
  - (c) making a payment or payments to a fund –
    - (i) which is administered by, or by a person acting on behalf of, the Secretary of State or the Welsh Ministers, and
    - (ii) the proceeds of which are used to pay (directly or indirectly) for activities within paragraph (a). 20
- (4) Provision made under paragraph 4A for the use of certificates as evidence of compliance with building regulations by virtue of action within sub-paragraph (3) may include provision –
- (a) for the creation and maintenance of a register for keeping track of the use of certificates for that purpose; 25
  - (b) about the administration of the register;
  - (c) for charges to be imposed in connection with the registration of any matter in the register or for the disclosure of information held in the register. 30
- (5) If building regulations make provision for the creation and maintenance of a register, building regulations must make provision for the register to be administered by, or by a person acting on behalf of, the Secretary of State or the Welsh Ministers.
- (6) Building regulations made by the Welsh Ministers may make provision for the use, in relation to action taken in respect of a building in Wales, of a register administered by, or by a person acting on behalf of, the Secretary of State. 35
- (7) Building regulations made by the Secretary of State may make provision about the use of such a register for that purpose. 40
- (8) Building regulations may make provision for the creation and maintenance of a fund of a kind referred to in sub-paragraph (3)(c), including provision about –
- (a) the administration of such a fund;
  - (b) the purposes for which proceeds from such a fund may be used. 45
- (9) Building regulations may make provision about –

- (a) the calculation of payments to be made into a fund of a kind referred to in sub-paragraph (3)(c);
  - (b) the maximum payment which may be required to be made into such a fund in respect of a building.
- (10) Building regulations made by the Welsh Ministers may make provision for a payment or payments in respect of a building in Wales to be made to a fund administered by, or by a person acting on behalf of, the Secretary of State. 5
- (11) Building regulations made by the Secretary of State may make provision about the use of such a fund for that purpose. 10
- (12) Paragraph 8(2) does not prevent building regulations from providing for action within sub-paragraph (3) to be taken in relation to a building erected before the date on which the regulations come into force.”
- (5) In paragraph 8(2) (requirement for building regulations not to apply to buildings erected before regulations come into force, subject to exceptions) after “Subject to sub-paragraphs (3) to (6) below and to” insert “paragraph 7A(12) above and”. 15
- (6) The reference to the Building Act 1984 in article 2(a) of the Welsh Ministers (Transfer of Functions) (No 2) Order 2009 (SI 2009/3019) is to be treated as referring to that Act as amended by this section. 20

## PART 5

### ENERGY

#### *The community electricity right*

- 34 The community electricity right** 25
- (1) The Secretary of State may make regulations which give individuals resident in a community or groups connected with a community (or both) the right to buy a stake in a renewable electricity generation facility that is located –
- (a) in the community (if it is a land-based facility), or
  - (b) adjacent to the community (if it is an offshore facility). 30
- (2) The Secretary of State may make regulations about –
- (a) the kind, or kinds, of body which may be a facility operator,
  - (b) ownership of facility operators, and
  - (c) matters relating to the ownership of facility operators (including the rights, duties and powers arising from ownership), 35
- if the Secretary of State considers that the regulations are appropriate in connection with the right to buy.
- (3) The Secretary of State may make regulations about the supply of information in connection with the following –
- (a) the right to buy; 40
  - (b) ownership of stakes in qualifying facilities (including the transfer of ownership);
  - (c) operation of qualifying facilities;



- (d) ownership of facility operators (including matters relating to the ownership of facility operators);
- (e) monitoring and assessing –
  - (i) the operation of the right to buy, and
  - (ii) the ownership of stakes in qualifying facilities. 5
- (4) The Secretary of State may make regulations about the enforcement of obligations imposed by regulations made under any of subsections (1) to (3); and the regulations about enforcement may include –
  - (a) provision for obligations to be enforceable as, or as if they were, generation licence conditions or relevant requirements; 10
  - (b) a power to impose financial penalties for breach of obligations.
- (5) The Secretary of State may by regulations modify –
  - (a) any generation licence condition, or
  - (b) any generation licence exemption,if the Secretary of State considers that the modification is appropriate in connection with regulations made under any of subsections (1) to (4) or this subsection. 15
- (6) Schedule 6 (which describes certain provision that community electricity right regulations can make, including provision about renewable electricity generation facilities, communities, and individuals and groups who may exercise the right to buy) has effect. 20
- (7) In this section, Schedule 6 and section 35 –
  - “community electricity right regulations” means regulations under this section;
  - “electricity generation licence” means a licence granted under section 6(1)(a) of the Electricity Act 1989; 25
  - “facility operator” means a person who generates, or is expected to generate, electricity at a qualifying facility for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - “generation licence condition” means – 30
    - (a) the conditions of a particular electricity generation licence, or
    - (b) the standard conditions so far as they are incorporated in electricity generation licences by virtue of section 8A of the Electricity Act 1989;
  - “generation licence exemption” means an exemption from section 4(1)(a) of the Electricity Act 1989 granted under section 5(1) of that Act; 35
  - “land-based facility” means a renewable electricity generation facility that is not an offshore facility;
  - “offshore facility” means a renewable electricity generation facility that is located in waters in or adjacent to Great Britain that are beyond the mean low water mark; 40
  - “qualifying facility” means a renewable electricity generation facility in relation to which the right to buy is to be, is, or has been, exercisable;
  - “relevant requirement” has the same meaning as in section 25 of the Electricity Act 1989; 45
  - “renewable electricity generation facility” means a facility using a renewable source of energy to generate electricity (and here “renewable source” has the same meaning as in sections 32 to 32LB of the Electricity Act 1989 – see section 32M of that Act) which is located in –

- (a) Great Britain,
  - (b) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea adjacent to Great Britain, but do not form part of that territorial sea, 5
  - (c) the territorial sea adjacent to Great Britain, or
  - (d) the Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004), except for any part of that Zone which forms part of the territorial sea adjacent to Northern Ireland; 10
- “right to buy” means the right to buy a stake in a renewable electricity generation facility that is given by regulations under subsection (1).

### 35 Supplementary provision

- (1) Community electricity right regulations may confer a function on— 15
  - (a) the Secretary of State, or
  - (b) any other person, apart from the Scottish Ministers or the Welsh Ministers.
- (2) The functions that may be imposed include— 20
  - (a) a duty (including a restriction or prohibition);
  - (b) a function involving the exercise of a discretion;
  - (c) a requirement to consult;
  - (d) a requirement to take account of guidance.
- (3) The provisions of section 34, Schedule 6 and this section which specify particular kinds of provision that may be made in community electricity right regulations do not limit the powers conferred by section 34 to make such regulations. 25
- (4) The duties under Schedule 6 to make particular provision in community electricity right regulations do not apply unless the Secretary of State decides to exercise the power conferred by section 34 to make such regulations.
- (5) Provision which commences community electricity right regulations may be framed so as to secure that the regulations do not apply to a renewable electricity generation facility if development of the facility has reached a stage of advancement specified in the commencement provision. 30
- (6) A reference in section 34 or Schedule 6 to buying a stake in a renewable electricity generation facility includes a reference to making a loan in relation to a renewable electricity generation facility. 35
- (7) The Secretary of State must carry out a review of section 34, Schedule 6 and the preceding provisions of this section as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which they come into force. 40

#### *The Extractive Industries Transparency Initiative*

### 36 The Extractive Industries Transparency Initiative

After section 8 of the Commissioners for Revenue and Customs Act 2005

insert –

**“8A The Extractive Industries Transparency Initiative**

- (1) The Commissioners may do anything which they think necessary or expedient in connection with the Extractive Industries Transparency Initiative in so far as it relates to taxes the collection and management of which is the responsibility of the Commissioners. 5
- (2) In this section “the Extractive Industries Transparency Initiative” means the international initiative of that name which has the aim of promoting openness in the management of revenues from natural resources.” 10

*Recovery of UK petroleum*

**37 Maximising economic recovery of UK petroleum**

After section 9 of the Petroleum Act 1998 insert –

“PART 1A

MAXIMISING ECONOMIC RECOVERY OF UK PETROLEUM 15

**9A The principal objective and the strategy**

- (1) In this Part the “principal objective” is the objective of maximising the economic recovery of UK petroleum, in particular through –
- (a) development, construction, deployment and use of equipment used in the petroleum industry (including upstream petroleum infrastructure), and 20
  - (b) collaboration among the following persons –
    - (i) holders of petroleum licences;
    - (ii) operators under petroleum licences;
    - (iii) owners of upstream petroleum infrastructure; 25
    - (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure.
- (2) The Secretary of State must produce one or more strategies for enabling the principal objective to be met.
- (3) A strategy may relate to matters other than those mentioned in subsection (1)(a) and (b). 30
- (4) For provision about producing and revising a strategy, see sections 9F and 9G.

**9B Exercise of certain functions of the Secretary of State**

The Secretary of State must act in accordance with the current strategy or strategies when – 35

- (a) exercising functions under the other Parts of this Act (except Part 4),
- (b) exercising functions under Part 4 to the extent that they concern reduction of the costs of abandonment of offshore installations and submarine pipelines, 40

- 
- (c) exercising functions under Chapter 3 of Part 2 of the Energy Act 2011 (upstream petroleum infrastructure),
  - (d) exercising any function or using any power under a petroleum licence, and
  - (e) exercising any other function or using any power – 5
    - (i) to provide advice or assistance to another person, or
    - (ii) to acquire, use or supply information,
 for the purpose of enabling the principal objective to be met.
- 9C Carrying out of certain petroleum industry activities**
- (1) A person who is the holder of a petroleum licence must act in accordance with the current strategy or strategies when planning and carrying out activities as the licence holder. 10
  - (2) A person who is an operator under a petroleum licence must act in accordance with the current strategy or strategies when planning and carrying out activities as the operator under the licence. 15
  - (3) A person who is the owner of upstream petroleum infrastructure must act in accordance with the current strategy or strategies when planning and carrying out the person’s activities as the owner of upstream petroleum infrastructure (including the development, construction, deployment and use of the infrastructure). 20
  - (4) A person must act in accordance with the current strategy or strategies when planning and carrying out the commissioning of upstream petroleum infrastructure.
- 9D Reports by the Secretary of State**
- (1) As soon as practicable after the end of each reporting period, the Secretary of State must – 25
    - (a) consider the extent to which, during that period, these persons have followed section 9C by acting in accordance with the current strategy or strategies –
      - (i) licence holders, 30
      - (ii) operators under petroleum licences,
      - (iii) owners of upstream petroleum infrastructure, and
      - (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure; and
    - (b) produce a report on the results of the consideration of that question. 35
  - (2) The report may contain other material, including a statement of action which the Secretary of State has taken, or is proposing to take, in response to any matter included in the report (including changes to a strategy). 40
  - (3) The Secretary of State must publish, and lay before each House of Parliament, a copy of each report produced under this section.
  - (4) In this section “reporting period” means –
    - (a) the period of two years beginning with the day when this section comes into force, and 45

- (b) each subsequent period of one year beginning with the day after the end of a previous reporting period.

**9E Secretary of State’s security and resilience functions**

- (1) This Part does not limit the exercise of the Secretary of State’s security and resilience functions. 5
- (2) This Part is subject to the exercise of the security and resilience functions by the Secretary of State.
- (3) In this section “security and resilience function” means any function which relates to – 10
  - (a) the security of petroleum supplies, or
  - (b) the resilience of the petroleum industry.

**9F Producing and revising a strategy**

- (1) The Secretary of State must produce the first strategy before the end of the period of one year beginning with the day on which this section comes into force. 15
- (2) The Secretary of State may subsequently –
  - (a) produce a new strategy, or
  - (b) revise a current strategy,whenever the Secretary of State thinks appropriate.
- (3) The Secretary of State must review each current strategy before the end of each relevant four year period. 20
- (4) In reviewing a current strategy, the Secretary of State must (in particular) take account of the results of any consideration undertaken under section 9D in respect of reporting periods falling within the relevant four year period. 25
- (5) In this section “relevant four year period”, in relation to a current strategy, means a period of four years beginning with –
  - (a) the date on which the strategy was issued, or
  - (b) if later, the date on which the last review under subsection (3) was concluded. 30

**9G Procedure for producing and revising a strategy**

- (1) Before –
  - (a) producing the first strategy,
  - (b) producing a new strategy, or
  - (c) revising a current strategy,the Secretary of State must prepare a draft of the strategy or revised strategy. 35
- (2) The Secretary of State must –
  - (a) consult such persons as the Secretary of State thinks appropriate about the draft, and
  - (b) consider any representations made by them. 40
- (3) If, after complying with that duty, the Secretary of State decides to proceed with the draft (in its original form or with modifications), the

Secretary of State must lay a copy of the draft before each House of Parliament.

- (4) The Secretary of State may not take any further steps in relation to the draft if, within the 40 day period, either House resolves not to approve the draft (a “negative resolution”). 5
- (5) If neither House passes a negative resolution, the Secretary of State may issue the strategy or revised strategy in the form laid before Parliament.
- (6) The strategy or revised strategy comes into force on the date specified by the Secretary of State (which must not be before the date when it is issued). 10
- (7) Subsection (4) does not prevent a new draft of a strategy or revised strategy from being laid before Parliament.
- (8) In this section “40 day period”, in relation to the draft of a strategy or revised strategy, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or if the draft is not laid before each House on the same day, the later of the 2 days on which it is laid). 15
- (9) For the purposes of calculating the 40 day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days. 20

#### **9H “Upstream petroleum infrastructure” and its owners**

- (1) In this Part “upstream petroleum infrastructure” means –  
 (a) a gas processing facility,  
 (b) an oil processing facility, or  
 (c) an upstream petroleum pipeline, 25  
 if and in so far as it meets conditions A and B.
- (2) A facility or pipeline meets condition A if and in so far as it is situated in Great Britain or relevant UK waters.
- (3) A facility or pipeline meets condition B if and in so far as it is used in relation to UK petroleum (including such petroleum after it has been got). 30
- (4) But an upstream petroleum pipeline is not “upstream petroleum infrastructure” if it is a pipeline to which section 17GA applies (petroleum pipelines subject to Norwegian access system).
- (5) In this section, the following expressions have the same meanings as in Chapter 3 of Part 2 of the Energy Act 2011 (see section 90 of that Act) – 35  
 (a) “gas processing facility”;  
 (b) “oil processing facility”;  
 (c) “upstream petroleum pipeline”.
- (6) In this Part, “owner”, in relation to upstream petroleum infrastructure, means – 40  
 (a) a person in whom the pipeline or facility is vested;  
 (b) a lessee and any person occupying or controlling the pipeline or facility; and

- (c) a person who has the right to have things conveyed by the pipeline or processed by the facility.

## 9I Other interpretation

In this Part –

- “current strategy”, in relation to any particular time, means a strategy under section 9A(2) in force at that time; 5
- “operator under a petroleum licence” means a person who is responsible for organising or supervising any of the operations of searching for, boring for, or getting UK petroleum in pursuance of the petroleum licence; 10
- “owner”, in relation to upstream petroleum infrastructure, has the meaning given in section 9H;
- “petroleum” has meaning given in section 1;
- “petroleum licence” means a licence granted under – 15
  - (a) section 3 of this Act, or
  - (b) section 2 of the Petroleum (Production) Act 1934;
- “principal objective” has the meaning given in section 9A;
- “relevant UK waters” means – 20
  - (a) the territorial sea adjacent to the United Kingdom, and
  - (b) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964;
- “UK petroleum” means petroleum which for the time being exists in its natural condition in strata beneath relevant UK waters;
- “upstream petroleum infrastructure” has the meaning given in section 9H.” 25

## 38 Levy on holders of certain energy industry licences

- (1) The Secretary of State may, by regulations, provide for a levy to be imposed on, and be payable by, one or more of the following kinds of persons –
  - (a) persons who hold licences under section 2 of the Petroleum (Production) Act 1934 or licences under section 3 of the Petroleum Act 1998 (exploitation of petroleum); 30
  - (b) persons who hold licences under section 4 of the Energy Act 2008 (unloading and storing gas);
  - (c) persons who hold licences under section 18 of the Energy Act 2008 granted by the Secretary of State (storage of carbon dioxide). 35
- (2) No licensing levy is to be imposed in respect of a time which falls after the end of the period of 3 years beginning with the first day of the first charging period.
- (3) The Secretary of State must exercise the power conferred by subsection (1) so as to secure –
  - (a) that the total amount of licensing levy which is payable in respect of a charging period does not exceed the costs incurred by the Secretary of State in exercising the relevant functions in respect of that period; and 40
  - (b) that no levy is payable in respect of costs incurred in any exercise of relevant functions for which a charge is payable under the Gas and Petroleum (Consents) Charges Regulations 2013 (as those Regulations stand when this section comes into force). 45

- 
- (4) In determining for the purposes of subsection (3)(a) the total amount of licensing levy payable in respect of a charging period, an amount of levy payable in respect of that period may be ignored if (during that period or subsequently) –
- (a) having been paid, it is repaid or credit for it is given against other licensing levy that is payable; or 5
  - (b) having not been paid, the requirement to pay it is cancelled.
- (5) The “relevant functions” referred to in subsection (3) are –
- (a) functions under the following enactments –
    - (i) the Pipe-lines Act 1962 (cross-country pipe-lines); 10
    - (ii) section 3 and the other provisions of Part 1 of the Petroleum Act 1998 (exploitation of petroleum);
    - (iii) Part 1A of the Petroleum Act 1998 (maximising economic recovery of UK petroleum);
    - (iv) Part 3 of the Petroleum Act 1998 (submarine pipelines); 15
    - (v) Part 4 of the Petroleum Act 1998, in so far as the functions concern reduction of the costs of abandonment of offshore installations and submarine pipelines;
    - (vi) section 4 and the other provisions of Chapter 2 of Part 1 of the Energy Act 2008 (importation and storage of combustible gas); 20
    - (vii) section 18 and the other provisions of Chapter 3 of Part 1 of the Energy Act 2008 (storage of carbon dioxide);
    - (viii) Chapter 3 of Part 2 of the Energy Act 2011 (upstream petroleum infrastructure);
  - (b) carrying out policy work on matters relating to UK petroleum and its recovery; 25
  - (c) providing advice and assistance to the petroleum industry on matters relating to UK petroleum and its recovery;
  - (d) collaborating with the petroleum industry on matters relating to UK petroleum and its recovery; 30
  - (e) acquiring, using and supplying information on matters relating to UK petroleum and its recovery;
  - (f) encouraging development of the petroleum industry in relation to the recovery of UK petroleum;
  - (g) carrying out, or providing advice and assistance to those carrying out, research and development in relation to technology and products relevant to the recovery of UK petroleum; 35
  - (h) functions which relate to –
    - (i) the security of petroleum supplies, or
    - (ii) the resilience of the petroleum industry; 40
  - (i) international co-operation on matters relating to UK petroleum and its recovery, including –
    - (i) resolution of disputes relating to the entitlements of different countries in relation to petroleum fields, and
    - (ii) openness and accountability in the management of natural resources. 45
- (6) The matters relating to UK petroleum and its recovery which fall within paragraphs (b), (c), (d) and (e) of subsection (5) include –
- (a) maximising the economic recovery of UK petroleum, and
  - (b) improving the supply chain of UK petroleum. 50



- (7) The amount or amounts of licensing levy payable by licence holders must be –
  - (a) set out in the regulations, or
  - (b) calculated in accordance with a method set out in the regulations.
- (8) The licensing levy is payable to the Secretary of State.
- (9) Schedule 7 (the licensing levy) has effect. 5
- (10) Schedule 7 does not limit the provision that may be made by regulations under this section.
- (11) The Secretary of State may, by regulations, amend subsection (3)(b) by adding, removing or amending a reference to any regulations made under section 188 of the Energy Act 2004. 10
- (12) In this section and Schedule 7 –
  - “charging period” means a period in respect of which licensing levy is payable;
  - “licensing levy” means the levy provided for in regulations under this section; 15
  - “UK petroleum” means petroleum (within the meaning given in section 1 of the Petroleum Act 1998) which for the time being exists in its natural condition in strata beneath –
    - (a) the territorial sea adjacent to the United Kingdom, and
    - (b) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964. 20

*Petroleum and geothermal energy in deep-level land*

**39 Petroleum and geothermal energy: right to use deep-level land**

- (1) A person has the right to use deep-level land in any way for the purposes of exploiting petroleum or deep geothermal energy. 25
- (2) Land is subject to the right of use (whether for the purposes of exploiting petroleum or deep geothermal energy) only if it is –
  - (a) deep-level land, and
  - (b) within a landward area.
- (3) But that does not prevent deep-level land that is within a landward area from being used for the purposes of exploiting petroleum or deep geothermal energy outside a landward area. 30
- (4) Deep-level land is any land at a depth of at least 300 metres below surface level.
- (5) This section confers the right to use Scottish deep-level land for the purposes of exploiting deep geothermal energy only in cases where the sole, or main, use of that energy is to be, or is, the generation of electricity. 35

**40 Further provision about the right of use**

- (1) The ways in which the right of use may be exercised include –
  - (a) drilling, boring, fracturing or otherwise altering deep-level land;
  - (b) installing infrastructure in deep-level land; 40

- 
- (c) keeping, using or removing any infrastructure installed in deep-level land;
  - (d) passing any substance through, or putting any substance into, deep-level land or infrastructure installed in deep-level land;
  - (e) keeping, using or removing any substance put into deep-level land or into infrastructure installed in deep-level land. 5
- (2) The purposes for which the right of use may be exercised include—
- (a) searching for petroleum or deep geothermal energy;
  - (b) assessing the feasibility of exploiting petroleum or deep geothermal energy; 10
  - (c) preparing for exploiting petroleum or deep geothermal energy;
  - (d) decommissioning, and other activity which falls to be continued or undertaken, in consequence of activities undertaken for the purposes of exploiting petroleum or deep geothermal energy.
- (3) The right of use includes the right to leave deep-level land in a different condition from the condition it was in before an exercise of the right of use (including by leaving any infrastructure or substance in the land). 15
- (4) The right of use—
- (a) does not give a person (“R”) any power which is greater than, or different from, the power which R would have had if the right had been granted by a person legally entitled to grant it; and 20
  - (b) does not relieve a person (“R”) from any obligation or liability to which R would have been subject if the right had been granted by a person legally entitled to grant it.
- (5) A person (“L”) who owns land (the “relevant land”) is not liable, as the owner of that land, in tort or delict for any loss or damage which is attributable to the exercise, or proposed exercise, of the right of use by another person (whether in relation to the relevant land or any other land). 25
- (6) For that purpose, loss or damage is not attributable to the exercise, or proposed exercise, of the right of use (in particular) if, or to the extent that, the loss or damage is attributable to a deliberate omission by L. 30
- (7) There is a “deliberate omission by L” if L, as owner of the relevant land, decides—
- (a) not to do an act, or
  - (b) not to allow another person to do an act, 35
- and the circumstances at the time of that decision were such that L would not have had to bear any of the costs incurred (whether by L or any other person) in doing or allowing the act.
- (8) Section 39 and this section bind the Crown.
- 41 Payment scheme 40**
- (1) The Secretary of State may, by regulations, require relevant energy undertakings to make payments in respect of the proposed exercise, or exercise, of the right of use.
- (2) The regulations may require payments to be made—
- (a) to owners of relevant land or interests in relevant land; 45

- (b) to other persons for the benefit of areas in which relevant land is situated.
- (3) The regulations may –
  - (a) specify the amount or amounts of payments;
  - (b) make provision for determining the amount or amounts of payments. 5
- (4) The regulations may require relevant energy undertakings to provide the Secretary of State, or any other specified person, with specified information about –
  - (a) the proposed exercise, or exercise, of the right of use;
  - (b) the making of payments in accordance with regulations under this section. 10
- (5) Before making any regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

#### 42 Notice scheme

- (1) The Secretary of State may, by regulations, require relevant energy undertakings to give notice of the proposed exercise, or exercise, of the right of use. 15
- (2) The regulations may require relevant energy undertakings –
  - (a) to give notice –
    - (i) to owners of relevant land or interests in relevant land; 20
    - (ii) to persons of other specified descriptions;
  - (b) to display notice within the area in which relevant land is situated or elsewhere;
  - (c) to publish notice (otherwise than by displaying the notice).
- (3) The regulations may make provision about the information which the notice is to contain, including provision about information relating to –
  - (a) any payment scheme regulations which are in force;
  - (b) the application of any payment scheme regulations to the proposed exercise, or exercise, of the right of use;
  - (c) the method for obtaining a payment under any payment scheme regulations. 30
- (4) The regulations may make provision about the manner in which notice is to be given, displayed or published, including provision requiring notice to be –
  - (a) displayed at specified places or places of specified descriptions;
  - (b) published in specified publications or publications of specified descriptions. 35
- (5) The regulations may require relevant energy undertakings to provide the Secretary of State, or any other specified person, with specified information about –
  - (a) the proposed exercise, or exercise, of the right of use; 40
  - (b) the giving of notice in accordance with regulations under this section.
- (6) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

- (7) In this section “payment scheme regulations” means regulations under section 41.

#### 43 Payment and notice schemes: supplementary provision

- (1) Regulations under section 41 or 42 may make provision about the enforcement of relevant requirements, including provision for the imposition of financial penalties in respect of breach of relevant requirements. 5
- (2) Regulations under section 41 or 42 may confer a function on—
- (a) the Secretary of State, or
  - (b) any other person, apart from the Scottish Ministers or the Welsh Ministers. 10
- (3) The functions that may be imposed include—
- (a) a duty (including a restriction or prohibition);
  - (b) a function involving the exercise of a discretion;
  - (c) a requirement to consult.
- (4) The provisions of sections 41 and 42 and this section which specify particular kinds of provision that may be made in regulations under section 41 or 42 do not limit the powers conferred by that section to make such regulations. 15
- (5) The Secretary of State must carry out a review of sections 41 and 42 and the preceding provisions of this section as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which they come into force. 20
- (6) The Secretary of State must by regulations—
- (a) repeal section 41, and make any consequential amendments (including repeals) of the other provisions of this Act that the Secretary of State considers appropriate, if the relevant conditions are met in relation to the power under section 41; 25
  - (b) repeal section 42, and make any consequential amendments (including repeals) of the other provisions of this Act that the Secretary of State considers appropriate, if the relevant conditions are met in relation to the power under section 42. 30
- (7) The relevant conditions are met in relation to the power under section 41 or the power under section 42 if—
- (a) that power is not exercised within the period of 7 years beginning with the day on which that section comes into force, and
  - (b) the Secretary of State is satisfied that there is no convincing case for retaining that power. 35

#### 44 Interpretation

- (1) For the purposes of deciding whether land is deep-level land—
- (a) the depth of a point in land below surface level is the distance between that point and the surface of the land vertically above that point; and 40
  - (b) in determining what is the surface of the land, any building or other structure on the land, and any water covering the land, must be ignored.
- (2) In sections 39 to 43 and this section—

- “deep geothermal energy” means geothermal energy in deep-level land (including in water or any other fluid in deep-level land);
- “deep-level land” has the meaning given in section 39(4);
- “landward area” has the same meaning as in the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (see regulation 1(2) of those Regulations); 5
- “petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998 (see section 1 of that Act);
- “relevant energy undertaking” means a person who proposes to exercise, or exercises, the right of use; 10
- “relevant land” means land in respect of which the right of use is proposed to be, or is, exercised;
- “relevant requirement” means a requirement imposed by regulations under section 41 or 42;
- “right of use” means the right conferred by section 39; 15
- “Scottish deep-level land” means deep-level land in Scotland or beneath waters adjacent to Scotland;
- “specified” means specified in regulations under section 41 or 42;
- “substance” includes electricity and any other intangible thing.
- (3) The power of the Secretary of State to make regulations under section 4 of the Petroleum Act 1998 includes power to make such amendments of the definition of “landward area” in subsection (2) above as the Secretary of State considers appropriate in consequence of any other exercise of the power under section 4 of the 1998 Act. 20

*Renewable heat incentives* 25

**45 Renewable heat incentives**

- (1) Section 100 of the Energy Act 2008 (renewable heat incentives) is amended in accordance with subsections (2) to (4).
- (2) After subsection (1) insert –
- “(1A) Regulations under this section may confer any function on any person. 30
- (1B) Regulations under this section may provide for a function conferred on a person to be exercisable on behalf of another person.”
- (3) In subsection (2) –
- (a) in paragraph (a), for the words before sub-paragraph (i) substitute – 35
- “(a) make provision giving any of the following persons entitlements to payments (“RHI payments”) in specified circumstances –”;
- (b) in paragraph (b), for “such payments” substitute “RHI payments”;
- (c) after paragraph (b) insert – 40
- “(ba) make provision about the circumstances in which, and descriptions of persons to whom, the whole or a part of an entitlement to an RHI payment may be assigned (whether the person has the entitlement by virtue of regulations under paragraph (a) or regulations under this paragraph); 45

- 
- (bb) authorise or require the Secretary of State, the Authority, designated fossil fuel suppliers, or any person with any other administration function, to make an RHI payment –
- (i) to the person who is entitled to the payment by virtue of regulations under paragraph (a), or 5
  - (ii) where that entitlement has been wholly or partly assigned in accordance with regulations under this section, to the person or persons for the time being enjoying the entitlement or any part of it;” 10
- (d) in paragraph (c), for “such payments” substitute “RHI payments”;
- (e) for paragraph (d) substitute –
- “(d) authorise or require a person to provide specified information;”;
- (f) in paragraph (e), omit “to the Secretary of State or the Authority”; 15
- (g) in paragraph (h), omit “for the Secretary of State or the Authority”;
- (h) omit paragraph (i);
- (i) at the end insert –
- “(j) authorise the Secretary of State to make payments to a person in respect of the exercise by the person of functions under regulations under this section; 20
  - (k) make provision about the resolution of disputes relating to the exercise of functions under regulations under this section, including provision about arbitration or appeals (which may, in particular, provide for the person conducting an arbitration or determining an appeal to order the payment of costs or compensation).” 25
- (4) In subsection (3), after the definition of “fossil fuel supplier” insert –
- ““other administration function” means a function relating to the administration of a scheme established under this section, other than a function conferred by regulations under subsection (2)(bb);”.
- (5) Section 105 of the Energy Act 2008 (Parliamentary control of subordinate legislation) is amended in accordance with subsections (6) to (8).
- (6) In subsection (2) – 35
- (a) in paragraph (a), omit sub-paragraph (vi);
  - (b) after paragraph (aa) insert –
    - “(ab) regulations which contain (whether alone or together with other provision) affirmative resolution provision made under section 100 (renewable heat incentives);”.
- (7) In subsection (3), after “(2)(a)” insert “, (ab)”
- (8) After subsection (3) insert –
- “(3A) Provision made under section 100 is affirmative resolution provision if –
- (a) the provision is made under any of the powers which always attract the affirmative resolution procedure, or 45
  - (b) the provision –
    - (i) is not made under any of those powers, and

- (ii) meets condition A, B, C or D.
- (3B) The powers which always attract the affirmative resolution procedure are the powers conferred by –
- (a) section 100(2)(c), (e), (f), (g), (h) and (k),
  - (b) section 100(5), and
  - (c) section 100(6).
- (3C) Provision meets condition A if –
- (a) it is made under the power conferred by section 100(2)(bb), and
  - (b) it requires a designated fossil fuel supplier to make a payment under an RHI scheme.
- (3D) Provision meets condition B if –
- (a) it confers an administration function on a person who is not the Secretary of State or the Authority, and
  - (b) the time when the provision comes into force will be the first time that an administration function under the RHI scheme concerned is exercisable by a person who is not the Secretary of State or the Authority.
- (3E) Provision meets condition C if –
- (a) it is made under a power conferred by paragraph (ba) or (bb)(ii) of section 100(2),
  - (b) it is made in relation to an RHI scheme that was in existence immediately before the coming into force of this subsection, and
  - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3F) Provision meets condition D if –
- (a) it is made under a power conferred by paragraph (a), (b), (ba), (bb), (d) or (j) of section 100(2),
  - (b) it is made in relation to an RHI scheme that was not in existence immediately before the coming into force of this subsection, and
  - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3G) In deciding whether provision meets condition B, the following matters must be ignored –
- (a) for the purposes of subsection (3D)(a): any provision which confers a payment function on designated fossil fuel suppliers;
  - (b) for the purposes of subsection (3D)(b): any payment function under the RHI scheme concerned which (before the time when the provision comes into force) is, or has been, exercisable by designated fossil fuel suppliers.
- (3H) The fact that provision is to some extent made under a power conferred by section 100(1), (1A) or (1B) does not prevent that provision from being taken (for the purposes of subsections (3A) to (3F)) as being made under any other power conferred by section 100.
- (3I) In subsections (3B) to (3H) and this subsection –
- “administration function” means a function relating to the administration of an RHI scheme;

- “designated fossil fuel suppliers” has the same meaning as in section 100;
- “payment function” means a function of making a payment under an RHI scheme (whether the function authorises or requires the making of the payment); 5
- “RHI scheme” means a scheme under section 100 to facilitate and encourage renewable generation of heat.”
- (9) In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information), in subsection (3) – 10
- (a) in paragraph (a), omit “or section 100”;
- (b) after paragraph (a) insert –
- “(aa) it is made for the purpose of facilitating any functions of any person under section 100 of the Energy Act 2008;”.

*Reimbursement of persons who have met expenses*

**46 Reimbursement of persons who have met expenses of making electrical connections** 15

- (1) The Electricity Act 1989 is amended in accordance with this section.
- (2) In section 19 (power to recover expenditure) – 20
- (a) omit subsections (2) and (3);
- (b) after subsection (3) insert –
- “(3A) Schedule 5B (reimbursement of persons who have met expenses) has effect.”;
- (c) in subsection (4), after “this section” insert “and Schedule 5B”.
- (3) After Schedule 5A insert –

“SCHEDULE 5B 25

REIMBURSEMENT OF PERSONS WHO HAVE MET EXPENSES

*Power to make regulations*

- 1 (1) The Secretary of State may, by regulations, make provision entitling the relevant electricity distributor to exercise the reimbursement powers in cases where conditions A, B, C and D are met. 30
- (2) Condition A is met if any electric line or electrical plant is provided for the purpose of making a connection (the “first connection”) –
- (a) between premises and a distribution system, or
- (b) between two distribution systems.
- (3) Condition B is met if a payment in respect of first connection expenses is made by one or more of the following persons – 35
- (a) a person requiring the first connection in pursuance of section 16(1);
- (b) a person who otherwise causes the first connection to be made (including by means of contractual arrangements). 40



- (4) Condition C is met if any electric line or electric plant provided for the purpose of making the first connection is used for the purpose of making another connection (the “second connection”) –
  - (a) between premises and a distribution system, or
  - (b) between two distribution systems. 5
- (5) Condition D is met if the second connection is made within the prescribed period after the first connection was made.
- (6) “First connection expenses” are any expenses reasonably incurred by a person in providing any electric line or electric plant for the purpose of making the first connection. 10
- (7) It does not matter whether the first connection, or the second connection, is made by an electricity distributor or a person of another description.

*The reimbursement powers*

- 2 (1) The “reimbursement powers” are – 15
  - (a) the power to demand a reimbursement payment from –
    - (i) a person requiring the second connection in pursuance of section 16(1), or
    - (ii) a person who otherwise causes the second connection to be made (including by means of contractual arrangements); and 20
  - (b) the power to apply the reimbursement payment in making such payments as may be appropriate towards reimbursing any persons for any payments they were previously required to make in respect of first connection expenses (whether that requirement arose by virtue of paragraph (a) or otherwise). 25
- (2) A “reimbursement payment” is a payment, of such amount as may be reasonable in all the circumstances, in respect of first connection expenses.

*Other provision about regulations under this Schedule* 30

- 3 (1) The Secretary of State must consult the Authority before making regulations under this Schedule.
- (2) Regulations under this Schedule may make provision requiring relevant electricity distributors to exercise a reimbursement power (whether in all cases or in cases provided for in the regulations). 35
- (3) Regulations under this Schedule may make provision for the relevant electricity distributor to establish or estimate the amount of first connection expenses – or an amount of any aspect of those expenses – in cases where that distributor is not the person who made the first connection. 40
- (4) Regulations under sub-paragraph (3) may not require any person to supply the relevant electricity distributor with information about any expenses incurred.

- (5) Regulations under sub-paragraph (3) may provide for an estimate of an amount of first connection expenses to be calculated by a relevant electricity distributor by reference only to a combination of –
- (a) expenses which that distributor would incur if that distributor were making the connection at the time of the estimate, and 5
  - (b) changes in prices since the time when the connection was actually made.

*Interpretation*

- 4 (1) In this Schedule – 10
- “first connection” has the meaning given in paragraph 1;
  - “first connection expenses” has the meaning given in paragraph 1;
  - “reimbursement payment” has the meaning given in paragraph 2; 15
  - “reimbursement powers” has the meaning given in paragraph 2;
  - “relevant electricity distributor”, in relation to the exercise of a reimbursement power, means –
    - (a) in a case where the first connection was made 20
      - between premises and a distribution system, the electricity distributor that (at the time of the exercise of the power) operates that distribution system;
    - (b) in a case where the first connection was made 25
      - between two distribution systems, the electricity distributor that (at the time of the exercise of the power) operates the distribution system into which the first connection has been, or is expected to be, incorporated.
- (2) A reference in this Schedule to a payment in respect of first connection expenses includes a reference to such a payment made in pursuance of section 19(1).” 30
- (4) In section 16 (duty to connect on request), in subsection (4), after “23” insert “and Schedule 5B”. 35
- (5) In section 16A (procedure for requiring a connection), in subsection (5)(b) – 35
- (a) omit “or regulations under section 19(2)”;
  - (b) after “19(2)” insert “or regulations under Schedule 5B”.
- (6) In section 23 (determination of disputes) –
- (a) after subsection (1) insert –
    - “(1ZA) This section also applies to any dispute arising under 40
      - regulations under Schedule 5B between –
      - (a) an electricity distributor, and
      - (b) a person in respect of whom the electricity distributor exercises the reimbursement powers conferred by the regulations.”; 45

- (b) after subsection (1C) insert –
- “(1D) No dispute arising under regulations under Schedule 5B may be referred to the Authority after the end of the period of 12 months beginning with the time when the second connection (within the meaning of Schedule 5B) is made.”; 5
- (c) after subsection (2) insert –
- “(2A) Where a dispute arising under regulations under Schedule 5B falls to be determined under this section, the Authority may give directions as to the circumstances in which, and the terms on which, an electricity distributor is to make or (as the case may be) to maintain the second connection (within the meaning of Schedule 5B) pending the determination of the dispute.”; 10
- (d) in subsection (4), after “(2)” insert “, (2A)”.

*Consequential provision*

**47 Consequential provision** 15

- (1) The Secretary of State may by regulations make consequential provision in connection with any provision made by or under this Part (other than section 36).
- (2) Regulations under this section may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of an Act, only if the Act was passed before the end of the Session in which this Act is passed). 20
- (3) In this section “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.

**PART 6**

**PUBLIC WORKS LOAN COMMISSIONERS** 25

**48 Power to abolish Public Works Loan Commissioners**

In the Public Bodies Act 2011, in Schedule 1 (power to abolish: bodies and offices), after “Plant Varieties and Seeds Tribunal.” insert –  
“Public Works Loan Commissioners.”

**PART 7** 30

**THE ELECTRONIC COMMUNICATIONS CODE**

**49 The electronic communications code**

- (1) In the Telecommunications Act 1984 omit Schedule 2 (the telecommunications code).
- (2) Before Schedule 4 to the Communications Act 2003 insert the Schedule 3A set out in Schedule 8 to this Act. 35
- (3) Section 106 of the Communications Act 2003 (application of the electronic communications code) is amended as follows.

- (4) In subsection (1) for “the code set out in Schedule 2 to the Telecommunications Act 1984 (c 12).” substitute “the code set out in Schedule 3A.”
- (5) Omit subsection (2).
- (6) In subsection (4)(b) for “conduits” substitute “infrastructure”.
- (7) In subsection (5)(c) for “conduit system” in each place substitute “system of infrastructure”.
- (8) In subsection (6) for “16(3)” substitute “82(7)”.
- (9) Omit subsection (7).
- (10) Schedule 9 (the electronic communications code: consequential amendments) has effect.
- (11) The Secretary of State may by regulations make consequential provision in connection with any provision made by or under this section or Schedule 8 or 9.
- (12) Regulations under subsection (11) may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of primary legislation, only if the primary legislation was passed or made before the end of the Session in which this Act is passed).
- (13) The Secretary of State may by regulations amend the electronic communications code set out in Schedule 3A to the Communications Act 2003 for the purposes of ensuring that the provisions of the code are consistent with the law of Scotland or Northern Ireland.
- (14) In this section –
- “enactment” includes –
- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,
- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
- (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and
- (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;
- “primary legislation” means –
- (a) an Act of Parliament,
- (b) a Measure or Act of the National Assembly for Wales,
- (c) an Act of the Scottish Parliament, or
- (d) Northern Ireland legislation.

## PART 8

### GENERAL PROVISIONS

#### 50 Regulations and orders

- (1) Regulations and orders made by the Secretary of State, the Treasury or the Welsh Ministers under this Act are to be made by statutory instrument.
- (2) A statutory instrument which contains an order under section 1 –

- (a) appointing a strategic highways company for an area other than the whole of England, and
  - (b) which is the first exercise of the power in respect of such an area, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 5
- (3) A statutory instrument which contains an order under section 1 –
  - (a) appointing a strategic highways company for an area other than the whole of England, and
  - (b) which is a subsequent exercise of the power in respect of such an area, is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (4) A statutory instrument containing (whether alone or with other provisions) –
  - (a) regulations under section 16,
  - (b) regulations under section 34 or 38(11),
  - (c) regulations under section 41, 42 or 43, 15
  - (d) regulations under section 17(1)(a), 27 or 47 which amend, repeal or modify the application of an Act, or
  - (e) regulations under section 49 which amend, repeal or modify the application of primary legislation within the meaning of that section, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 20
- (5) Subsection (4) does not apply to a statutory instrument containing only regulations under section 34(5)(b).
- (6) A statutory instrument –
  - (a) which contains regulations under this Act other than under section 14 or 52, and 25
  - (b) to which subsection (4) does not apply, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory instrument which contains regulations under section 14 is subject to annulment in pursuance of a resolution of the House of Commons. 30
- (8) A power to make regulations under this Act may be used –
  - (a) to make different provision for different purposes;
  - (b) in relation to all or only some of the purposes for which it may be used.
- (9) Regulations under this Act may include incidental, supplementary, consequential, transitional, transitory or saving provision. 35
- (10) Subsections (8) and (9) do not apply to regulations under section 52.

## 51 Extent

- (1) Part 1 (strategic highways companies) extends to England and Wales only, save that – 40
  - (a) sections 14 and 16 to 18 extend to England and Wales, Scotland and Northern Ireland, and
  - (b) an amendment or repeal made by that Part, other than the amendment made by section 15(7), has the same extent as the provision to which it relates. 45

- 
- (2) In Part 2 (powers of British Transport Police Force) –
    - (a) section 19(1) extends to England and Wales only, and
    - (b) section 19(2) extends to England and Wales and Scotland.
  - (3) Part 3 (environmental control of animal and plant species) extends to England and Wales only. 5
  - (4) In Part 4 (planning, land and buildings) –
    - (a) an amendment or repeal has the same extent as the provision to which it relates, and
    - (b) sections 27(2) to (4) and 29(11) and (12), Part 4 of Schedule 5 and section 30 so far as applying to that Part and section 33(6) extend to England and Wales only. 10
  - (5) In Part 5 (energy) –
    - (a) sections 34 and 35, sections 37 and 38, sections 39 to 44, section 45, section 46, section 47, and Schedules 6 and 7 extend to England and Wales and Scotland, and 15
    - (b) section 36 extends to England and Wales, Scotland and Northern Ireland.
  - (6) Part 6 (Public Works Loan Commissioners) extends to England and Wales, Scotland and Northern Ireland.
  - (7) Part 7 (the electronic communications code) extends to England and Wales, Scotland and Northern Ireland, save that an amendment or repeal made by that Part has the same extent as the provision to which it relates. 20
  - (8) The power in section 411(6) of the Communications Act 2003 (power to extend provisions of Act to Channel Islands and Isle of Man) is exercisable in relation to the amendments of that Act made by or under Part 7. 25
  - (9) This Part extends to England and Wales, Scotland and Northern Ireland.

## 52 Commencement

- (1) Part 1 (strategic highways companies) comes into force –
  - (a) in so far as it confers power to make regulations, on the day on which this Act is passed, and 30
  - (b) for all other purposes, on such day as the Secretary of State appoints by regulations.
- (2) Part 2 (powers of British Transport Police Force) comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) Part 3 (environmental control of animal and plant species) – 35
  - (a) so far as it relates to England, comes into force on such day as the Secretary of State appoints by regulations, and
  - (b) so far as it relates to Wales, comes into force on such day as the Welsh Ministers appoint by regulations.
- (4) In Part 4 (planning, land and buildings) – 40
  - (a) sections 23, 24 and 33 come into force on such day as the Secretary of State appoints by regulations,
  - (b) section 25 comes into force –

- (i) in so far as it confers power to make regulations, on the day on which this Act is passed, and
    - (ii) for all other purposes, on such day as the Secretary of State appoints by regulations,
  - (c) section 26 comes into force on the day on which this Act is passed, 5
  - (d) section 27 and Schedule 4 come into force –
    - (i) in so far as they confer power to make provision by regulations or by development order within the meaning of the Town and Country Planning Act 1990, on the day on which this Act is passed, and 10
    - (ii) for all other purposes, on such day as the Secretary of State appoints by regulations, and
  - (e) sections 28, 29, 30, 31 and 32 and Schedule 5 come into force at the end of the period of two months beginning with the day on which this Act is passed. 15
- (5) In the case of section 30 and Schedule 5, subsection (4) has effect subject to Part 4 of that Schedule.
- (6) In Part 5 (energy) –
  - (a) sections 34 and 35 and Schedule 6 come into force on 1 June 2016,
  - (b) section 36 and sections 39 to 44 come into force at the end of the period of two months beginning with the day on which this Act is passed, 20
  - (c) sections 37 and 38, section 46 and Schedule 7 come into force on such day as the Secretary of State appoints by regulations, and
  - (d) section 45 and section 47 come into force on the day on which this Act is passed. 25
- (7) Part 6 (Public Works Loan Commissioners) comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (8) Part 7 (the electronic communications code) comes into force on such day as the Secretary of State appoints by regulations.
- (9) This Part comes into force on the day on which this Act is passed. 30
- (10) Regulations under subsection (1)(b), (3), (4)(a), (b)(ii) or (d)(ii), (6)(c) or (8) may appoint different days for different purposes or areas.
- (11) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act, other than Part 3 so far as it relates to Wales. 35
- (12) The Welsh Ministers may by regulations make transitional, transitory or saving provision in connection with the coming into force of Part 3 so far as it relates to Wales.

### 53 Short title

This Act may be cited as the Infrastructure Act 2015. 40

## SCHEDULES

### SCHEDULE 1

Section 1

#### STRATEGIC HIGHWAYS COMPANIES: CONSEQUENTIAL AND SUPPLEMENTAL AMENDMENTS

##### PART 1

#### HIGHWAYS ACT 1980 5

- 1 The Highways Act 1980 is amended as follows.
- 2 (1) Section 1 (highway authorities: general provision) is amended as follows.
  - (2) In subsection (1) –
    - (a) after “Minister is” insert “, subject to subsection (1A),”;
    - (b) after paragraph (d) insert – 10
      - “(e) any highway for which he becomes the highway authority by virtue of section 2 of the Infrastructure Act 2015.”
  - (3) After subsection (1) insert –
    - “(1A) A strategic highways company is the highway authority for – 15
      - (a) any highway specified in the appointment of the company in accordance with Part 1 of the Infrastructure Act 2015;
      - (b) any highway that is directed to become a trunk road and for which that company is directed to be highway authority under section 10; 20
      - (c) any special road provided by the company;
      - (d) any highway for which an order made under any enactment expressly provides for that company to be the highway authority;
      - (e) any highway transferred to the company by an order under section 14 or 18; 25
      - (f) any other highway constructed by the company except where –
        - (i) by virtue of section 4(3) or 5(2) or some other enactment, a local highway authority is the highway authority for it; or 30
        - (ii) by means of an order under section 14 or 18 the highway is transferred to a local highway authority.Paragraphs (a), (b) and (f) do not apply where a local highway authority becomes the highway authority by virtue of section 2.” 35
- (4) In subsections (2) and (3) to (4) –
  - (a) after “subsection (1)” insert “or (1A)”;



- (b) after “Minister” insert “or a strategic highways company”.
- 3 In section 2 (highway authority for road which ceases to be a trunk road), in subsection (2) –
- (a) after the first “Minister” insert “or by a strategic highways company”; 5
- (b) after the second “Minister” insert “or the company”.
- 4 (1) Section 3 (highway authority for approaches to and parts of certain bridges) is amended as follows.
- (2) In subsection (1), after the first “Minister” insert “or a strategic highways company”. 10
- (3) In subsection (3), after “Minister” insert “or a strategic highways company”.
- 5 (1) Section 4 (agreement for exercise by Minister of certain functions of local highway authority as respects highway affected by construction etc of trunk road) is amended as follows.
- (2) In subsection (1) – 15
- (a) after the first “Minister” insert “or a strategic highways company, whichever is the highway authority for a trunk road (“the trunk road authority”);
- (b) for the second “Minister” substitute “trunk road authority”;
- (c) for “a trunk road”, wherever occurring, substitute “that trunk road”. 20
- (3) In subsection (2) –
- (a) for “Minister”, wherever occurring, substitute “trunk road authority”;
- (b) for “he” substitute “the trunk road authority”.
- (4) In subsection (3) – 25
- (a) omit “by him”;
- (b) for “Minister” substitute “trunk road authority”.
- (5) In subsections (4) and (5), for “Minister”, wherever occurring, substitute “trunk road authority”.
- (6) In the heading, after “Minister” insert “or strategic highways company”. 30
- 6 (1) Section 5 (agreement for local highway authority to maintain and improve certain highways constructed or to be constructed by Minister) is amended as follows.
- (2) In subsection (1) –
- (a) after the first “Minister” insert “or a strategic highways company”; 35
- (b) for “their” substitute “the local highway authority’s”;
- (c) after the second “Minister” insert “or the company”.
- (3) In the heading, after “Minister” insert “or strategic highways company”.
- 7 (1) Section 6 (delegation etc of functions with respect to trunk roads) is amended as follows. 40
- (2) In subsection (1) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) after “his” insert “or its”;

- (c) after “him” insert “or it”.
- (3) In subsection (1A) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) for “their”, wherever occurring, substitute “that council’s”.
- (4) In subsection (1B) – 5
- (a) after “Minister” insert “or a strategic highways company”;
- (b) for “their” substitute “that council’s”.
- (5) In subsection (2) –
- (a) after “Minister”, wherever occurring, insert “or a strategic highways company”;
- (b) for “he may attach” substitute “may be attached”. 10
- (6) In subsection (3) –
- (a) after “Minister”, wherever occurring, insert “or a strategic highways company”;
- (b) after “he” insert “or the company”;
- (c) after “him” insert “or the company”. 15
- (7) In subsection (4), after “Minister”, wherever occurring, insert “or a strategic highways company”.
- (8) In subsection (5) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) in paragraph (b), for “them” substitute “the council”. 20
- (9) In subsection (6), after “Minister”, wherever occurring, insert “or a strategic highways company”.
- (10) In subsection (8) –
- (a) after “Minister”, wherever occurring, insert “or a strategic highways company”.
- (b) after “his” substitute “or the company’s”. 25
- 8 (1) Section 8 (agreements between local highway authorities for doing of certain works) is amended as follows.
- (2) In subsection (1) – 30
- (a) after “local highway authorities” insert “and strategic highways companies”;
- (b) for “each other” substitute “other such authorities and companies”.
- (3) In the heading, after “local highway authorities” insert “and strategic highways companies”. 35
- 9 (1) Section 9 (seconding of staff etc) is amended as follows.
- (2) In subsection (1) –
- (a) after “Minister” insert “or a strategic highways company”.
- (b) after “his”, wherever occurring, insert “or the company’s”.
- (3) In subsection (2), after “Minister” insert “or a strategic highways company”. 40
- 10 (1) Section 10 (general provision as to trunk roads) is amended as follows.

- (2) In subsection (2)(a)(i), after “Minister” insert “or a strategic highways company”.
- (3) After subsection (3) insert –
- “(3A) The power to direct that a highway or proposed highway become a trunk road includes the power to direct that a strategic highways company is the highway authority for that trunk road.” 5
- (4) In subsection (8), after “Minister” insert “or a strategic highways company”.
- 11 (1) Section 11 (local and private Act functions with respect to trunk roads) is amended as follows.
- (2) In subsection (1), after “Minister alone” insert “or a strategic highways company alone, whichever is highway authority for the trunk road (“the trunk road authority”),”.
- (3) In subsection (2), in paragraphs (a), (b) and (c), for “Minister”, wherever occurring, substitute “trunk road authority”.
- 12 In section 14 (powers as respects roads that cross or join trunk or classified roads), in subsection (3) – 15
- (a) in paragraph (a), after “trunk road” insert “for which he is the highway authority”;
- (b) in paragraph (b), for “in relation to a classified road” substitute “in any other case”. 20
- 13 (1) Section 16 (general provision as to special roads) is amended as follows.
- (2) For subsection (4) substitute –
- “(4) A reference in this Act to a special road authority is a reference to –
- (a) except where paragraph (b) or (c) applies, a highway authority authorised to provide a special road by means of – 25
- (i) a scheme under this section, or
- (ii) a scheme referred to in subsection (1);
- (b) except where paragraph (c) applies, the highway authority determined to be the special road authority by a jointly submitted scheme under subsection (10); 30
- (c) a strategic highways company, where the company is the highway authority for a special road by virtue of an appointment under Part 1 of the Infrastructure Act 2015.”
- (3) In subsection (6)(b) –
- (a) for “the case” substitute “any other case”; 35
- (b) omit “local”.
- (4) In subsection (10) –
- (a) omit “local”;
- (b) omit from “, references in this Act” to the end.
- 14 In section 18 (supplementary orders relating to special roads), in subsection (3)(b) – 40
- (a) for “the case” substitute “any other case”;
- (b) omit “local”.

- 
- 15 In section 19 (certain special roads and other highways to become trunk roads), in subsections (1) and (2), after “Minister”, wherever occurring, insert “or a strategic highways company”.
- 16 (1) Section 23 (compensation in respect of certain works executed in pursuance of orders under section 14 or 18) is amended as follows. 5
- (2) After the first “Minister,” insert “a strategic highways company,”.
- (3) After the second “Minister,” insert “the strategic highways company,”.
- 17 (1) Section 24 (construction of new highways and provision of road-ferries) is amended as follows.
- (2) In subsection (1) – 10
- (a) after “Minister” insert “or a strategic highways company”;
- (b) omit “, with the approval of the Treasury,”;
- (c) after “he”, wherever occurring, insert “or it”;
- (d) in paragraph (d), after “him” insert “or it”;
- (e) in the words following paragraph (d), after “his” insert “or its”. 15
- (3) After subsection (1) insert –
- “(1A) Where a strategic highways company proposes to construct a highway which will communicate with a highway for which another strategic highways company is the highway authority, the communication shall not be made unless the manner in which it is to be made has been approved by the Secretary of State.” 20
- (4) In subsection (2) –
- (a) after the first “Minister” insert “or a strategic highways company”;
- (b) after the second “Minister” insert “or the company”.
- 18 (1) Section 26 (compulsory powers for creation of footpaths, bridleways and restricted byways) is amended as follows. 25
- (2) In subsection (1) –
- (a) after “local authority” insert “or a strategic highways company”;
- (b) after “the authority” insert “or company”;
- (c) after “them”, wherever occurring, insert “or it”. 30
- (3) In subsection (3) –
- (a) after the first “local authority” insert “and a strategic highways company”;
- (b) omit “other”.
- (4) In subsection (3A)(b), after “local authority” insert “and a strategic highways company”. 35
- 19 In section 38 (power of highway authorities to adopt by agreement), in subsection (1), after “Minister,” insert “or a strategic highways company, whichever is the highway authority”.
- 20 (1) Section 41 (duty to maintain highways maintainable at public expense) is amended as follows. 40
- (2) In subsection (2), after “him” insert “or a strategic highways company”.

- (3) In subsection (4)(b), after “Minister” insert “or the strategic highways company”.
- (4) In subsection (5), after the second “Minister” insert “or the strategic highways company”.
- 21 (1) Section 55 (extinguishment of liability to maintain or improve bridges comprised in trunk roads and special roads) is amended as follows. 5
- (2) In subsection (1), after “Minister” insert “or a strategic highways company (“the trunk road authority”)”.
- (3) In subsection (2) –
- (a) for the first “Minister” substitute “trunk road authority”; 10
- (b) for the second “Minister” substitute “authority”.
- (4) In subsection (3), for “Minister”, wherever occurring, substitute “trunk road authority”.
- (5) In subsection (4) –
- (a) for the first “Minister” substitute “trunk road authority”; 15
- (b) after the second “Minister” insert “, a strategic highways company or trunk road authority”.
- (6) In subsection (5), in the definition of “owners”, for “Minister” substitute “trunk road authority”.
- 22 In section 63 (relief of main carriageway of trunk road from local traffic), after “Minister” insert “or a strategic highways company”. 20
- 23 In section 66 (footways and guard-rails etc for publicly maintainable highways), in subsection (6) –
- (a) after the first “Minister” insert “or a strategic highways company”; 25
- (b) after the second “Minister” insert “or the strategic highways company”.
- 24 In section 69 (subways), in subsection (2)(a), after “Minister” insert “or a strategic highways company”.
- 25 (1) Section 80 (power to fence highways) is amended as follows.
- (2) In subsection (1)(b), after “Minister” insert “or a strategic highways company”. 30
- (3) In subsection (3), after “Part III” insert “and, in the case of a trunk road, consent has been given under section 175B (consent of highway authority required for trunk road access).”
- (4) In subsection (4) – 35
- (a) in paragraph (b) –
- (i) after “Minister” insert “or a strategic highways company”; 40
- (ii) after “him” insert “or it”;
- (b) in the words following paragraph (b), after “Minister” insert “or a strategic highways company”.
- 26 (1) Section 90C (consultation and local inquiries) is amended as follows.
- (2) In subsection (1) –
- (a) after “Secretary of State” insert “, a strategic highways company”;

- (b) after “he” insert “, it”.
- (3) In subsection (2), after “Secretary of State” insert “, a strategic highways company”.
- (4) In subsection (4) –
- (a) after “Secretary of State” insert “, a strategic highways company”; 5
- (b) after “him” insert “, it”;
- (c) after “he” insert “, it”.
- 27 (1) Section 93 (power to make orders as to reconstruction, improvement etc of privately maintainable bridges) is amended as follows.
- (2) In subsections (1) and (2), omit “local”, wherever occurring. 10
- (3) Omit subsection (5).
- 28 In section 95 (supplemental provisions as to orders and agreements under sections 93 and 94), in subsection (2), for the words from “section 94” to the end substitute “sections 93 and 94 are exercisable by the highway authority for the trunk road over, or partly over, the bridge.” 15
- 29 In section 97 (lighting of highways), in subsection (1), for “The Minister and every local” substitute “A”.
- 30 (1) Section 105A (environmental impact assessments) is amended as follows.
- (2) In subsection (2) –
- (a) after “Secretary of State” insert “or a strategic highways company”; 20
- (b) after the first “he” insert “or it”;
- (c) after the second “he” insert “or it, whichever is considering the project,”.
- (3) In subsection (3) –
- (a) after “Secretary of State” insert “or the strategic highways company”; 25
- (b) after “he” insert “or the company”.
- (4) In subsection (4), after “Secretary of State” insert “or the strategic highways company”.
- (5) In subsection (5)(d) –
- (a) after “Secretary of State” insert “or the strategic highways company”; 30
- (b) after “his” insert “or its”.
- 31 (1) Section 105B (procedure) is amended as follows.
- (2) In subsection (1) –
- (a) after “Secretary of State” insert “or a strategic highways company”; 35
- (b) after “him” insert “or it (as the case may be)”.
- (3) In subsection (3), after “Secretary of State” insert “or the strategic highways company (as the case may be)”.
- (4) In subsection (3A) –
- (a) in paragraphs (a) and (h), after “Secretary of State” insert “or the strategic highways company”; 40
- (b) in paragraph (i), after “Secretary of State” insert “or the strategic highways company (as the case may be)”;

- (c) in paragraph (j), after “Secretary of State” insert “or the strategic highways company”.
- (5) In subsections (3B) and (3C), after “Secretary of State” insert “or the strategic highways company”.
- (6) In subsection (4) – 5
- (a) after “Secretary of State” insert “or the strategic highways company”;
- (b) after “he” insert “or it”.
- (7) In subsection (5) – 10
- (a) after the first “Secretary of State” insert “or the strategic highways company”;
- (b) in paragraphs (b) and (c) –
- (i) after “Secretary of State” insert “or the strategic highways company (as the case may be)”;
- (ii) after “him” insert “or it”.
- (8) In subsection (5A) – 15
- (a) after “Secretary of State”, wherever occurring, insert “or the strategic highways company”;
- (b) after “him”, wherever occurring, insert “or it”.
- (9) In subsection (6) – 20
- (a) after “Secretary of State” insert “or the strategic highways company (as the case may be)”;
- (b) after “he”, wherever occurring, insert “or it”;
- (c) after “his”, wherever occurring, insert “or its”.
- (10) In subsection (7), after “Secretary of State”, wherever occurring, insert “or the strategic highways company”. 25
- (11) In subsection (8)(e), after “Secretary of State” insert “, the strategic highways company”.
- 32 (1) Section 105C (other EEA States) is amended as follows.
- (2) In subsection (1) – 30
- (a) in paragraph (a), after “Secretary of State” insert “or a strategic highways company”;
- (b) in paragraph (b), after “Secretary of State” insert “or the strategic highways company, whichever is considering the project”.
- (3) In subsection (2) – 35
- (a) after “Secretary of State” insert “or the strategic highways company”;
- (b) in paragraph (a), after “him” insert “or the company”;
- (c) in paragraphs (b) and (c), after “he” insert “or the company”.
- (4) In subsection (4) – 40
- (a) after “Secretary of State” insert “or the strategic highways company”;
- (b) in paragraphs (a) and (c), after “he” insert “or the company”.
- (5) In subsection (5) –
- (a) after “Secretary of State” insert “or the strategic highways company”;
- (b) after “he”, wherever occurring, insert “or the company”;
- (c) in paragraph (b), after “him” insert “or the company”.

- 
- (6) In subsections (6) and (7), after “Secretary of State” insert “or the strategic highways company”.
- 33 In section 105D (validity of decisions), in subsection (1), after “Secretary of State” insert “or a strategic highways company”.
- 34 (1) Section 106 (orders and schemes providing for construction of bridges over or tunnels under navigable waters) is amended as follows. 5
- (2) In subsection (3) –
- (a) after “local highway authority” insert “or a strategic highways company”;
- (b) after “the authority” insert “or company”. 10
- (3) In subsection (6), omit “local”.
- 35 In section 108 (power to divert navigable watercourses), in subsection (2)(b), for “a local” substitute “any other”.
- 36 In section 110 (power to divert non-navigable watercourses and to carry out other works on any watercourse), in subsection (6)(b), for “, they shall not carry them” substitute “or a strategic highways company, they must not be carried”. 15
- 37 (1) Section 112 (provision of picnic sites and public conveniences for users of trunk roads) is amended as follows.
- (2) In subsection (1), after “Minister” insert “or a strategic highways company”. 20
- (3) In subsection (2) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) after “him” insert “or the company”.
- (4) In subsections (3) to (5), after “Minister”, wherever occurring, insert “or a strategic highways company”. 25
- (5) In subsection (6) –
- (a) after “Minister” insert “or the strategic highways company, whichever is highway authority for the trunk road,”;
- (b) after “him” insert “or it”.
- (6) In subsection (7), after “Minister” insert “or a strategic highways company”. 30
- 38 (1) Section 113 (exercise by council of functions of Minister with respect to management or provision of picnic sites etc) is amended as follows.
- (2) In subsection (1) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) after “his” insert “or its”;
- (c) after “him” insert “or it”. 35
- (3) In subsection (2), omit “by Minister”.
- (4) In subsection (3) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) in paragraph (b), after “he” insert “or it”;
- (c) in paragraph (c), after “his” insert “or its”. 40



- (5) In subsections (5) and (7), after “Minister” insert “or a strategic highways company”.
- (6) In the heading, after “Minister” insert “or a strategic highways company”.
- 39 (1) Section 124 (stopping up of private access to highways) is amended as follows. 5
- (2) In subsection (2), after “if they are” insert “a strategic highways company or”.
- (3) In subsection (3) –
- (a) for “a local” substitute “any other”;
- (b) in paragraph (b), for “local” substitute “other”. 10
- (4) In subsection (4)(d) and (e), omit “local”, wherever occurring.
- (5) In subsection (5) –
- (a) after “order made by” insert “a strategic highways company or”;
- (b) omit the second “local”.
- (6) In subsections (6) and (7), omit “local”. 15
- 40 In section 129 (further provision with respect to new means of access), in subsection (3), for “a local” substitute “any other”.
- 41 In section 154 (cutting or felling etc trees etc that overhang or are a danger to roads or paths), in subsection (1)(a) –
- (a) after the first “Minister” insert “or a strategic highways company”;
- (b) for the second “Minister” substitute “highway authority”. 20
- 42 In section 174 (precautions to be taken by persons executing works in streets), in subsections (1A) and (1B), omit “local”.
- 43 Before section 176 insert –
- “175B Consent of highway authority required for trunk road access 25**
- (1) Access to or from a trunk road in England must not be constructed, formed or laid out without the consent of the highway authority for the trunk road.
- (2) Subsection (1) does not apply where –
- (a) section 24(2) applies, or
- (b) development consent is required under the Planning Act 2008.” 30
- 44 In section 232 (power to treat as a private street land designated for purposes of this section by development plan), in subsection (7), after “constructed by” insert “a strategic highways company or”. 35
- 45 (1) Section 239 (acquisition of land for construction, improvement etc of highway: general powers) is amended as follows.
- (2) In subsection (1), after “Minister” insert “or a strategic highways company”.
- (3) In subsection (2) –
- (a) after “Minister” insert “or a strategic highways company”;
- (b) after “his” insert “or its”. 40

- 
- 46 In section 240 (acquisition of land in connection with construction, improvement etc of highway: further general powers), in subsection (3) –
- (a) after “Minister” insert “or a strategic highways company”;
  - (b) in paragraph (b), after “his” insert “or its”.
- 47 (1) Section 245A (acquisition of land by Secretary of State or Assembly for buildings etc needed for traffic management purposes) is amended as follows. 5
- (2) After subsection (1) insert –
- “(1A) A strategic highways company may acquire land in England which in its opinion is required for the provision of any buildings or facilities which are needed – 10
- (a) for use by, or in connection with the activities of, traffic officers in the area for which it is appointed in accordance with Part 1 of the Infrastructure Act 2015; or
  - (b) for other purposes connected with the management of traffic on highways in that area and for which it is the highway authority.” 15
- (3) In the heading, after “Secretary of State” insert “, strategic highways company”.
- 48 In section 247 (general provision as to acquisition procedure etc), in subsection (1), after “this Act on” insert “a strategic highways company or”. 20
- 49 (1) Section 254 (compulsory acquisition for certain purposes of rights in land belonging to local authorities etc) is amended as follows.
- (2) In subsection (1)(b), after “Minister”, wherever occurring, insert “or a strategic highways company”. 25
  - (3) In subsection (2), after “Minister”, wherever occurring, insert “or a strategic highways company”.
  - (4) In subsection (5)(b), after “Minister” insert “or a strategic highways company”.
- 50 (1) Section 260 (clearance of title to land acquired for statutory purposes) is amended as follows. 30
- (2) In subsection (3)(b), after “Minister” insert “or a strategic highways company”.
  - (3) In subsection (4), after “Minister” insert “, strategic highways company”.
- 51 In section 263 (vesting of highways maintainable at public expense), in subsection (3), omit “local”. 35
- 52 (1) Section 265 (transfer of property and liabilities upon a highway becoming or ceasing to be a trunk road) is amended as follows.
- (2) In subsection (1) –
    - (a) after the first “Minister” insert “or the strategic highways company, whichever is highway authority for the trunk road,”; 40
    - (b) after the second “Minister” insert “or the company”.
  - (3) In subsection (2), after “Minister” insert “or a strategic highways company”.

- 
- (4) In subsection (4) –
- (a) after “Minister” insert “or a strategic highways company”;
  - (b) after “him” insert “or the company”.
- (5) In subsection (5) –
- (a) after “Minister”, wherever occurring, insert “or the strategic highways company”; 5
  - (b) in paragraph (a), after “him” insert “or the company”.
- (6) In subsections (6) and (7), after “Minister”, wherever occurring, insert “or a strategic highways company”.
- (7) In subsection (8) – 10
- (a) after “Minister” insert “or the strategic highways company”;
  - (b) after “him” insert “or it”;
  - (c) after “he” insert “or it”.
- 53 (1) Section 266 (transfer to Minister of privately maintainable bridges carrying trunk roads) is amended as follows. 15
- (2) In subsection (1), after “Minister” insert “or a strategic highways company, whichever is highway authority for the trunk road (“the trunk road authority”),”.
- (3) In subsection (2), for “Minister” substitute “trunk road authority”.
- (4) In subsection (3) – 20
- (a) for the first “Minister” substitute “trunk road authority”;
  - (b) for “Minister”, wherever else occurring, substitute “authority”.
- (5) In subsection (4), for “Minister” substitute “trunk road authority”.
- (6) In subsections (5) and (6) – 25
- (a) for the first “Minister” substitute “trunk road authority”;
  - (b) for “Minister”, wherever else occurring, substitute “authority”.
- (7) In subsections (7), (8) and (10), for “Minister”, wherever occurring, substitute “trunk road authority”.
- (8) In the heading, after “Minister” insert “or a strategic highways company”.
- 54 In section 266A (transfer of property and liabilities upon a highway becoming or ceasing to be a GLA road), in subsection (8)(b), after “Minister” insert “or a strategic highways company”. 30
- 55 (1) Section 267 (transfer to local highway authorities of privately maintainable bridges carrying special roads) is amended as follows.
- (2) In subsection (1), after “Minister” insert “or a strategic highways company,”. 35
- (3) In subsections (2) and (3), for “Minister” substitute “trunk road authority”.
- 56 (1) Section 271 (provisions with respect to transfer of toll highways to highway authorities) is amended as follows.
- (2) In subsection (1)(i), after “trunk road” insert “for which he is the highway authority”. 40

- (3) After subsection (1)(i) insert –  
     “(ia) in the case of a trunk road for which it is the highway authority, a strategic highways company;”.
- 57 (1) Section 277 (contribution towards maintenance of bridge where road ceases to be a trunk road) is amended as follows. 5
- (2) After the first “Minister” insert “or a strategic highways company”.
- (3) After the second “Minister” insert “or the company”.
- 58 (1) Section 284 (powers of Minister in relation to privately maintainable parts of trunk roads) is amended as follows.
- (2) After “Minister” insert “or a strategic highways company, whichever is highway authority for the trunk road,”. 10
- (3) In the heading, after “Minister” insert “or strategic highways company”.
- 59 (1) Section 284A (trunk roads: miscellaneous functions of Secretary of State) is amended as follows.
- (2) For the words from “any trunk road” to the end substitute “a trunk road for which the Secretary of State is highway authority, include the Secretary of State and, in relation to a trunk road for which a strategic highways company is the highway authority, include that company.” 15
- (3) In the heading, after “Secretary of State” insert “and strategic highways company”. 20
- 60 (1) Section 329 (further provision as to interpretation) is amended as follows.
- (2) In subsection (1) –
- (a) in the definition of “local highway authority” after “Minister” insert “or a strategic highways company”;
- (b) at the appropriate place insert – 25  
     ““strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015;”.
- (3) After subsection (5) insert –
- “(6) Subsection (5) is subject to the specification of those roads as ones for which a strategic highways company is highway authority under Part 1 of the Infrastructure Act 2015.” 30
- 61 In section 330 (construction of certain enactments relating to execution of works by statutory undertakers), in subsection (1), after “Minister” insert “or a strategic highways company, whichever is highway authority for the trunk road,”. 35
- 62 In section 331 (references to functions of council as respects any highway), after “Minister” insert “or a strategic highways company”.
- 63 (1) Schedule 1 (procedures for making or confirming certain orders and schemes) is amended as follows. 40
- (2) In paragraph 1, after “trunk road” insert “for which he is the highway authority”.

- 
- (3) In paragraph 2—
- (a) after “order relating to” insert “a trunk road for which a strategic highways company is the highway authority or to”;
  - (b) omit “local”.
- (4) In paragraph 3— 5
- (a) after the first “Minister” insert “, the strategic highways company”;
  - (b) after the second “Minister” insert “, of the strategic highways company”.
- (5) In paragraphs 4 and 5, after “Minister” insert “, the strategic highways company”. 10
- (6) In paragraph 6, after “Minister” insert “, a strategic highways company”.
- (7) In paragraphs 7(1)(ii), 8(1)(b), 9 and 10 omit “local”.
- (8) In paragraph 11, for “local” substitute “other”.
- (9) In paragraph 12, for the first “local” substitute “other”.
- (10) In paragraph 13, for “a local” substitute “another”. 15
- (11) In paragraphs 14(1)(ii), 15(1)(b) and 16 omit “local”.
- (12) In paragraph 17, for “local” substitute “other”.
- 64 In Schedule 3 (provisions of this Act referred to in section 11), in the headings to Parts 1, 2 and 3, after “Minister”, wherever occurring, insert “or a strategic highways company”. 20
- 65 (1) Schedule 5 (modifications of certain provisions of the Town and Country Planning Act 1990 as applied by section 21) is amended as follows.
- (2) In Part 1 (modifications in relation to land referred to in paragraph (a) or (b) of section 21(2)), in paragraph 3, after “when” insert “a strategic highways company or”. 25
  - (3) In Part 2 (modifications in relation to land referred to in paragraph (c) of section 21(2))—
    - (a) in paragraph 1, after “Minister,” insert “the strategic highways company,”;
    - (b) in paragraph 3, after “references to” insert “a strategic highways company or”; 30
    - (c) in paragraph 4, in the substituted text of subsection (1) of section 273 of the Town and Country Planning Act 1990, after “Minister,” insert “the strategic highways company,”;
    - (d) in paragraph 5, after “Minister,” insert “the strategic highways company,”. 35
- 66 (1) Schedule 11 (provisions as to orders under section 93 of this Act) is amended as follows.
- (2) In paragraph 9(3), omit “local”.
  - (3) In paragraph 15(1), omit “other than a trunk road bridge”. 40
  - (4) Omit paragraph 17.

- 67 (1) Schedule 21 (transitional matters arising where a highway becomes a trunk road or a trunk road ceases to be a trunk road) is amended as follows.
- (2) In paragraph 1 –
- (a) after the first “Minister” insert “or a strategic highways company, whichever is highway authority for the trunk road”; 5
  - (b) after the second “Minister” insert “or the company”;
  - (c) for “him” substitute “it”.
- (3) In paragraph 3 –
- (a) after the first “Minister” insert “or a strategic highways company”; 10
  - (b) after “Minister”, wherever else occurring, insert “or the company”.
- (4) In paragraph 4, after “Minister”, wherever occurring, insert “or a strategic highways company”.
- (5) In paragraphs 6 to 9 –
- (a) after the first “Minister” insert “or a strategic highways company”; 15
  - (b) after “Minister”, wherever else occurring, insert “or the company”.

## PART 2

### OTHER ENACTMENTS

#### *Public Records Act 1958 (c. 51)*

- 68 In Schedule 1 to the Public Records Act 1958, in the table at the end of paragraph 3, at the appropriate place in Part 2 insert “A strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2015.” 20

#### *Parliamentary Commissioner Act 1967 (c. 13)*

- 69 In Schedule 2 to the Parliamentary Commissioner Act 1967, at the appropriate place insert “A strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2015.” 25

#### *Road Traffic Regulation Act 1984 (c. 27)*

- 70 The Road Traffic Regulation Act 1984 is amended as follows.
- 71 (1) Section 1 (traffic regulation orders outside Greater London) is amended as follows. 30
- (2) In subsection (3) –
- (a) after “Secretary of State” insert “, a strategic highways company”;
  - (b) after “he is” insert “, it is”.
- (3) In subsection (3A) –
- (a) after the first “Secretary of State” insert “, a strategic highways company”; 35
  - (b) in paragraph (b), after “Secretary of State,” insert “the strategic highways company”.
- 72 In section 2 (what a traffic regulation order may provide), in subsection (5), after “local authority” insert “, a strategic highways company”. 40

- 
- 73 In section 6 (orders similar to traffic regulation orders), in subsection (2) –
- (a) after “Secretary of State” insert “or a strategic highways company”;
  - (b) after “his” insert “or its”.
- 74 (1) Section 9 (experimental traffic orders) is amended as follows.
- (2) In subsection (2) – 5
    - (a) after “Secretary of State” insert “or a strategic highways company”;
    - (b) after “he” insert “or it”.
  - (3) In subsection (2A) – 10
    - (a) after “Secretary of State” insert “or a strategic highways company”;
    - (b) after “his” insert “or its”.
- 75 In section 16A (prohibition or restriction on roads in connection with certain events), in subsection (6) –
- (a) after “Secretary of State” insert “or a strategic highways company”;
  - (b) after “his” insert “or its”.
- 76 (1) Section 16B (restrictions on orders under s16A) is amended as follows. 15
- (2) In subsection (1) –
    - (a) in paragraph (a), after “Secretary of State” insert “or a strategic highways company”;
    - (b) in paragraph (b), after “he” insert “or it”.
  - (3) In subsection (2), after “Secretary of State” insert “or a strategic highways company”. 20
  - (4) In subsections (4) and (5), for “is not himself the traffic authority, he” substitute “or a strategic highways company (whichever made the order or agreed that it should continue in force) is not the traffic authority, he or it”.
  - (5) In subsection (6) – 25
    - (a) in paragraph (a), after “Secretary of State” insert “or a strategic highways company”;
    - (b) in paragraph (b), after “his” insert “or its”.
- 77 In section 19 (regulation of use of highways by public service vehicles), in subsection (1), after “Greater London” insert “or a strategic highways company”. 30
- 78 (1) Section 23 (powers of local authorities with respect to pedestrian crossings on roads other than trunk roads) is amended as follows.
- (2) In subsections (1) to (3), before “local traffic authority” insert “strategic highways company or a”. 35
  - (3) For the heading substitute “Powers of strategic highways companies and local traffic authorities with respect to pedestrian crossings”.
- 79 In section 24 (pedestrian crossings on trunk roads), in the heading, for “trunk” substitute “other”.
- 80 In section 37 (extension of powers for purposes of general scheme of traffic control), in subsection (3), after “Secretary of State” insert “or a strategic highways company”. 40

- 
- 81 In section 58 (consents for the purposes of s 57(1)), in paragraph (i) of the table in subsection (1) –
- (a) in the first column, after “Secretary of State” insert “or a strategic highways company”;
  - (b) in the second column, after “Secretary of State” insert “or the strategic highways company, whichever is the traffic authority for the road”. 5
- 82 (1) Section 65 (powers and duties of highway authorities as to placing of traffic signs) is amended as follows.
- (2) In subsection (2), after “directions to” insert “a strategic highways company or”. 10
  - (3) In the heading, for “highway” substitute “traffic”.
- 83 In section 69 (general provisions as to removal of signs), in subsection (3) –
- (a) after “directions to” insert “a strategic highways company or”;
  - (b) for “the authority” substitute “it or them”. 15
- 84 (1) Section 70 (default powers of Secretary of State as to traffic signs) is amended as follows.
- (2) In subsection (1) –
    - (a) after “If” insert “a strategic highways company,”;
    - (b) after “from” insert “the company or”. 20
  - (3) After subsection (2) insert –
    - “(3) In England, where subsection (1) applies in respect of non-compliance with a direction by a traffic authority other than a strategic highways company –
      - (a) a strategic highways company may carry out the work required by the direction with the consent of the Secretary of State, and 25
      - (b) the expenses incurred by the company in doing so are recoverable by the company from the authority summarily as a civil debt.” 30
- 85 In section 71 (power to enter land in connection with traffic signs), in subsection (1), after “A” insert “strategic highways company, a”.
- 86 (1) Section 74B (transfer of traffic control systems between Secretary of State and Transport for London) is amended as follows.
- (2) In subsections (1) and (2) – 35
    - (a) after the first “Secretary of State” insert “or a strategic highways company”;
    - (b) after the second “Secretary of State” insert “or the company”.
  - (3) In subsection (5), after “Secretary of State” insert “or the strategic highways company”. 40
  - (4) In the heading, after “Secretary of State” insert “or a strategic highways company”.
- 87 In section 83 (provisions as to directions under s 82(2)), in subsection (2) –
- (a) after the first “by” insert “a strategic highways company or”;



- (b) after the third “by” insert “the company or”.
- 88 In section 84 (speed limits on roads other than restricted roads), in subsection (1B), after “orders of” insert “strategic highways companies or”.
- 89 (1) Section 85 (traffic signs for indicating speed restrictions) is amended as follows. 5
- (2) In subsections (2) and (3), omit “local”, wherever occurring.
- (3) After subsection (3) insert –
- “(3A) In England, where subsection (3) applies in respect of non-compliance with a direction by a traffic authority other than a strategic highways company – 10
- (a) a strategic highways company may execute the work required by the direction with the consent of the Secretary of State, and
- (b) the expense incurred by the company in doing so is recoverable by the company from the authority summarily as a civil debt.” 15
- 90 (1) Section 93 (powers of Secretary of State in relation to functions under s 92) is amended as follows.
- (2) In subsection (2), for “a local” substitute “another”.
- (3) In subsection (3), omit “local”. 20
- 91 (1) Section 94 (bollards and other constructions in Greater London) is amended as follows.
- (2) In subsection (1) –
- (a) after the first “Secretary of State” insert “or a strategic highways company”; 25
- (b) after “he”, wherever occurring, insert “or it”;
- (c) in paragraph (a), after “Secretary of State” insert “or the company”.
- (3) In subsection (2), after “Secretary of State” insert “nor a strategic highways company”.
- (4) In subsection (4) – 30
- (a) after the first “Secretary of State” insert “, a strategic highways company”;
- (b) after the second “Secretary of State” insert “, the company”;
- (c) in paragraph (a) –
- (i) after “Secretary of State” insert “or a strategic highways company”; 35
- (ii) after the first “he” insert “or it”;
- (iii) for “he might under subsection (1)(a) above require” substitute “might under subsection (1)(a) be required”.
- (5) In subsection (5) – 40
- (a) after the first “Secretary of State” insert “, the strategic highways company”;
- (b) after the second “Secretary of State” insert “, the company”.

- 
- 92 In section 100 (interim disposal of vehicles removed under section 99), in subsection (3A), after “Secretary of State” insert “or a strategic highways company”.
- 93 In section 101 (ultimate disposal of vehicles abandoned and removable under this Act), in paragraph (d) of the definition of “competent authority” in subsection (8), after “Secretary of State” insert “or a strategic highways company”. 5
- 94 (1) Section 102 (charges for removal, storage and disposal of vehicles) is amended as follows.
- (2) In subsection (2ZA) – 10
- (a) in the substituted paragraph (b) –
- (i) after “Secretary of State” insert “or a strategic highways company”;
- (ii) after “his” insert “or its”;
- (b) in the substituted paragraph (c) – 15
- (i) after “Secretary of State” insert “or a strategic highways company”;
- (ii) after “him” insert “or it”.
- (3) In subsection (4A) –
- (a) after the first “Secretary of State” insert “or a strategic highways company”;
- (b) after the second “Secretary of State” insert “or the company”. 20
- (4) In subsection (8), in paragraph (c) of the definition of “appropriate authority”, after “Secretary of State” insert “or a strategic highways company”. 25
- 95 (1) Section 121A (traffic authorities) is amended as follows.
- (2) After subsection (1AA) insert –
- “(1AB) A strategic highways company is the traffic authority for every highway for which it is the highway authority within the meaning of the Highways Act 1980.” 30
- (3) In subsections (2), (3) and (5)(a), after “Secretary of State” insert “or a strategic highways company”.
- 96 (1) Section 122 (exercise of functions by local authorities) is amended as follows.
- (2) In subsection (1), after “every” insert “strategic highways company and”.
- (3) In subsection (2)(d), after “appearing to” insert “the strategic highways company or”. 35
- (4) In the heading, after “functions by” insert “strategic highways companies or”.
- 97 In section 124A (GLA side roads), in subsection (4), after “Secretary of State” insert “or a strategic highways company”. 40
- 98 In section 124B (orders of the Authority changing what are GLA side roads), in subsection (2)(a), after “Secretary of State” insert “or a strategic highways company”.

- 99 In section 142 (general interpretation of Act), in subsection (1), at the appropriate place insert –  
“strategic highways company” means a company appointed under section 1 of the Infrastructure Act 2015;”.
- 100 (1) Schedule 9 (special provision as to certain orders) is amended as follows. 5
- (2) In paragraph 1, after “consultation with” insert “a strategic highways company or”.
- (3) In paragraph 7, omit sub-paragraph (3).
- (4) In paragraph 13 – 10
- (a) after sub-paragraph (1)(b) insert –
- “(ba) applying to a road for which a strategic highways company is the traffic authority, or”.
- (b) in sub-paragraph (1), for “or sub-paragraph (3)” substitute “, (3) or (4)”;
- (c) after sub-paragraph (3) insert – 15
- “(4) This sub-paragraph applies where it is proposed to include in the order provision mentioned in sub-paragraph (1)(ba), in which case the order must not be made without the consent of the strategic highways company.”
- (5) In paragraph 14 – 20
- (a) the existing provision becomes sub-paragraph (1);
- (b) in sub-paragraph (1), after “except” insert “in a case to which sub-paragraph (2) applies or”;
- (c) after sub-paragraph (1) insert –
- “(2) This sub-paragraph applies where it is proposed to include in the order provision mentioned in paragraph 13(1)(ba), in which case the order must not be made without the consent of the strategic highways company.” 25
- (6) After paragraph 14 insert –
- “14A(1) This paragraph applies where a strategic highways company proposes, other than further to a direction under paragraph 2, to include provision mentioned in paragraph 13(1)(b) or (c) to (f) in an order made by it under sections 1, 6, 9, 83(2) or 84. 30
- (2) Where this paragraph applies, the order must not be made without the consent of the Secretary of State.” 35
- (7) In paragraph 15(1) –
- (a) for “and 14” substitute “to 14A”;
- (b) for “local” substitute “traffic”.
- (8) In paragraph 16(2), for “local” substitute “traffic”.
- (9) In paragraph 20(1) – 40
- (a) after “and 84,” insert “a strategic highways company,”;
- (b) after the second “of this Act,” insert “the company,”.
- (10) In paragraph 21, after “orders of” insert “a strategic highways company or”.

*Transport Act 1985 (c. 67)*

- 101 In section 112G of the Transport Act 1985 (representations following an investigation by the Passengers’ Council), in subsection (1), for paragraph (d) substitute –
- “(d) a strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2015;”.
- 5

*Dartford-Thurrock Crossing Act 1988 (c. 20)*

- 102 In the Dartford-Thurrock Crossing Act 1988, after section 46 (interpretation) insert –
- “46A Appointment of a strategic highways company**
- 10
- (1) This section applies in any period in which, by virtue of an appointment under section 1 of the Infrastructure Act 2014, a strategic highways company is the highway authority for the highways comprised in the tunnel crossing or the bridge.
- (2) The reference to the Secretary of State in section 12(4) (crossing operator) is to be read as a reference to the strategic highways company.
- (3) References to the Secretary of State in the following provisions are to be read as references to the strategic highways company –
- (a) section 24(1)(a) and (b) (special traffic restrictions);
- (b) section 27(1) and (2) (bicycles);
- (c) section 37 (powers in relation to River Thames);
- (d) section 38 (restriction on works on crossing);
- (e) Schedule 7 (protective provisions), except –
- (i) paragraph 2 of Part 1, and
- (ii) paragraph 2 of Part 3.”
- 20  
15  
25

*Road Traffic Act 1988 (c. 52)*

- 103 In section 44 (authorisation of use on roads of special vehicles not complying with regulations under section 41) of the Road Traffic Act 1988, after subsection (3) insert –
- “(4) The function of the Secretary of State under subsection (1) in the case of orders applying only to –
- (a) specified vehicles, or
- (b) vehicles of specified persons,
- may be delegated to a strategic highways company.
- (5) A delegation under subsection (4) may specify –
- (a) the extent to which the function is delegated;
- (b) any conditions to which the delegation is subject.”
- 30  
35

*Town and Country Planning Act 1990 (c. 8)*

- 104 (1) Section 247 of the Town and Country Planning Act 1990 (highways affected by development: orders by Secretary of State) is amended as follows.
- 40

- (2) In subsection (3) –
- (a) in paragraph (b), after “Secretary of State,” insert “a strategic highways company,”;
  - (b) in paragraph (c), after “Secretary of State” insert “or a strategic highways company”. 5
- (3) In subsection (3A) –
- (a) after paragraph (a) insert –  
“(aa) a strategic highways company,”;
  - (b) after the second “Secretary of State,” insert “the strategic highways company,”. 10
- 105 In section 248 (highways crossing or entering route of proposed new highway etc), in subsection (1)(a), after “Secretary of State” insert “or a strategic highways company”.
- 106 In section 254 (compulsory acquisition of land in connection with highways), in subsection (1), after “local highway authority” insert “or a strategic highways company”. 15
- 107 In section 256 (electronic communications apparatus: orders by Secretary of State), in subsection (3) omit “local”.
- 108 In section 336 (interpretation), in subsection (1) –
- (a) in the definition of “local highway authority”, after “Secretary of State” insert “or a strategic highways company”; 20
  - (b) at the appropriate place insert –  
““strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015;”. 25
- 109 (1) Schedule 13 (blighted land) is amended as follows.
- (2) In paragraph 16, for “if he” substitute “or a strategic highways company if he or it”.
  - (3) In paragraph 18 –
    - (a) after “Secretary of State” insert “or a strategic highways company”; 30
    - (b) after “him” insert “or it”;
    - (c) after “he” insert “or it”.

*Environmental Protection Act 1990 (c. 43)*

- 110 The Environmental Protection Act 1990 is amended as follows.
- 111 (1) Section 89 (duty to keep land and highways clear of litter etc) is amended as follows. 35
- (2) In subsection (1) –
    - (a) in paragraph (b), after “special road” insert “(other than one to which paragraph (ba)(i) applies)”;
    - (b) after paragraph (b) insert – 40  
“(ba) a strategic highways company as respects –
      - (i) any trunk road which is a special road for which it is the highway authority, and

- (ii) any relevant highway for which it is responsible.”.
- (3) In subsection (2) –
- (a) in paragraph (b), after “special road” insert “(other than one to which paragraph (c)(i) applies)”;
- (b) after paragraph (b) insert –
- “(c) a strategic highways company as respects –
- (i) any trunk road which is a special road for which it is the highway authority, and
- (ii) any relevant highway for which it is responsible.”.
- 112 (1) Section 98 (definitions) is amended as follows.
- (2) In subsection (5), after “public expense”),” insert ““highway authority”,”.
- (3) After subsection (5A) insert –
- “(5B) “Strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015.”
- New Roads and Street Works Act 1991 (c. 22)*
- 113 The New Roads and Street Works Act 1991 is amended as follows.
- 114 In section 6 (toll orders), in subsection (2) –
- (a) after the second “provided by” insert “a strategic highways company or”;
- (b) after the second “made by” insert “the company or”.
- 115 (1) Section 12 (extension toll orders) is amended as follows.
- (2) In subsection (2) –
- (a) after “highway authority is” insert “a strategic highways company or”;
- (b) after the second “made by” insert “that company or”.
- (3) In subsection (5), after the third “made by” insert “a strategic highways company or”.
- 116 (1) Section 26 (interpretation) is amended as follows.
- (2) After subsection (1) insert –
- “(1A) In this Part, “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015.”
- (3) In subsection (3) –
- (a) in the first column of the table, at the appropriate place insert “strategic highways company”;
- (b) in the second column opposite that entry insert “section 26(1)”.
- 117 In section 49 (the street authority and other relevant authorities), in subsection (2) –
- (a) after “Secretary of State” insert “or a strategic highways company”;
- (b) after “his” insert “or its”.

- 118 In section 63 (streets with special engineering difficulties), in subsection (3), after “Where” insert “a strategic highways company or”.
- 119 In section 74 (charge for occupation of the highway where works unreasonably prolonged), in subsection (7A)(a), after “application by” insert “strategic highways companies or”. 5
- 120 (1) Section 74A (charge determined by reference to duration of works) is amended as follows.
- (2) In subsection (2), after “paid to” insert “a strategic highways company or”.
- (3) In subsection (10)(a), after “application by” insert “strategic highways companies or”. 10
- 121 In section 86 (highway authorities, highways and related matters), after subsection (1) insert –
- “(1A) In this Part, “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015.”
- 122 In section 106 (index of defined expressions) – 15
- (a) in the first column of the table, at the appropriate place insert “strategic highways company”;
- (b) in the second column opposite that entry insert “section 86(1A)”.
- 123 (1) Schedule 2 (procedure in connection with toll orders) is amended as follows.
- (2) In paragraph 1 – 20
- (a) in sub-paragraph (2) –
- (i) after “Secretary of State by” insert “a strategic highways company or”;
- (ii) after “local highway authority,” insert “the company or”.
- (b) in sub-paragraph (3), after “Secretary of State” insert “, the strategic highways company”. 25
- (3) In paragraph 2(1), 3 and 4(1) after “Secretary of State” insert “, the strategic highways company”.
- 124 In Schedule 3 (street works licences), in paragraph 9 – 30
- (a) in sub-paragraph (1) –
- (i) after “is made to” insert “a strategic highways company or”;
- (ii) in paragraph (a), after “refusal of” insert “the company or”;
- (b) in sub-paragraph (3) –
- (i) after “decision of” insert “the strategic highways company or”;
- (ii) after “duty of” insert “that company or”. 35

*Transport Act 2000 (c. 38)*

- 125 The Transport Act 2000 is amended as follows.
- 126 In section 167 (trunk road charging schemes), in subsection (1)(a), after “he” insert “or a strategic highways company”. 40

- 
- 127 In section 176 (equipment etc), after subsection (1) insert –
- “(1A) In relation to a charging scheme under section 167 (trunk road charging schemes), a strategic highways company may –
- (a) install and maintain, or authorise the installation and maintenance of, any equipment, or
- (b) construct and maintain, or authorise the construction and maintenance of, any buildings or other structures,
- used or to be used for or in connection with the operation of a charging scheme under that section.”
- 128 (1) Section 177 (traffic signs) is amended as follows. 10
- (2) After subsection (3) insert –
- “(3A) The Secretary of State may direct a strategic highways company to place and maintain traffic signs, or cause traffic signs to be placed and maintained, in connection with a trunk road charging scheme.”
- (3) In subsection (4), after “an authority” insert “or a strategic highways company”. 15

*Traffic Management Act 2004 (c. 18)*

- 129 The Traffic Management Act 2004 is amended as follows.
- 130 (1) Section 1 (traffic officers: introduction) is amended as follows.
- (2) In subsection (2)(b), after “national authority” insert “or a strategic highways company”. 20
- (3) In subsection (5), after “Secretary of State” insert “or a strategic highways company”.
- 131 (1) Section 11 (uniform) is amended as follows.
- (2) The existing provision becomes subsection (1) of section 11. 25
- (3) After subsection (1) insert –
- “(2) The Secretary of State may delegate his or her function under subsection (1) to a strategic highways company.
- (3) A delegation under subsection (2) may specify –
- (a) the extent to which the function is delegated; 30
- (b) any conditions to which the delegation is subject.”
- 132 In section 12 (power to charge for traffic officer services provided on request), after “national authority” insert “or, as respects England, a strategic highways company”.
- 133 In section 15 (interpretation of Part 1), at the appropriate place insert – 35
- ““strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015;”.
- 134 In the heading to Part 2, after “local traffic authorities” insert “and strategic highways companies”.
- 135 (1) Section 16 (the network management duty) is amended as follows. 40



- (2) In subsection (1), after “local highway authority” insert “or a strategic highways company (“the network management authority”)”.
- (3) In subsection (3), for “local traffic” substitute “network management”.
- 136 In section 17 (arrangements for network management), in subsection (1), for “local traffic” substitute “network management”. 5
- 137 In section 18 (guidance to local authorities), in subsections (1) and (2), and in the heading, for “local traffic” substitute “network management”.
- 138 In section 19 (power to require information relating to network management), in subsections (1), (2) and (3), for “local traffic”, wherever occurring, substitute “network management”. 10
- 139 In section 20 (intervention notices), in subsections (1), (2)(b) and (3), for “local traffic” substitute “network management”.
- 140 In section 21 (intervention orders), in subsections (1), (4), (5), (6), (8) and (9), for “local traffic”, wherever occurring, substitute “network management”.
- 141 In section 22 (appointment of traffic director: supplementary), in subsections (1) and (3), for “local traffic”, wherever occurring, substitute “network management”. 15
- 142 In section 23 (monitoring and reporting), in subsections (1), (2)(b) and (3), for “local traffic” substitute “network management”.
- 143 In section 24 (intervention in activities of local traffic authority), in subsection (2), and in the heading, for “local traffic” substitute “network management”. 20
- 144 (1) Section 25 (exercise of local traffic authority functions) is amended as follows.
- (2) In subsection (2), after “from the” insert “network management”. 25
- (3) In the heading, for “local traffic” substitute “network management”.
- 145 In section 26 (application of sections 20 to 25 to local traffic authorities exercising functions jointly), in subsection (1), and in the heading, for “local traffic” substitute “network management”.
- 146 In section 30 (recovery of costs from local traffic authorities), in subsections (1) and (2), and in the heading, for “local traffic” substitute “network management”. 30
- 147 (1) Section 31 (interpretation of Part 2) is amended as follows.
- (2) In the definition of “local traffic authority”, after “Secretary of State” insert “, a strategic highways company”. 35
- (3) In the definition of “road network” –
- (a) after “in relation to” insert “a strategic highways company or”;
- (b) after “for which” insert “the company or”.
- (4) Before the definition of “network management duty” insert –
- ““network management authority” has the meaning given in section 16(1);”.
- 40

148	In section 33 (preparation of permit schemes), in subsections (1) and (2), omit “local”.	
149	(1) Section 60 (strategic roads in London: initial designation by Secretary of State) is amended as follows.	
	(2) In subsection (1), after the second “Secretary of State” insert “, a strategic highways company”.	5
	(3) After subsection (4)(a) insert – “(aa) “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2014;”.	
150	In section 61 (orders of the Greater London Authority changing what are strategic roads), in subsection (1), after “Secretary of State” insert “, a strategic highways company”.	10
151	(1) Section 65 (duty of local highway authority to keep records of objects in highway) is amended as follows.	
	(2) In subsection (1) –	15
	(a) after “require” insert “a strategic highways company or”;	
	(b) after “placed by” insert “that company or”.	
	(3) In subsection (4) –	
	(a) in paragraph (a) of the definition of “appropriate national authority”, after “in relation to” insert “strategic highways companies or”;	20
	(b) after that definition insert – ““local highway authority” has the same meaning as in the 1980 Act; “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2014;”.	25
	(4) In the heading, after “Duty of” insert “strategic highways company or”.	
<i>Civil Contingencies Act 2004 (c. 36)</i>		
152	In Part 3 of Schedule 1 to the Civil Contingencies Act 2004 (category 2 responders: transport), in paragraph 28 –	30
	(a) the existing provision becomes sub-paragraph (1);	
	(b) after sub-paragraph (1) insert – “(2) A strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2014.”	
<i>Planning Act 2008 (c. 29)</i>		
		35
153	(1) Section 22 of the Planning Act 2008 (highways) is amended as follows.	
	(2) In subsections (2)(b), (3)(b) and (5)(b), after “Secretary of State” insert “or a strategic highways company”.	
	(3) In subsection (9), at the appropriate place insert – ““strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2014.”	40

SCHEDULE 2

Section 3

ROAD INVESTMENT STRATEGY: PROCEDURE

PART 1

SETTING A ROAD INVESTMENT STRATEGY

<i>Introductory</i>	5
1 (1) This Part specifies the procedure by which a Road Investment Strategy is set. (2) It does not apply to the first Road Investment Strategy under section 3 where it is published and laid before Parliament by the Secretary of State within a year of that section coming into force.	
<i>Step 1: the Secretary of State’s proposals</i>	10
2 (1) The Secretary of State must provide a strategic highways company with proposals for a Road Investment Strategy. (2) The proposals must include details of – (a) the objectives to be achieved by the company, (b) the financial resources to be provided by the Secretary of State for the purpose of achieving those objectives, and (c) the period to which the proposals relate.	15
(3) The Secretary of State must – (a) specify a date before which the company is to respond, and (b) provide the company with – (i) a statement of his or her general strategy in respect of highways for which the company is the highway authority, and (ii) such other information in support of the proposals as the Secretary of State considers appropriate.	20 25
<i>Step 2: the strategic highways company’s response</i>	
3 (1) Having been provided with proposals under paragraph 2, the strategic highways company must respond to the Secretary of State – (a) agreeing to the proposals, or (b) making counter-proposals. (2) The company must respond before the date specified by the Secretary of State in accordance with paragraph 2(3)(a).	30
<i>Step 3: where the strategic highways company has agreed to the proposals</i>	
4 (1) Where the strategic highways company has agreed to proposals under paragraph 2, the Secretary of State may publish those proposals as the Road Investment Strategy. (2) The Secretary of State may only publish proposals under sub-paragraph (1) if satisfied that appropriate consultation has taken place.	35

- (3) Publication under sub-paragraph (1) may be in such manner as the Secretary of State considers appropriate.

*Step 4: where the strategic highways company has made counter-proposals or failed to respond*

- 5 (1) Where the strategic highways company has made counter-proposals to the Secretary of State’s proposals under paragraph 3, or has failed to respond before the date specified, the Secretary of State may – 5
- (a) provide the company with revised proposals under paragraph 2, or
- (b) publish as the Road Investment Strategy – 10
- (i) the Secretary of State’s proposals, or
- (ii) the company’s counter-proposals.
- (2) The Secretary of State may only publish proposals under sub-paragraph (1)(b) if satisfied that appropriate consultation has taken place.
- (3) Publication under sub-paragraph (1)(b) may be in such manner as the Secretary of State considers appropriate.

PART 2 15

VARYING A ROAD INVESTMENT STRATEGY

- 6 (1) This paragraph applies where the Secretary of State is considering varying a Road Investment Strategy.
- (2) Paragraphs 2 to 5 apply to proposals for a varied Road Investment Strategy as they apply to proposals for a Road Investment Strategy. 20
- (3) In performing their functions under this Part of this Schedule, the Secretary of State and the strategic highways company must have regard to the desirability of maintaining certainty and stability in respect of Road Investment Strategies.

SCHEDULE 3 Section 13 25

TRANSFER SCHEMES

*Application and commencement of scheme*

- 1 (1) The property, rights and liabilities to be transferred may be specified or described by a scheme.
- (2) A scheme comes into force on the date it appoints. 30

*Property, rights and liabilities that may be transferred*

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include – 35
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned;
- (b) property acquired in the period after the making of the scheme and before it comes into force;
- (c) rights and liabilities arising in that period;

- (d) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force;
  - (e) rights and liabilities under an enactment or EU instrument.
- (2) A scheme may provide that transfers are to take effect irrespective of—
- (a) any requirement to obtain a person’s consent or concurrence, 5
  - (b) any liability in respect of a contravention of another requirement, or
  - (c) any interference with an interest or right,
- which would otherwise apply.
- (3) Sub-paragraph (4) applies where a person would otherwise be entitled, in consequence of anything done, or likely to be done, in connection with a scheme— 10
- (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject, or
  - (b) to treat such an interest or right as modified or terminated.
- (4) That entitlement is enforceable in relation to the interest or right— 15
- (a) in consequence of what is done or likely to be done, and
  - (b) in corresponding circumstances arising after the transfer,
- to the extent only that the scheme provides for it to be so enforceable.

*Dividing and modifying transferor’s property, rights and liabilities*

- 3 (1) A scheme may contain provision— 20
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in, or in relation to, property to be transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in, or in relation to, property to be retained by a transferor; 25
  - (c) for the creation of new rights and liabilities, including rights of indemnity and duties to indemnify, as between a transferee and a transferor.
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor’s undertaking which exist immediately before the coming into force of the scheme into a contract between— 30
- (a) different transferees, or
  - (b) a transferee and a transferor. 35
- (3) A scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against—
    - (i) more than one transferee, or
    - (ii) both the transferee and the transferor, and 40
  - (b) for rights and liabilities enforceable against more than one of those people to be enforceable in different or modified respects by or against each or any of them.
- (4) A scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme. 45

- (5) Paragraph 2(2) applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights.

*Obligation to effect transfers etc under a scheme*

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation – 5
- (a) to enter into such agreements with another person on whom a corresponding obligation is, could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or
  - (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme. 10
- (2) That other person may enforce an obligation imposed on a transferor or a transferee by virtue of sub-paragraph (1) in civil proceedings.

*Effect of scheme*

- 5 (1) Where a scheme provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities – 15
- (a) the property or interests, rights or liabilities vest, without further assurance, in the transferee at that time, and
  - (b) the provisions of that scheme in relation to that property or those interests, rights or liabilities have effect from the time when the scheme comes into force. 20
- (2) Sub-paragraph (1) is subject to provision under a scheme for –
- (a) the transfer of property, rights or liabilities, or
  - (b) the creation of interests, rights and liabilities,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1). 25
- (3) A certificate issued by the Secretary of State that any property, rights or liabilities have been transferred under a scheme is conclusive evidence of the transfer.

*Powers and duties under statutory provisions*

- 6 (1) A scheme may make provision for some or all of the powers and duties to which this paragraph applies – 30
- (a) to be transferred to a transferee,
  - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees, or
  - (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee. 35
- (2) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon a transferor by or under an enactment so far as they relate to –
- (a) property to be transferred in accordance with the scheme, 40
  - (b) carrying out works designed to be used in connection with such property, or
  - (c) acquiring land for the purpose of carrying out such works.

- (3) This paragraph does not require a restrictive construction to be given to what may be transferred by virtue of paragraph 2(1)(e).

*Supplementary provisions of schemes*

- 7 (1) A scheme may –
- (a) make such incidental, supplemental, consequential and transitional provision in connection with the scheme as the Secretary of State thinks fit; 5
  - (b) make different provision for different cases.
- (2) In particular, a scheme may make provision –
- (a) for the transferee to be treated as the same person in law as the transferor; 10
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee; 15
  - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme; 20
  - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment.

*Modification of a scheme by agreement*

- 8 (1) Where the transferor and transferee under a scheme that has come into force so agree, the scheme is to be treated for all purposes as having come into force with such modifications as may be agreed. 25
- (2) An agreement under this paragraph which relates to rights and liabilities under a contract of employment may be entered into only if the employee is a party to the agreement. 30
- (3) An agreement under this paragraph that adversely affects the property or rights of a person other than the transferor, the transferee or such an employee may be entered into only if that person is a party to the agreement.
- (4) An agreement under this paragraph may include –
- (a) any provision that could have been contained in the scheme; 35
  - (b) incidental, supplemental, consequential and transitional provision in connection with any such provision.

*Continuity of employment etc*

- 9 (1) Where in accordance with a scheme a person employed by a transferor becomes an employee of a transferee – 40
- (a) that person is not to be regarded for the purposes of Part 11 (redundancy payments etc) of the Employment Rights Act 1996 as having been dismissed by virtue of the transfer,

- (b) that person's period of employment with the transferor counts for the purposes of that Act as a period of employment with the transferee, and
- (c) the change of employment does not break the continuity of the period of employment for the purposes of that Act. 5
- (2) Where a transfer scheme contains provision for the transfer of rights and liabilities relating to a person's contract of employment but, before the transfer takes effect, the person informs the transferor or the transferee that the person objects to the transfer –
- (a) those rights and liabilities are not transferred under the transfer scheme, 10
- (b) the person's contract of employment is terminated immediately before the day on which the transfer would occur, and
- (c) the person is not, for any purpose, to be regarded as having been dismissed. 15
- (3) Nothing in sub-paragraph (2) affects the person's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the person's detriment in the person's working conditions.
- (4) Where a transfer scheme contains provision for the transfer of rights and liabilities relating to a person's contract of employment, it may include provision with respect to – 20
- (a) the person's eligibility to become a member of a pension scheme by virtue of employment with the transferee;
- (b) the rights of, or rights or liabilities in respect of, the person under a pension scheme of which the person may become a member by virtue of employment with the transferee; 25
- (c) the rights of, or rights or liabilities in respect of, the person under a pension scheme of which the person is a member by virtue of employment immediately before the transfer. 30

#### *Compensation for third parties*

- 10 (1) A third party is entitled to compensation in respect of the extinguishment of that party's entitlement where –
- (a) the entitlement is to an interest or right which would, apart from a provision of a scheme and paragraph 2(3) and (4), have become enforceable in respect of the transfer or creation of any property, rights or liabilities in accordance with the scheme, 35
- (b) the provisions of that scheme or of paragraph 2(3) and (4) have the effect of preventing that party's entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and 40
- (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides. 45
- (2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to



do so, that the third party does not suffer financial loss from the extinguishment of the entitlement.

(3) A liability to pay compensation under this paragraph falls on the Secretary of State.

(4) This paragraph has effect in relation to – 5

(a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme, and

(b) the provisions of an agreement under paragraph 8 relating to property, rights or liabilities transferred or created in accordance with a scheme, 10

as it has effect in relation to the scheme but as if, in the case of an agreement under paragraph 8, only persons who are not parties to the agreement were third parties.

*Provision of information to Secretary of State for the purposes of making a scheme*

11 (1) The Secretary of State may direct a strategic highways company, or a former strategic highways company, to provide such information as he or she may consider necessary for the purposes of making a scheme. 15

(2) The direction must specify the period within which the information is to be provided.

(3) The period specified in the direction must be not less than 28 days beginning with the day on which the direction is given. 20

(4) If the company fails to comply with the direction, the Secretary of State may serve a notice on the company requiring –

(a) production to the Secretary of State of any documents which are specified or described in the notice and are in the custody or under the control of that company, or 25

(b) provision to the Secretary of State of such information as may be specified or described in the notice.

(5) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice. 30

(6) A direction or notice under this paragraph may not require –

(a) production of a document which a person could not be compelled to produce in civil proceedings, or

(b) provision of information which a person could not be compelled to give in evidence in such proceedings. 35

(7) If a strategic highways company fails to comply with a notice under sub-paragraph (4), the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good. 40

(8) Any order under sub-paragraph (7) may include provision requiring all the costs or expenses of, or incidental to, the application to be borne by one or more of the following –

(a) the strategic highways company in default;

(b) any officers of that company who are responsible for its default. 45

- (9) In this paragraph, reference to the production of a document includes reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

### Interpretation

- 12 (1) In this Schedule – 5
- “third party”, in relation to a scheme, means a person other than a transferor and a transferee;
- “transferee” –
- (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme, and 10
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person –
- (i) to whom that property or those rights or liabilities are transferred, or 15
- (ii) in whose favour, or in relation to whom, they are created;
- “transferor” –
- (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme, and 20
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person – 25
- (i) from whom that property or those rights or liabilities are transferred,
- (ii) who, or whose property, is subject to the interest or right created, or
- (iii) for whose benefit the liability is created; 30
- “scheme” means a scheme under section 13.
- (2) In this Schedule, reference to employment includes reference to employment in the civil service of the State and, in respect of such employment –
- (a) reference to a contract of employment is to be treated as a reference to the terms of employment in the civil service of the State, and 35
- (b) reference to a dismissal is to be treated as a reference to the termination of the employment.
- (3) References in this Schedule –
- (a) to a right or to an entitlement to a right include references to an entitlement to exercise a right, and 40
- (b) to a right’s arising include references to its becoming exercisable.

SCHEDULE 4

Section 27

MAYORAL DEVELOPMENT ORDERS

PART 1

MAIN AMENDMENTS

- 1 After section 61D of the Town and Country Planning Act 1990 insert— 5
- “Mayoral development orders*
- 61DA Mayoral development orders**
- (1) The Mayor of London may by order (a Mayoral development order) grant planning permission for development specified in the order on one or more sites specified in the order. 10
- (2) The site or sites must fall within—
- (a) the area of a local planning authority in Greater London, or
- (b) the areas of two or more local planning authorities in Greater London.
- (3) The Secretary of State may by development order specify an area or class of development in respect of which a Mayoral development order must not be made. 15
- 61DB Permission granted by Mayoral development order**
- (1) Planning permission granted by a Mayoral development order may be granted— 20
- (a) unconditionally, or
- (b) subject to such conditions or limitations as are specified in the order.
- (2) A condition imposed by a Mayoral development order may provide for the consent, agreement or approval to a matter specified in the condition to be given by one or more persons specified in the condition. 25
- (3) A person specified in a condition must be the Mayor of London or a relevant local planning authority.
- (4) The Secretary of State may by development order provide that, if the consent, agreement or approval of a person required by a condition imposed by a Mayoral development order is not given within a specified period, that consent, agreement or approval may be sought from a specified person. 30
- (5) In subsection (4) “specified” means specified, or of a description specified, in the development order. 35
- (6) The Secretary of State may by development order make provision for a person to apply for planning permission for the development of land without complying with a condition imposed on the grant of planning permission by a Mayoral development order. 40

- (7) A development order under subsection (6) may, in particular make provision similar to that made by section 73, subject to such modifications as the Secretary of State thinks appropriate.
- (8) So far as the context requires, in relation to –
- (a) an application for the consent, agreement or approval of the Mayor of London to a matter specified in a condition imposed by a Mayoral development order, or 5
  - (b) the determination of such an application, 10
- any reference in an enactment to a local planning authority (however expressed) includes a reference to the Mayor.
- (9) For the purposes of this Act a local planning authority is a relevant local planning authority in relation to a Mayoral development order or proposed Mayoral development order if a site or part of a site to which the order or proposed order relates is within the authority's area. 15

#### **61DC Preparation and making of Mayoral development order**

- (1) The Secretary of State may by development order make provision about the procedure for the preparation and making of a Mayoral development order.
- (2) A development order under subsection (1) may in particular make provision about – 20
- (a) notice, publicity and inspection by the public;
  - (b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;
  - (c) the making and consideration of representations. 25
- (3) A Mayoral development order may be made only in response to an application to the Mayor of London by each relevant local planning authority.
- (4) A proposed Mayoral development order may be consulted on only with the consent of each relevant local planning authority. 30
- (5) A Mayoral development order may not be made unless the order has been approved, in the form in which it is made, by each relevant local planning authority.
- (6) If the Mayor of London makes a Mayoral development order, the Mayor must send a copy to the Secretary of State as soon as is reasonably practicable after the order is made. 35

#### **61DD Revision or revocation of Mayoral development order**

- (1) The Mayor of London may at any time revise or revoke a Mayoral development order with the approval of each relevant local planning authority. 40
- (2) The Mayor of London must revise a Mayoral development order if the Secretary of State directs the Mayor to do so (and the requirement for the approval of each relevant local planning authority does not apply in those circumstances).

- 
- (3) The Secretary of State may at any time revoke a Mayoral development order if the Secretary of State thinks it is expedient to do so.
- (4) The power under subsection (3) is to be exercised by order made by the Secretary of State. 5
- (5) If the Secretary of State revokes a Mayoral development order the Secretary of State must state the reasons for doing so.
- (6) The Secretary of State may by development order make provision about— 10
- (a) the steps to be taken by the Secretary of State before giving a direction or making an order under this section;
  - (b) the procedure for the revision or revocation of a Mayoral development order.
- (7) A development order under subsection (6) may in particular make provision about— 15
- (a) notice, publicity and inspection by the public;
  - (b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;
  - (c) the making and consideration of representations.
- 61DE Effect of revision or revocation on incomplete development** 20
- (1) This section applies if planning permission for development granted by a Mayoral development order is withdrawn at a time when the development has been started but not completed.
- (2) For this purpose planning permission for development granted by a Mayoral development order is withdrawn— 25
- (a) if the order is revoked under section 61DD, or
  - (b) if the order is revised under that section so that it ceases to grant planning permission for the development or materially changes any condition or limitation to which the grant of permission is subject. 30
- (3) The development may, despite the withdrawal of the permission, be completed, subject as follows.
- (4) If the permission is withdrawn because the Mayoral development order is revoked by the Mayor of London, the Mayor may make a determination that subsection (3) is not to apply in relation to development specified in the determination. 35
- (5) A determination under subsection (4) must be published in such manner as the Mayor of London thinks appropriate.
- (6) If the permission is withdrawn because the Mayoral development order is revoked by an order made by the Secretary of State under section 61DD, the order under that section may provide that subsection (3) is not to apply in relation to development specified in that order. 40
- (7) If the permission is withdrawn because the order is revised as mentioned in subsection (2)(b), the revised order may provide that 45

subsection (3) is not to apply in relation to development specified in the order.

- (8) The power under this section to include provision in an order under section 61DD or a Mayoral development order may be exercised differently for different purposes.”

5

## PART 2

### CONSEQUENTIAL AMENDMENTS

- 2 The Town and Country Planning Act 1990 is amended as follows.
- 3 In section 56(5)(a) (time when development begun where planning permission granted by general or local development order) for “or a local development order” substitute “, a local development order or a Mayoral development order”.
- 4 In section 57(3) (planning permission not required for normal use of land where planning permission for development of land granted by development order etc) after “a local development order” insert “, a Mayoral development order”.
- 5 In section 58(1) (planning permission may be granted by development order etc) after “a local development order” insert “, a Mayoral development order”.
- 6 In section 62(2A) (applications for planning permission: references in subsections (1) and (2) to applications for planning permission to include applications under section 61L(2)) after “references to” in the second place insert “–
- (a) applications for consent, agreement or approval as mentioned in section 61DB(2), and
- (b) ”.
- 7 In section 65(3A) (notice etc of applications for planning permission: references in subsections (1) and (3) to applications for planning permission etc to include applications under section 61L(2) etc) after “references to” in the second place insert “–
- (a) any application for consent, agreement or approval as mentioned in section 61DB(2) or any applicant for such consent, agreement or approval, and
- (b) ”.
- 8 (1) Section 69 (register of applications etc) is amended as follows.
- (2) In subsection (1) (duty of local planning authority to keep register containing information about planning applications etc) after paragraph (c) insert –
- “(cza) Mayoral development orders;”.
- (3) In subsection (2)(b) (requirement for register to contain information about local development orders etc) after “local development order,” insert “Mayoral development order,”.
- 9 (1) Section 71 (consultations in connection with determinations under section 70) is amended as follows.

- (2) In subsection (2ZA) (references in subsections (1) and (2) to applications for planning permission to include applications under section 61L(2)) after “references to” in the second place insert “–
- (a) an application for consent, agreement or approval as mentioned in section 61DB(2), and 5
  - (b) ”.
- (3) In subsection (3A) (disapplication of consultation requirement relating to caravan sites in case of neighbourhood development order) after “granted by” insert “a Mayoral development order”.
- 10 In section 74(1ZA) (directions etc as to method of dealing with applications: references in subsections (1)(c) and (f) to planning permission etc to include approvals under section 61L(2) etc) – 10
- (a) in paragraph (a) after “reference to” in the second place insert “–
    - (i) a consent, agreement or approval as mentioned in section 61DB(2), and 15
    - (ii) ”, and
  - (b) in paragraph (b) after “references to” in the second place insert “–
    - (i) applications for consent, agreement or approval as mentioned in section 61DB(2), and 20
    - (ii) ”.
- 11 In section 77(1) (reference of applications to the Secretary of State) –
- (a) for “approval” substitute “consent, agreement or approval”, and
  - (b) after “a local development order” insert “, a Mayoral development order”. 25
- 12 In section 78(1)(c) (right of appeal against refusal of application for approval under development order etc.) after “a local development order” insert “, a Mayoral development order”.
- 13 In section 88(9) (provision for permission for development in enterprise zones does not prevent planning permission from being granted by other means) after “a local development order” insert “, a Mayoral development order”. 30
- 14 In section 91(4)(a) (provisions about general condition limiting duration of planning permission do not apply to permission granted by development order etc) after “a local development order” insert “, a Mayoral development order”. 35
- 15 (1) Section 108 (compensation for refusal etc of planning permission formerly granted by development order etc) is amended as follows.
- (2) In the heading after “local development order” insert “, Mayoral development order”. 40
  - (3) In subsection (1) –
    - (a) in paragraph (a) after “a local development order” insert “, a Mayoral development order”, and
    - (b) after “the local development order” insert “, the Mayoral development order”. 45

- 
- (4) After subsection (1) insert –
- “(1A) Where section 107 applies in relation to planning permission granted by a Mayoral development order –
- (a) subsection (1) of that section has effect as if it provided for a claim to be made to, and compensation to be paid by, the Mayor of London rather than the local planning authority, and 5
- (b) subject to subsection (1B), sections 109 to 112 have effect where compensation is payable by the Mayor of London under section 107(1) as if references to the local planning authority (however expressed) were references to the Mayor of London. 10
- (1B) Subsection (1A)(b) does not apply to section 110(2) or (4).”
- (5) In subsection (2) –
- (a) after “a local development order” insert “, a Mayoral development order”, and 15
- (b) after “revocation” in both places insert “, revision”.
- (6) In subsection (3B) after paragraph (b) insert –
- “(ba) in the case of planning permission granted by a Mayoral development order, the condition in subsection (3DA) is met, or” 20
- (7) After subsection (3D) insert –
- “(3DA) The condition referred to in subsection (3B)(ba) is that –
- (a) the planning permission is withdrawn by the revocation or revision of the Mayoral development order, 25
- (b) notice of the revocation or revision was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation or revision took effect, and
- (c) either – 30
- (i) the development authorised by the Mayoral development order had not begun before the notice was published, or
- (ii) section 61DE(3) applies in relation to the development.” 35
- 16 In section 109(6) (apportionment of compensation for depreciation: interpretation) in the definition of “relevant planning decision” after “the local development order” insert “, the Mayoral development order”.
- 17 In section 171H(1)(a) (compensation for temporary stop notice: application where activity authorised by development order etc) after “a local development order” insert “, a Mayoral development order”. 40
- 18 In section 264(5)(ca) (land which is treated as operational land of a statutory undertaker by virtue of planning permission for its development granted by a local development order etc) after “a local development order” insert “, a Mayoral development order”. 45
- 19 (1) Section 303 (fees for planning applications etc) is amended as follows.



- (2) After subsection (1) insert—
- “(1ZA) The Secretary of State may by regulations make provision for the payment of a fee to—
- (a) the Mayor of London in respect of an application for consent, agreement or approval as mentioned in section 61DB(2) or the giving of advice about such an application; 5
  - (b) a specified person in respect of an application for consent, agreement or approval for which provision is made under section 61DB(4) or the giving of advice about such an application.” 10
- (3) After subsection (10) insert—
- “(10A) If the Mayor of London or a specified person calculates the amount of fees in pursuance of provision made by regulations under subsection (1ZA) the Mayor of London or the specified person must secure that, taking one financial year with another, the income from the fees does not exceed the cost of performing the function.” 15
- (4) After subsection (11) insert—
- “(12) In this section “specified person” means a person specified by development order under section 61DB(4).”
- 20 In section 305(1)(a) (contributions by Ministers towards compensation paid by local authorities) after “local authority” insert “, the Mayor of London”. 20
- 21 In section 324 (rights of entry) after subsection (1A) insert—
- “(1B) Any person duly authorised in writing by the Secretary of State, a local planning authority or the Mayor of London may at any reasonable time enter any land for the purpose of surveying it in connection with— 25
- (a) a proposal by a local planning authority to apply to the Mayor of London for the Mayor to make a Mayoral development order, or
  - (b) a proposal by the Mayor of London to make a Mayoral development order.” 30
- 22 (1) Section 333 (regulations and orders) is amended as follows.
- (2) In subsection (4) after “61A(5)” insert “, 61DD(4),”.
  - (3) In subsection (5) after “Wales),” insert “61DD(4),”.
- 23 In section 336(1) (interpretation) at the appropriate place insert— 35
- ““relevant local planning authority” is to be construed in accordance with section 61DB(9);”.

SCHEDULE 5

Section 30

TRANSFER OF RESPONSIBILITY FOR LOCAL LAND CHARGES TO LAND REGISTRY

PART 1

AMENDMENTS TO THE LOCAL LAND CHARGES ACT 1975

- |   |  |    |
|---|--|----|
| 1 | The Local Land Charges Act 1975 is amended as follows.   | 5  |
| 2 | In the italic heading before section 3 for “registers” substitute “register”.  |    |
| 3 | For section 3 (registering authorities, local land charges registers, and indexes) substitute –  |    |
|   | <b>“3 The local land charges register</b>  |    |
|   | (1) The Chief Land Registrar must keep the local land charges register.  | 10 |
|   | (2) The local land charges register is a register of –   |    |
|   | (a) each local land charge registered in a local land charges register for a local authority’s area immediately before this section first had effect in relation to that area, and |    |
|   | (b) each local land charge subsequently registered under section 5 or 6 or another relevant enactment in respect of land which is wholly or partly within that area.               | 15 |
|   | (3) Subsection (2) is subject to any later variation or cancellation of the registration of the local land charge.   |    |
|   | (4) The local land charges register may be kept in electronic form.  | 20 |
|   | (5) In this section –  |    |
|   | “local authority” means –  |    |
|   | (a) a district council,  |    |
|   | (b) a county council in England for an area for which there is no district council,  | 25 |
|   | (c) a county council in Wales,   |    |
|   | (d) a county borough council,  |    |
|   | (e) a London borough council,  |    |
|   | (f) the Common Council of the City of London, or   |    |
|   | (g) the Council of the Isles of Scilly;  | 30 |
|   | “relevant enactment” means a provision which is made by or under an Act and which provides for the registration of a charge or other matter as a local land charge.                |    |
|   | (6) For the purposes of this section the area of the Common Council of the City of London includes the Inner Temple and the Middle Temple.”  | 35 |
| 4 | Omit section 4 (the appropriate local land charges register).  |    |
| 5 | (1) Section 5 (registration) is amended as follows.  |    |
|   | (2) Omit subsection (1).   |    |

- (3) For subsections (2) and (3) substitute –
- “(2) Subject to subsection (6) below, the originating authority as respects a local land charge must apply to the Chief Land Registrar for its registration in the local land charges register; and on the application being made the Chief Land Registrar must register the charge accordingly. 5
- (3) The registration in the local land charges register of a local land charge, or of any matter which when registered becomes a local land charge, must be carried out by reference to the land affected.”
- (4) In subsection (6) for “a local land charges register” substitute “the local land charges register”. 10
- 6 (1) Section 6 (local authority’s right to register a general charge against land in certain circumstances) is amended as follows.
- (2) For subsection (2) substitute –
- “(2) At any time before the specific charge comes into existence, the Chief Land Registrar must register a general charge against the land, without any amount being specified, in the local land charges register if the originating authority make an application for that purpose.” 15
- (3) In subsection (3) for “5(1) and (2)” substitute “5(2)”. 20
- (4) In subsection (4) –
- (a) for “pursuant to an application by the originating authority, they” substitute “the originating authority”, and
- (b) for “registering authority” substitute “Chief Land Registrar”.
- 7 (1) Section 8 (personal searches) is amended as follows. 25
- (2) In subsection (1) –
- (a) for “any local land charges register” substitute “the local land charges register”, and
- (b) after “fee” insert “(if any)”.
- (3) In subsection (1A) – 30
- (a) for “a local land charges register is kept otherwise than in documentary” substitute “the local land charges register is kept in electronic”, and
- (b) for “registering authority” substitute “Chief Land Registrar”.
- (4) In subsection (2) – 35
- (a) for “a registering authority” substitute “the Chief Land Registrar”, and
- (b) omit “authority’s”.
- 8 (1) Section 9 (official searches) is amended as follows.
- (2) In subsection (1) – 40
- (a) omit “appropriate”, and
- (b) for “registering authority” substitute “Chief Land Registrar”.
- (3) Omit subsection (2).

- 
- (4) For subsections (3) and (3A) substitute –
- “(3) The prescribed fee (if any) shall be payable in the prescribed manner in respect of any requisition made under this section.”
- (5) In subsection (4) –
- (a) for “a registering authority” substitute “the Chief Land Registrar”, 5
- (b) omit “or (3A)”, and
- (c) for “the registering authority” substitute “the Chief Land Registrar”.
- (6) In consequence of the amendment made by sub-paragraph (5)(b), in Schedule 4 to the Constitutional Reform Act 2005 omit paragraph 84(3)(b).
- 9 (1) Section 10 (compensation for non-registration or defective official search certificate) is amended as follows. 10
- (2) In subsection (1) –
- (a) omit “appropriate” in each place,
- (b) in paragraph (aa) for “in a case where” substitute “if”, and
- (c) in that paragraph for “otherwise than in documentary” substitute “in electronic”. 15
- (3) Omit subsection (2).
- (4) In subsection (4) for “registering authority in whose area the land affected is situated” substitute “Chief Land Registrar”.
- (5) In subsection (5) – 20
- (a) for the words from “a registering authority” to “not the originating authority” substitute “the Chief Land Registrar”, and
- (b) for “the registering authority” in each place substitute “the Chief Land Registrar”.
- (6) After that subsection insert – 25
- “(5A) An amount equal to any compensation paid under this section by the Chief Land Registrar in respect of a local land charge is also recoverable from the originating authority in a case where the matter within subsection (1) giving rise to the Chief Land Registrar’s liability is a consequence of – 30
- (a) an error made by the originating authority in applying to register the local land charge, or
- (b) an error made by the originating authority in applying for the registration of the local land charge to be varied or cancelled.” 35
- (7) In subsection (6) –
- (a) for “a registering authority” substitute “the Chief Land Registrar”,
- (b) for “that authority” substitute “the Chief Land Registrar”,
- (c) after “(5)” in each place insert “or (5A)”, and
- (d) for “the registering authority” substitute “the Chief Land Registrar”. 40
- (8) After subsection (6) insert –
- “(6A) The Chief Land Registrar may insure against the risk of liability to pay compensation under this section.”

- (9) In subsection (7) for “Limitation Act 1939” substitute “Limitation Act 1980”.
- (10) In subsection (9) for “registering authority’s” substitute “Chief Land Registrar’s”.
- 10 In section 12 (office copies as evidence) for “any local land charges register” substitute “the local land charges register”. 5
- 11 In section 13 (protection of solicitors, trustees etc) for “a local land charges register” substitute “the local land charges register”.
- 12 (1) Omit section 13A (specification of fees by registering authorities in England).
- (2) In consequence of the amendment made by sub-paragraph (1), in Schedule 4 to the Constitutional Reform Act 2005 omit paragraph 83. 10
- 13 (1) Section 14 (rules) is amended as follows.
- (2) In subsection (1) –
- (a) in paragraph (a) for “registering authorities” substitute “the Chief Land Registrar”, 15
- (b) after paragraph (f) insert –
- “(fa) as to the variation without an order of the court of the registration of a local land charge –
- (i) on the application or with the consent of the person by whom it is enforceable, or 20
- (ii) of the Chief Land Registrar’s own motion;”,
- (c) for paragraph (g) substitute –
- “(g) as to the cancellation without an order of the court of the registration of a local land charge –
- (i) on its cesser, 25
- (ii) on the application or with the consent of the person by whom it is or was enforceable, or
- (iii) of the Chief Land Registrar’s own motion;”, and
- (d) for paragraph (h) substitute – 30
- “(h) for prescribing the fees to be paid to the Chief Land Registrar for services relating to local land charges provided by the Chief Land Registrar.”
- (3) In subsection (2) –
- (a) in paragraph (a) for “any local land charges register” substitute “the local land charges register”, 35
- (b) after paragraph (a) insert –
- “(aa) power to make rules –
- (i) prescribing different fees for different services or descriptions of service; 40
- (ii) prescribing services or descriptions of service for which no fees are payable;”, and
- (c) for paragraph (b) and the “and” at the end of that paragraph substitute –
- “(b) power to make rules about communications for the purposes of this Act, or any statutory provision by 45

	virtue of which any matter is registrable in the local land charges register, including rules as to –	
	(i) the particular means of communication which may or must be used for such purposes (which may include an electronic means of communication),	5
	(ii) the circumstances in which a particular means of communication may or must be used (which may be all circumstances, subject to exceptions);	10
	(iii) the form or contents of anything sent using a particular means of communication;	
	(ba) power to make rules requiring or enabling anything which is provided to or by the Chief Land Registrar for the purposes of this Act, or any statutory provision by virtue of which any matter is registrable in the local land charges register, to be provided in electronic form;	15
	(bb) power to make rules enabling the Chief Land Registrar, or a person providing services to the Chief Land Registrar, to determine –	20
	(i) any matter within paragraph (b), or	
	(ii) whether anything of the kind referred to in paragraph (ba) may or must be provided in electronic form; and”.	25
(4)	Sub-paragraphs (5) and (6) apply to the function of the Lord Chancellor under section 14(1) of the Local Land Charges Act 1975 as amended by this paragraph so far as it relates to the power to make rules for prescribing fees and the manner of payment of fees (“the new function”).	
(5)	The new function is to be treated as having been transferred to the Welsh Ministers by –	30
	(a) the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044), and	
	(b) Schedule 11 to the Government of Wales Act 2006,	
	in the same way as the equivalent function of the Lord Chancellor under that section as it had effect apart from this paragraph (“the old function”).	35
(6)	A provision made by that Order or that Act in respect of the old function continues to apply to the new function.	
14	In section 15(b) (expenses) for “a registering authority” substitute “the Chief Land Registrar”.	40
15	(1) Section 16 (interpretation) is amended as follows.	
	(2) In subsection (1) omit the definitions of “the appropriate local land charges register” and “the registering authority”.	
	(3) In subsection (1A) for “otherwise than in documentary” substitute “in electronic”.	45
16	In section 19(4) (transitional provision) omit the words from “In so far as” to “so made, but”.	

PART 2

AMENDMENTS TO THE LAND REGISTRATION ACT 2002

- 17 The Land Registration Act 2002 is amended as follows.
- 18 In section 100 (conduct of business) after subsection (2) insert—
- “(2A) Subsections (1) and (2) apply to all functions of the registrar, whether or not conferred by this Act.” 5
- 19 In section 106(1) (incidental powers of registrar in relation to companies) after “Schedule 5,” insert “or under the Local Land Charges Act 1975,”.
- 20 In paragraph 4 of Schedule 7 (indemnity for members of the land registry in relation to functions relating to land registration) after “land registration” insert “or local land charges”. 10

PART 3

AMENDMENTS TO OTHER ACTS

*Law of Property Act 1925 (c. 20)*

- 21 In section 198(1) of the Law of Property Act 1925 (registration in local land charges register to be notice) for “any local land charges register” substitute “the local land charges register”. 15

*Requisitioned Land and War Works Act 1948 (c. 17)*

- 22 In section 14 of the Requisitioned Land and War Works Act 1948 (registration of rights as to government oil pipelines)— 20
- (a) in subsections (1) and (4)(b) omit “appropriate”,
- (b) in subsection (1) for “authority keeping that register that authority” substitute “Chief Land Registrar, the Chief Land Registrar”, and
- (c) in subsection (4) for “a local land charges register” substitute “the local land charges register”. 25

*Cheshire County Council Act 1953 (c. xl)*

- 23 In section 25(3) of the Cheshire County Council Act 1953 (notice preventing building next to proposed street to be void unless registered as a local land charge) omit the words from “Provided that” to “local land charge”.

*Land Powers (Defence) Act 1958 (c. 30)* 30

- 24 The Land Powers (Defence) Act 1958 is amended as follows.
- 25 In section 12 (extension of provisions of Requisitioned Land and War Works Acts) in each of subsections (2) and (5) for “appropriate register of local land charges” substitute “local land charges register”.
- 26 In section 17 (registration of wayleave orders and restrictions under section 16)— 35
- (a) in subsections (2)(a), (2A) and (3)(b) omit “appropriate”,

- (b) in subsection (2A) for “authority keeping that register” substitute “Chief Land Registrar”, and
- (c) in subsection (3) for “a local land charges register” substitute “the local land charges register”.

*Rights of Light Act 1959* 5

- 27 The Rights of Light Act 1959 is amended as follows.
- 28 (1) Section 2 (registration of notice in lieu of obstruction of access of light) is amended as follows.
- (2) In subsection (1) for “local authority in whose area the dominant building is situated” substitute “Chief Land Registrar”. 10
  - (3) In subsection (2) omit “be in the prescribed form and shall”.
  - (4) In subsection (3) after “accompanied by” insert “ a copy of”.
  - (5) In subsection (4) –
    - (a) for “a local authority” substitute “the Chief Land Registrar”,
    - (b) for “that authority” substitute “the Chief Land Registrar”, 15
    - (c) omit “appropriate”, and
    - (d) in paragraph (b) for “5(1) and (2)” substitute “5(2)”.
- 29 In section 3(2)(c) (period for which notice has effect) –
- (a) after “expires without” insert “a copy of”, and
  - (b) for “local authority” substitute “Chief Land Registrar”. 20
- 30 In section 7(1) (interpretation) –
- (a) for the definition of “prescribed” substitute –
    - ““prescribed” means prescribed by rules under section 14 of the Local Land Charges Act 1975;”, and
  - (b) omit the definition of “local authority”. 25
- 31 In consequence of the amendment made by paragraph 30(b), in Schedule 1 to the Local Land Charges Act 1975 omit paragraph (c) of the amendments to the Rights of Light Act 1959.

*Leasehold Reform Act 1967 (c. 88)*

- 32 In section 19(10) of the Leasehold Reform Act 1967 (registration of scheme or certificate under section 19 in appropriate local land charges register) in the opening words omit “appropriate”. 30

*Land Compensation Act 1973 (c. 26)*

- 33 In section 52(9) of the Land Compensation Act 1973 (registration of advance payment of compensation in appropriate local land charges register) omit “appropriate”. 35

*Interpretation Act 1978 (c. 30)*

- 34 In Schedule 1 to the Interpretation Act 1978 (words and expressions defined) in the entry containing definitions of “local land charges register” and “the appropriate local land charges register” – 40



- (a) for “a register” substitute “the register”, and
- (b) omit the words from “and “the appropriate local land charges register”” to the end of that entry.

*Highways Act 1980 (c. 66)*

- 35 In paragraph 9(a) of Schedule 9 to the Highways Act 1980 (notification of revocation of improvement line or building line) for the words from “the council” to “is situated” substitute “the Chief Land Registrar”. 5

*Disused Burial Grounds (Amendment) Act 1981 (c. 18)*

- 36 In section 2(4) of the Disused Burial Grounds (Amendment) Act 1981 (requirement to deposit copy of order of Secretary of State dispensing with requirements as to human remains with registering authority) for the words from “deposited with” to “1975)” substitute “sent to the Chief Land Registrar.” 10

*Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66)*

- 37 In section 3(4) of the Compulsory Purchase (Vesting Declarations) Act 1981 (registration of preliminary notice) for the words from “registered” to the end of the subsection substitute “sent to the Chief Land Registrar, and the notice shall be a local land charge”. 15

*Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

- 38 In section 70(12) of the Leasehold Reform, Housing and Urban Development Act 1993 (consequence of registration of scheme in appropriate local land charges register) in the opening words omit “appropriate”. 20

*Local Government (Wales) Act 1994 (c. 19)*

- 39 In Schedule 17 to the Local Government (Wales) Act 1994 (savings and transitional provision) omit paragraph 11 (local land charges registers). 25

## PART 4

## TRANSITIONAL PROVISION

*Power for Parts 1 and 3 to be applied gradually to local authority areas*

- 40 (1) Parts 1 and 3 of this Schedule have effect in relation to the area of a local authority if (and only if) – 30
- (a) the Chief Land Registrar gives notice in writing to the local authority that, on and after the date specified in the notice, those Parts will have effect in relation to that area, and
  - (b) before that date, the notice is publicised in such manner as the Chief Land Registrar thinks is likely to bring the arrangements under the Local Land Charges Act 1975 as amended by Part 1 of this Schedule to the attention of persons who are likely to want to apply to register local land charges in, or to search, the register of local land charges after that Part has effect in relation to that area. 35

- 
- (2) The Chief Land Registrar may withdraw a notice under sub-paragraph (1) (“the original notice”) by a notice in writing which—
- (a) is given before the date specified in the original notice to the authorities to whom the original notice was given, and
  - (b) is publicised before that date in such manner as the Chief Land Registrar thinks is likely to bring the withdrawal to the attention of the persons to whom the original notice was publicised. 5
- (3) If, in accordance with this paragraph, the Chief Land Registrar gives a notice under sub-paragraph (1) which is not withdrawn, Parts 1 and 3 have effect in relation to the area specified in the notice on and after the date specified in it. 10
- (4) This paragraph does not prevent the making of rules under section 14 of the Local Land Charges Act 1975 as amended by Part 1 of this Schedule—
- (a) in relation to the operation of that Act as amended by that Part, or
  - (b) in relation to the operation of any other statutory provision by virtue of which any matter is registrable in the local land charges register, 15
- but such rules have effect in relation to the area of a local authority if (and only if) that Part has effect in relation to that area in accordance with this paragraph.
- Duty of local authorities to assist Chief Land Registrar* 20
- 41 A local authority must provide the Chief Land Registrar with such information or other assistance as the Chief Land Registrar reasonably requires for the purposes of enabling Part 1 of this Schedule to have effect in relation to the area of that authority.
- Continuity of functions* 25
- 42 (1) This paragraph and paragraph 43 apply where Parts 1 and 3 of this Schedule have effect in relation to the area of a local authority by virtue of paragraph 40.
- (2) Anything done or omitted to be done by or in relation to the local authority and in relation to the old register which is in force or effective immediately before the relevant date is to be treated as done or omitted to be done by or in relation to the Chief Land Registrar and in relation to the new register. 30
  - (3) There may be continued by or in relation to the Chief Land Registrar anything (including legal proceedings) that relates to the old register and is in the process of being done by or in relation to the local authority immediately before the relevant date. 35
- Compensation*
- 43 (1) The amendments in Part 1 of this Schedule to section 10(1) and (2) of the Local Land Charges Act 1975 (compensation for non-registration or defective official search certificate) and to section 16(1) of that Act so far as it applies to that section do not have effect in relation to a search of the old register made before the relevant date. 40
- (2) Subject to sub-paragraphs (4) and (5), the Chief Land Registrar may recover from the local authority an amount equal to any compensation which the

- Chief Land Registrar is liable to pay under section 10 of the Local Land Charges Act 1975 in consequence of –
- (a) the authority’s failure before the relevant date to register, or register correctly, a local land charge in the old register,
  - (b) the authority’s failure before the relevant date to satisfy an entitlement to search in the old register conferred by section 8 of that Act as mentioned in subsection (1A) of that section, or
  - (c) the omission of a local land charge from an official search certificate issued by the authority before the relevant date.
- (3) Subject to sub-paragraphs (4) and (5), the Chief Land Registrar may recover from the local authority an amount equal to any compensation which the Chief Land Registrar is liable to pay under section 10 of the Local Land Charges Act 1975 where –
- (a) an act or omission of the Chief Land Registrar gives rise to that liability, but
  - (b) that act or omission is in consequence of a failure by the authority to provide any information about a charge registered in the old register.
- (4) Sub-paragraph (5) applies where –
- (a) the Chief Land Registrar’s liability arises as a result of the local authority’s failure before the relevant date –
    - (i) to register, or register correctly, a local land charge in the old register, or
    - (ii) to provide any information about a local land charge registered in the old register to the Chief Land Registrar,
  - (b) the local authority is not the originating authority in relation to the charge, and
  - (c) the originating authority –
    - (i) did not apply for registration of the charge in time for it to be practicable for the local authority to register it before the relevant date, or
    - (ii) made an error in applying to register the charge, or in applying for the registration of the charge to be varied or cancelled.
- (5) Where this sub-paragraph applies, the Chief Land Registrar may recover an amount equal to the compensation from the originating authority (and may not recover such an amount from the local authority).
- (6) Sub-paragraph (7) applies where compensation for loss under section 10 of the Local Land Charges Act 1975 is paid by the Chief Land Registrar in the circumstances described in any of sub-paragraphs (2) to (4).
- (7) No part of the amount paid, or of any corresponding amount paid to the Chief Land Registrar by the local authority or originating authority under any of those sub-paragraphs, is to be recovered by the Chief Land Registrar, the local authority or originating authority from any other person except as provided by any of sub-paragraphs (2) to (4) or under a policy of insurance or on grounds of fraud.
- (8) Subsections (5) and (6) of section 10 of the Local Land Charges Act 1975 do not apply where compensation for loss under that section is paid by the Chief Land Registrar in the circumstances described in any of sub-paragraphs (2) to (4).

### Interpretation

- 44 (1) In this Part of this Schedule –
- “local authority” means –
- (a) a district council,
  - (b) a county council in England for an area for which there is no district council, 5
  - (c) a county council in Wales,
  - (d) a county borough council,
  - (e) a London borough council,
  - (f) the Common Council of the City of London, or 10
  - (g) the Council of the Isles of Scilly;
- “the old register”, in relation to a local authority, means the local land charges register kept by the authority under the Local Land Charges Act 1975 before the relevant date;
- “the new register” means the local land charges register kept by the Chief Land Registrar under the Local Land Charges Act 1975; 15
- “the relevant date”, in relation to a local authority, means the date on which Parts 1 and 3 of this Schedule first had effect in relation to the authority’s area.
- (2) For the purposes of this Part of this Schedule the area of the Common Council of the City of London includes the Inner Temple and the Middle Temple. 20
- (3) Expressions used in this Part of this Schedule and in the Local Land Charges Act 1975 have the same meaning as in that Act.

## SCHEDULE 6

Section 34 25

### COMMUNITY ELECTRICITY RIGHT REGULATIONS

#### PART 1

#### THE RIGHT TO BUY

#### *“Right to buy regulations”*

- 1 In this Schedule “right to buy regulations” means regulations under subsection (1) of section 34. 30

#### *Kinds of facilities in relation to which right to buy exercisable*

- 2 (1) Right to buy regulations must specify the kind, or kinds, of renewable electricity generation facilities in relation to which the right to buy is to be exercisable. 35
- (2) The regulations must secure that the right to buy is not to be exercisable in relation to a renewable electricity generation facility if the total installed capacity of the facility is expected to be less than 5 megawatts.
- (3) The regulations may specify a kind of renewable electricity generation facility by reference to one or more of the following factors – 40

- (a) the renewable source of energy used at the facility;
- (b) the technology used to generate electricity at the facility;
- (c) the electricity generation capacity of the facility;
- (d) whether the facility is a land-based facility or an offshore facility.

*Identification of qualifying facilities* 5

- 3 (1) Right to buy regulations must make provision enabling those renewable electricity generation facilities which are qualifying facilities to be identified.
- (2) The regulations may make provision enabling the following to be identified –
- (a) different renewable electricity generation facilities located at the same site; 10
  - (b) any facility at that site which is a qualifying facility.
- (3) The regulations may make provision enabling the following to be identified in cases where there is expansion at a site where a renewable electricity generation facility is located – 15
- (a) any new renewable electricity generation facility created by the expansion;
  - (b) any facility at that site which is a qualifying facility (including any existing facility which becomes a qualifying facility because its total installed capacity is expected to be 5 megawatts or more as a result of the expansion). 20
- (4) Right to buy regulations may make provision about cases in which the right to buy is not to be exercisable in relation to a renewable electricity generation facility which would otherwise be a qualifying facility (an “excepted facility”). 25
- (5) The functions that may be conferred by regulations under sub-paragraph (4) (in accordance with section 35(1)) include –
- (a) the function of determining whether or not a renewable electricity generation facility is an excepted facility;
  - (b) the function of specifying that a particular renewable electricity generation facility is an excepted facility. 30
- (6) The regulations may provide for an excepted facility to be identified by reference to one or more of the following factors –
- (a) community ownership of the facility;
  - (b) community ownership of a stake in the facility; 35
  - (c) non-participation in a statutory energy scheme (whether or not there could be participation in the scheme in respect of the facility).

*The promoter*

- 4 (1) Right to buy regulations must make provision enabling the promoter of a qualifying facility to be identified in a case where the promoter is not, or is not expected to become, the facility operator. 40
- (2) In this paragraph “promoter” means a person developing a qualifying facility.

*The community*

- 5 (1) Right to buy regulations must make provision enabling the following to be identified –
- (a) the community in which a land-based facility is located;
  - (b) the community adjacent to which an offshore facility is located. 5
- (2) A community must be a geographical area which is –
- (a) wholly in England, wholly in Wales or wholly in Scotland;
  - (b) partly in England and partly in Wales; or
  - (c) partly in England and partly in Scotland.
- (3) A community may be identified by reference to one or more of the following factors – 10
- (a) distance measured from the facility or some other point (such as a point on a coastline adjacent to an offshore facility);
  - (b) the number of residents;
  - (c) administrative boundaries of any kind. 15

*The members of the community*

- 6 (1) Right to buy regulations must make provision enabling the following to be identified –
- (a) individuals who may exercise the right to buy;
  - (b) groups who may exercise the right to buy. 20
- (2) The individuals who may exercise the right to buy may be identified by reference to one or more of the following factors –
- (a) how old an individual is;
  - (b) how long an individual has been resident in the community;
  - (c) whether the community is an individual’s only (or main) place of residence. 25
- (3) Right to buy regulations may specify the kind, or kinds, of individuals who may not exercise the right to buy.
- (4) Those kinds of individuals may be identified by reference to one or more of the following factors – 30
- (a) whether an individual is, or has been, bankrupt or subject to any other kind of arrangement relating to indebtedness;
  - (b) whether an individual has been convicted of a criminal offence involving fraud;
  - (c) whether an individual is connected with – 35
    - (i) the designated promoter or facility operator, or
    - (ii) bodies or individuals connected with the designated promoter or facility operator.
- (5) The groups who may exercise the right to buy may be identified by reference to one or more of the following factors – 40
- (a) the legal form of the group;
  - (b) the constitution, structure and management of the group;
  - (c) the criteria for membership of the group (including criteria relating to residence);

- (d) the members of the group;
  - (e) the aims of the group;
  - (f) the activities of the group (including economic activities);
  - (g) the geographical area or areas in which, or in relation to which, the group operates; 5
  - (h) the treatment of income and profits of the group;
  - (i) the treatment of assets of the group (including on its dissolution);
  - (j) whether the group is connected with –
    - (i) the designated promoter or facility operator, or
    - (ii) bodies or individuals connected with the designated promoter or facility operator. 10
- (6) The provision that may be made about membership, or members, of the group under sub-paragraph (5)(c) or (d) includes provision of any kind that may be made under sub-paragraph (2) or (4) about individuals.
- (7) Right to buy regulations may specify the kind, or kinds, of groups who may not exercise the right to buy. 15
- (8) Regulations under this paragraph may make provision about which persons are connected with which other persons for the purposes of any such regulations.
- (9) The regulations may provide that one person (“A”) is connected with another person (“B”) by virtue of – 20
  - (a) a direct or indirect connection;
  - (b) connections arising from employment or office-holding, from family relationships, or from financial arrangements;
  - (c) A being the parent of B or another person connected with B; 25
  - (d) A being a subsidiary of B or another person connected with B.

*Kinds of stake which may be bought through the right to buy*

- 7 (1) Right to buy regulations must specify the kinds of stakes in qualifying facilities which may be bought through the right to buy.
- (2) A stake may take any of the following forms – 30
  - (a) one or more shares in a company;
  - (b) any other interest in a body other than a company;
  - (c) an equitable interest;
  - (d) a right to a royalty related to revenues;
  - (e) a loan. 35
- (3) Right to buy regulations may make provision about the rights, obligations, powers and other terms attaching to a stake.

*Particular kind of stake which may be bought in particular facility*

- 8 (1) Right to buy regulations must require the designated promoter or facility operator to choose the kind, or kinds, of stake in a qualifying facility that are to be available through the right to buy. 40
- (2) The regulations must give the designated promoter or facility operator a choice of at least two different kinds of stake in relation to a qualifying facility.

- (3) The regulations must require the designated promoter or facility operator –
- (a) to carry out a consultation before choosing which kind, or kinds, of stake are to be available, and
  - (b) to take the results of that consultation into account in making the choice.

5

*The price of the stakes*

- 9 (1) Right to buy regulations must make provision about setting the price of the available stakes in a qualifying facility.
- (2) In making the regulations, the Secretary of State must have regard to the desirability of the prices of available stakes reflecting a measure of fair value.
- (3) In this paragraph “available stakes”, in relation to a qualifying facility, means the stakes in the qualifying facility that are to be offered through the right to buy.

10

*Total value of the offer*

- 10 (1) Right to buy regulations must require the offer to consist of stakes whose combined price is –
- (a) equal to, or
  - (b) greater than,
- the minimum amount described in the regulations.
- (2) That minimum amount must be expressed as a percentage of the total capital costs of development of a qualifying facility.
- (3) That percentage must not exceed 5%.
- (4) The regulations may make provision about –
- (a) the kinds of costs that are capital costs of development of a qualifying facility;
  - (b) calculation of the total capital costs of development of a qualifying facility.
- (5) The provision about calculation of the total capital costs may provide for the total –
- (a) to be calculated by reference to a period ending after the time of the calculation (including a period ending with commissioning of the facility);
  - (b) to include costs which have not been incurred at the time of the calculation;
  - (c) to include estimated costs.
- (6) In this paragraph –
- “combined price”, in relation to the stakes offered through the right to buy, means the total which the amounts to be paid for all of those stakes will add up to (assuming those stakes are all bought);
- “offer” means the offer of stakes in a qualifying facility through the right to buy.

15

20

25

30

35

40



*Buying a stake*

- 11 (1) Right to buy regulations must make provision about the procedure for exercising the right to buy in relation to a qualifying facility (the “purchase procedure”).
- (2) The purchase procedure must identify what stake or stakes – 5  
(a) the individuals resident in the community, and  
(b) the groups connected with the community,  
may buy through the right to buy.
- (3) The regulations may require the designated promoter or facility operator to conduct the purchase procedure. 10
- (4) The purchase procedure must identify the period of time during which stakes in a qualifying facility may be applied for (the “application period”).
- (5) The purchase procedure must secure that the application period does not begin until after planning consent has been given for the development of the qualifying facility. 15
- (6) Here “planning consent” means whichever of the following is, or are, needed for that facility to be developed –  
(a) development consent under the Planning Act 2008;  
(b) planning permission under Part 3 of the Town and Country Planning Act 1990; 20  
(c) a marine licence under the Marine and Coastal Access Act 2009;  
(d) consent of the Scottish Ministers under section 36 of the Electricity Act 1989;  
(e) planning permission under the Town and Country Planning (Scotland) Act 1997; 25  
(f) a marine licence under Part 4 of the Marine (Scotland) Act 2010.

*Excessive or insufficient take-up*

- 12 (1) Right to buy regulations may make provision (including provision relating to the allocation of stakes) –  
(a) about cases where applications made in the application period exceed the available stakes, and 30  
(b) about cases where applications made in the application period do not exceed the available stakes.
- (2) Provision about cases where applications made in the application period do not exceed the available stakes may – 35  
(a) provide for the right to buy to be modified or to cease to apply;  
(b) identify a subsequent period of time (a “secondary period”) during which the right to buy is to be exercisable.
- (3) If right to buy regulations identify a secondary period, the regulations may make, in relation to the secondary period, any provision of the kinds mentioned in sub-paragraphs (1) and (2)(a) that may be made in relation to the application period. 40
- (4) The power under section 50 to make different provision in community electricity right regulations for different purposes includes power to make

provision relating to secondary periods that is different from provision relating to application periods.

- (5) The provision that may differ includes provision about—
- (a) the community in which a land-based facility is located or adjacent to which an offshore facility is located; 5
  - (b) the individuals resident in a community or the groups connected with a community who may exercise the right to buy.
- (6) In this paragraph—
- “application period” has the meaning given in paragraph 11;
  - “applications” means applications for stakes in a qualifying facility; 10
  - “available stakes” means the stakes in a qualifying facility that are available to be bought through the right to buy.

*Subsequent disposal of a stake*

- 13 (1) Right to buy regulations may make provision about the disposal of a stake in a qualifying facility after it has been bought through the right to buy (whether the disposal is by a person who bought the stake through the right to buy or by a person who has subsequently acquired it). 15
- (2) The regulations may impose restrictions or prohibitions on the disposal of a stake.
- (3) The regulations may impose duties to dispose of a stake in a case where the holder ceases to be— 20
- (a) an individual resident in a community, or
  - (b) a body connected with a community.
- (4) A restriction or prohibition may limit or prevent the disposal of a stake except to an individual or body who— 25
- (a) would have been able to buy the stake at the time when the right to buy was originally exercisable, or
  - (b) would be able to buy the stake at the time of the disposal, were the right to buy exercisable at that time.

PART 2 30

OPERATORS, OWNERSHIP & RELATED MATTERS

*“Operator and ownership regulations”*

- 14 In this Schedule “operator and ownership regulations” means regulations under subsection (2) of section 34.

*Bodies that may be facility operators* 35

- 15 If operator and ownership regulations specify two or more kinds of bodies which may be a facility operator, the regulations may make provision about which kind of body may own which kind of facility in which circumstances.

*Constitutions of facility operators*

- 16 (1) Operator and ownership regulations may require the constitution of a facility operator to be in accordance with provision specified in the regulations.
- (2) In the case of a facility operator that is a company, the regulations may require the constitution of the company to be in accordance with provision about –
- (a) the voting rights attached to, or other characteristics of, shares in the company; 5
  - (b) the issuing of new shares in the company. 10

*Ownership of facility operators*

- 17 (1) Operator and ownership regulations may make provision about the ownership of facility operators.
- (2) The regulations may –
- (a) impose limitations on who may own a facility operator; 15
  - (b) require the owners of a facility operator to consist of, or include, one or more persons of a kind specified in the regulations.

*Conduct of owners of facility operators*

- 18 (1) Operator and ownership regulations may make provision about the conduct of the owners of facility operators. 20
- (2) The regulations may impose duties, restrictions or prohibitions in relation to the exercise of rights or powers of owners (including a right or power to exercise a vote attached to a share).

*Revenues*

- 19 (1) Operator and ownership regulations may make provision about the treatment of the revenues earned by a qualifying facility. 25
- (2) The regulations may restrict or prohibit the making of arrangements affecting the destination of the revenues.

PART 3

INFORMATION 30

*“Information regulations”*

- 20 In this Schedule “information regulations” means regulations under subsection (3) of section 34.

*Particular kinds of information*

- 21 Information regulations may make provision about the supply of – 35
- (a) financial information relating to a renewable electricity generation facility;

- (b) information relating to electricity generation at a renewable electricity generation facility.

*Possible buyers of stakes*

- 22 Information regulations may make provision about the supply of information by, or to, individuals and groups who are, or may be, interested in exercising the right to buy (were it available to them). 5

*Prospective buyers of stakes*

- 23 Information regulations may make provision about the supply of information by, or to, individuals and groups who are entitled to exercise the right to buy. 10

*Applicants for stakes*

- 24 Information regulations may make provision about the supply of information by, or to, individuals and groups who are exercising the right to buy.

*Owners of stakes* 15

- 25 Information regulations may make provision about the supply of information by, or to, individuals and groups who hold –  
 (a) stakes which they have bought through the right to buy, or  
 (b) stakes which they have acquired after their sale through the right to buy. 20

PART 4

SUPPLEMENTARY

*Interpretation*

- 26 In this Schedule –  
 “body” means an incorporated or unincorporated body of persons; 25  
 “company” includes any other kind of incorporated body;  
 “designated promoter”, in relation to a renewable electricity generation facility, means the promoter identified in accordance with regulations under paragraph 4;  
 “shares” includes any other instrument by which a person holds an interest in the equity of an incorporated body; 30  
 “total installed capacity”, in relation to a renewable electricity generation facility, means the maximum capacity at which the facility could be operated for a sustained period without causing damage to it. 35

SCHEDULE 7

Section 38

THE LICENSING LEVY

*The amount of the levy*

- 1 Regulations may provide for the licensing levy payable in respect of a charging period to increase or decrease over that period. 5

*Basis of amount*

- 2 Regulations may provide for an amount of licensing levy payable by a licence holder to be calculated by reference to the size of an area to which an energy industry licence held by that person relates.

*Amounts payable by different categories of licence holders* 10

- 3 Regulations may provide for different categories of licence holders to pay –  
(a) different amounts of licensing levy, or  
(b) amounts of licensing levy calculated, set or determined in different ways.

*Exemptions* 15

- 4 Regulations may provide for a category of licence holder to be exempt from payment of the licensing levy.

*Unpaid levy*

- 5 (1) Regulations may provide for interest (at a rate specified in, or determined under, the regulations) to be charged in respect of unpaid amounts of licensing levy. 20  
(2) Regulations may provide for unpaid amounts of licensing levy (together with any interest charged) to be recoverable as a civil debt.

*Conferral of functions*

- 6 Regulations may confer a function (including a function involving the exercise of a discretion) on – 25  
(a) the Secretary of State, or  
(b) any other person, apart from the Scottish Ministers or the Welsh Ministers.

*Categories of licence holders* 30

- 7 (1) Regulations (including regulations of the kinds mentioned in paragraphs 3 and 4) may provide for a category of licence holder to consist of persons who hold a kind of energy industry licence specified in the regulations.  
(2) The regulations may (in particular) specify any of the following kinds of energy industry licence – 35  
(a) licences granted under a particular enactment;  
(b) licences of a particular description granted under a particular enactment;

- (c) licences, or licences of a particular description (including a description falling within paragraph (a) or (b)), granted –
- (i) before a particular time,
  - (ii) after a particular time, or
  - (iii) during a particular period.
- 5

*Interpretation*

- 8 In this Schedule –
- “energy industry licence” means a licence falling within section 38(1);
  - “licence holder” means a person who holds an energy industry licence (whether the person was granted it or has, after its grant, acquired it by assignment or other means);
  - “regulations” means regulations under section 38(1).
- 10

## SCHEDULE 8

Section 49

## THE ELECTRONIC COMMUNICATIONS CODE

- 1 This is the Schedule to be inserted before Schedule 4 to the Communications Act 2003 –
- 15

## “SCHEDULE 3A

Section 106

## THE ELECTRONIC COMMUNICATIONS CODE

## PART 1

## KEY CONCEPTS

20

*Introductory*

- 1 (1) This Part defines some key concepts used in this code.
- (2) For definitions of other terms used in this code, see –
- (a) paragraph 91 (meaning of “the court”).
  - (b) paragraph 101 (meaning of “occupier”),
  - (c) paragraph 103 (general interpretation),
  - (d) section 32 (meaning of electronic communications networks and services), and
  - (e) section 405 (general interpretation).
- 25

*The operator*

30

- 2 In this code “operator” means –
- (a) where this code is applied in any person’s case by a direction under section 106, that person, and
  - (b) where this code applies by virtue of section 106(3)(b), the Secretary of State or (as the case may be) the Northern Ireland department in question.
- 35

*The code rights*

- 3 For the purposes of this code a “code right”, in relation to an operator and any land, is a right for the statutory purposes –
- (a) to install and keep electronic communications apparatus on, under or over the land, 5
  - (b) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is on, under or over the land,
  - (c) to carry out any works on the land for or in connection with the installation, maintenance, adjustment, alteration, repair, upgrading or operation of electronic communications apparatus, 10
  - (d) to enter the land to inspect, maintain, adjust, alter, repair, upgrade or operate any electronic communications apparatus which is on, under or over the land or elsewhere, 15
  - (e) to connect to a power supply,
  - (f) to interfere with or obstruct a means of access to or from the land (whether or not any electronic communications apparatus is on, under or over the land), or 20
  - (g) to lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with electronic communications apparatus.

*The statutory purposes*

- 4 In this code “the statutory purposes”, in relation to an operator, means – 25
- (a) the purposes of the operation of the operator’s network, or
  - (b) the purposes of providing an infrastructure system.

*Electronic communications apparatus, lines and structures*

- 5 (1) In this code “electronic communications apparatus” means – 30
- (a) any apparatus which is designed or adapted for use in connection with the provision of an electronic communications network,
  - (b) any apparatus which is designed or adapted for a use which consists of or includes the sending or receiving of communications or other signals that are transmitted by means of an electronic communications network, 35
  - (c) any line, and
  - (d) any other structure or thing which is designed or adapted for use in connection with the provision of an electronic communications network. 40
- (2) References to the installation of electronic communications apparatus are to be construed accordingly.
- (3) In this code – 45
- “line” means any wire, cable, tube, pipe or similar thing (including its casing or coating) which is designed or

- adapted for use in connection with the provision of any electronic communications network or electronic communications service;
- “structure” includes a building only if the sole purpose of that building is to enclose other electronic communications apparatus. 5

*The operator’s network*

- 6 In this code “network” in relation to an operator means –
- (a) if the operator falls within paragraph 2(a), so much of any electronic communications network or infrastructure system provided by the operator as is not excluded from the application of the code under section 106(5), and 10
  - (b) if the operator falls within paragraph 2(b), the electronic communications network which the Secretary of State or the Northern Ireland department is providing or proposing to provide. 15

*Infrastructure system*

- 7 In this code “infrastructure system” means a system of infrastructure provided so as to be available for use by providers of electronic communications networks for the purposes of the provision by them of their networks. 20

## PART 2

## CONFERRAL OF CODE RIGHTS AND THEIR EXERCISE

*Introductory*

- 8 This Part of this code makes provision about – 25
- (a) the conferral of code rights,
  - (b) the persons who are bound by code rights, and
  - (c) the exercise of code rights.

*Who may confer code rights?*

- 9 A code right in respect of land may only be conferred on an operator by an agreement between the occupier of the land and the operator. 30

*Who else is bound by code rights?*

- 10 (1) This paragraph applies if, in accordance with this Part, a code right is conferred on an operator in respect of land by a person (“O”) who is the occupier of the land when the code right is conferred. 35
- (2) If O has an interest in the land when the code right is conferred, the code right also binds –
- (a) the successors in title to that interest,



- (b) a person with an interest in the land that is created after the right is conferred and is derived (directly or indirectly) out of –
    - (i) O’s interest, or
    - (ii) the interest of a successor in title to O’s interest, and
  - (c) any other person at any time in occupation of the land whose right to occupation was granted by –
    - (i) O, at a time when O was bound by the code right, or
    - (ii) a person within paragraph (a) or (b).
- (3) A successor in title who is bound by a code right by virtue of sub-paragraph (2)(a) is to be treated as a party to the agreement by which O conferred the right. 5
- (4) The code right also binds any other person with an interest in the land who has agreed to be bound by it. 15
- (5) If such a person (“P”) agrees to be bound by the code right, the code right also binds –
  - (a) the successors in title to P’s interest,
  - (b) a person with an interest in the land that is created after P agrees to be bound and is derived (directly or indirectly) out of –
    - (i) P’s interest, or
    - (ii) the interest of a successor in title to P’s interest, and
  - (c) any other person at any time in occupation of the land whose right to occupation was granted by –
    - (i) P, at a time when P was bound by the code right, or
    - (ii) a person within paragraph (a) or (b).
- (6) A successor in title who is bound by a code right by virtue of sub-paragraph (5)(a) is to be treated as a party to the agreement by which P agreed to be bound by the right. 20 25 30

*Requirements for agreements*

- 11 (1) An agreement under this Part –
  - (a) must be in writing,
  - (b) must be signed by or on behalf of the parties to it,
  - (c) must state for how long the code right is exercisable, and
  - (d) must state the period of notice (if any) required to terminate the agreement.
- (2) Sub-paragraph (1)(a) and (b) also applies to the variation of an agreement under this Part.
- (3) The agreement as varied must still comply with sub-paragraph (1)(c) and (d). 35 40

*Exercise of code rights*

- 12 (1) A code right is exercisable only in accordance with the terms subject to which it is conferred.

- (2) Anything done by an operator in the exercise of a code right conferred under this Part in relation to any land is to be treated as done in the exercise of a statutory power.
- (3) Sub-paragraph (2) does not apply against a person who –
- (a) is the owner of the freehold estate in the land or the lessee of the land, and
  - (b) is not for the time being bound by the code right.
- (4) In the application of sub-paragraph (3) to Scotland the reference to a person who is the owner of the freehold estate in the land or the lessee of the land is to be read as a reference to a person who is the owner or the tenant of the land.

*Access to land*

- 13 (1) This paragraph applies to an operator by whom any of the following rights is exercisable in relation to land –
- (a) a code right within paragraph (a) to (e) or (g) of paragraph 3;
  - (b) a right under Part 8 (street works rights);
  - (c) a right under Part 9 (tidal water rights);
  - (d) a right under paragraph 71 (power to fly lines).
- (2) The operator may not exercise the right so as to interfere with or obstruct any means of access to or from any other land unless, in accordance with this code, the occupier of the other land has conferred or is otherwise bound by a code right within paragraph (f) of paragraph 3.
- (3) The reference in sub-paragraph (2) to a means of access to or from land includes a means of access to or from land that is provided for use in emergencies.
- (4) This paragraph does not require a person to whom sub-paragraph (5) applies to agree to the exercise of any code right on land other than the land mentioned in that sub-paragraph.
- (5) This sub-paragraph applies to a person who is the occupier of, or owns an interest in, land which is –
- (a) a street in England and Wales or Northern Ireland,
  - (b) a road in Scotland, or
  - (c) tidal water or lands within the meaning of Part 9.

## PART 3

## ASSIGNMENT OF CODE RIGHTS, AND UPGRADING AND SHARING OF APPARATUS

*Introductory*

- 14 This Part of this code makes provision for –
- (a) operators to assign code rights conferred by an agreement under Part 2,
  - (b) operators to upgrade electronic communications apparatus to which such an agreement relates, and

- (c) operators to share the use of any such electronic communications apparatus.

*Assignment of code rights*

- 15 (1) Any agreement under Part 2 of this code is void to the extent that— 5
- (a) it prevents or limits assignment of the agreement to another operator, or
  - (b) it makes assignment of the agreement subject to conditions to be met by the operator (including a condition requiring the payment of money). 10
- (2) In its application to England and Wales sub-paragraph (1) does not apply to the following terms of an agreement under Part 2 of this code—
- (a) terms in a lease which require the operator to enter into an authorised guarantee agreement within the meaning of the Landlord and Tenant (Covenants) Act 1995 (see sections 16 and 28 of that Act); 15
  - (b) terms in an agreement other than a lease which have a similar effect to terms within paragraph (a).
- (3) If an operator (“the assignor”) assigns an agreement under Part 2 of this code to another operator (“the assignee”), the assignee is from the date of the assignment bound by the terms of the agreement. 20
- (4) The assignor is not liable for any breach of a term of the agreement that occurs after the assignment if (and only if), before the breach took place, the assignor or the assignee gave a notice in writing to the other party to the agreement which— 25
- (a) identified the assignee, and
  - (b) provided a contact address for the assignee.
- (5) Sub-paragraph (4) is subject to the terms of any authorised guarantee agreement or similar agreement entered into by the assignor as mentioned in sub-paragraph (2). 30
- (6) In the application of this paragraph to Scotland references to assignment of an agreement are to be read as references to assignation of an agreement. 35

*Power for operator to upgrade or share apparatus*

- 16 (1) An operator (“the main operator”) who has entered into an agreement under Part 2 of this code may, if the conditions in sub-paragraphs (2) to (4) are met— 40
- (a) upgrade any of the electronic communications apparatus to which the agreement relates, or
  - (b) share the use of any such electronic communications apparatus with another operator.
- (2) The first condition is that the main operator has exclusive possession of the apparatus. 45

- (3) The second condition is that any changes to the apparatus as a result of the upgrading or sharing have no adverse impact on its appearance or no more than a minimal adverse impact on its appearance.
- (4) The third condition is that the upgrading or sharing imposes no additional burden on the other party to the agreement. 5
- (5) For the purposes of sub-paragraph (4) an additional burden includes anything that –
- (a) has an additional adverse effect on the other party’s enjoyment of the land, or 10
- (b) causes additional damage, expense or inconvenience to that party.
- (6) Any agreement under Part 2 of this code is void to the extent that –
- (a) it prevents or limits the upgrading or sharing, in a case where the conditions in sub-paragraphs (2) to (4) are met, of any of the electronic communications apparatus to which the agreement relates, or 15
- (b) it makes upgrading or sharing of such apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money). 20
- (7) References in this paragraph to sharing electronic communications apparatus include carrying out works to the apparatus to enable such sharing to take place.

*Effect of agreements enabling sharing between operators and others* 25

- 17 (1) This paragraph applies where –
- (a) this code has been applied by a direction under section 106 in a person’s case,
- (b) this code expressly or impliedly imposes a limitation on the use to which electronic communications apparatus installed by that person may be put or on the purposes for which it may be used, and 30
- (c) that person is a party to a relevant agreement or becomes a party to an agreement which (after the person has become a party to it) is a relevant agreement. 35
- (2) The limitation does not preclude –
- (a) the doing of anything in relation to that apparatus, or
- (b) its use for particular purposes,
- to the extent that the doing of that thing, or the use of the apparatus for those purposes, is in pursuance of the relevant agreement. 40
- (3) This paragraph is not to be construed, in relation to a person who is entitled or authorised by or under a relevant agreement to share the use of apparatus installed by another party to the agreement, as affecting any consent requirement imposed (whether by an agreement, an enactment or otherwise) on that person. 45
- (4) In this paragraph –

- “consent requirement”, in relation to a person, means a requirement for the person to obtain consent or permission to or in connection with—
- (a) the installation by the person of apparatus, or
  - (b) the doing by the person of any other thing in relation to apparatus the use of which the person is entitled or authorised to share;
- “relevant agreement” means an agreement in relation to electronic communications apparatus which—
- (a) relates to the sharing by different parties to the agreement of the use of that apparatus, and
  - (b) is an agreement that satisfies the requirements of sub-paragraph (5).
- (5) An agreement satisfies the requirements of this sub-paragraph if—
- (a) every party to the agreement is a person in whose case this code applies by virtue of a direction under section 106, or
  - (b) one or more of the parties to the agreement is a person in whose case this code so applies and every other party to the agreement is a qualifying person.
- (6) A person is a qualifying person for the purposes of sub-paragraph (5) if the person is either—
- (a) a person who provides an electronic communications network without being a person in whose case this code applies, or
  - (b) a designated provider of an electronic communications service consisting in the distribution of a programme service by means of an electronic communications network.
- (7) In sub-paragraph (6)—
- “designated” means designated by regulations made by the Secretary of State;
- “programme service” has the same meaning as in the Broadcasting Act 1990.

#### PART 4

##### POWER OF COURT TO IMPOSE AGREEMENT

#### *Introductory*

- 18 This Part of this code makes provision about—
- (a) the circumstances in which the court can impose an agreement on a person by which the person confers or is otherwise bound by a code right,
  - (b) the test to be applied by the court in deciding whether to impose such an agreement,
  - (c) the effect of such an agreement and its terms,
  - (d) the imposition of an agreement on a person on an interim or temporary basis.

*When can the court impose an agreement?*

- 19 (1) This paragraph applies where the operator requires a person (a “relevant person”) to agree –
- (a) to confer a code right on the operator, or
  - (b) to be otherwise bound by a code right which is exercisable by the operator. 5
- (2) The operator may give the relevant person a notice in writing –
- (a) setting out the code right, and all of the other terms of the agreement that the operator seeks, and
  - (b) stating that the operator seeks the person’s agreement to those terms. 10
- (3) The operator may apply to the court for an order under this paragraph if –
- (a) the relevant person does not, before the end of 28 days beginning with the day on which the notice is given, agree to confer or be otherwise bound by the code right, or
  - (b) at any time after the notice is given, the relevant person gives notice in writing to the operator that the person does not agree to confer or be otherwise bound by the code right. 15  
20
- (4) An order under this paragraph is one which imposes on the operator and the relevant person an agreement between them which –
- (a) confers the code right on the operator, or
  - (b) provides for the code right to bind the relevant person. 25

*What is the test to be applied by the court?*

- 20 (1) Subject to sub-paragraph (5), the court may make an order under paragraph 19 if (and only if) the court thinks that both of the following conditions are met.
- (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money. 30
- (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person. 35
- (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
- (5) The court may not make an order under paragraph 19 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made. 40

*What is the effect of an agreement imposed under paragraph 19?*

- 21 An agreement imposed by an order under paragraph 19 takes effect for all purposes of this code as an agreement under Part 2 of this code between the operator and the relevant person.

*What are the terms of an agreement imposed under paragraph 19?* 5

- 22 (1) An order under paragraph 19 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
- (2) An order under paragraph 19 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8). 10
- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be). 15
- (4) Paragraph 23 makes provision about the determination of consideration under sub-paragraph (3).
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who – 20
- (a) occupy the land in question,
  - (b) own interests in that land, or
  - (c) are from time to time on that land.
- (6) Sub-paragraph (3) applies in relation to a person regardless of whether the person is a party to the agreement. 25
- (7) The terms of the agreement must include terms specifying for how long the code right conferred by the agreement is exercisable.
- (8) The court must determine whether the terms of the agreement should include a term – 30
- (a) permitting termination of the agreement (and, if so, in what circumstances);
  - (b) enabling the relevant person to require the operator to reposition or temporarily to remove the electronic communications equipment to which the agreement relates (and, if so, in what circumstances). 35

*How is consideration to be determined under paragraph 22?*

- 23 (1) The amount of consideration payable by an operator to a relevant person under an agreement imposed by an order under paragraph 19 must be an amount or amounts representing the market value of the relevant person's agreement to confer or be bound by the code right (as the case may be). 40
- (2) For this purpose the market value of a person's agreement to confer or be bound by a code right is the amount that, at the date

the market value is assessed, a willing buyer would pay a willing seller for the agreement –

- (a) in a transaction at arm’s length,
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction, and 5
  - (c) as if the transaction were subject to the other provisions of the agreement imposed by the order under paragraph 19.
- (3) The market value –
- (a) must be assessed on the basis of the value to the operator of the agreement and having regard to the use which the operator intends to make of the land in question (even if the operator may only use the land in that way pursuant to powers conferred by an enactment), and 10
  - (b) must not be assessed on the basis of the value of the right or agreement to the relevant person. 15
- (4) The market value must be assessed on the assumption that –
- (a) there is more than one site which the operator could use for the purpose for which the operator intends to use the land in question (whether or not that is actually the case), and
  - (b) paragraphs 15 and 16 (assignment of code rights and upgrading and sharing of apparatus) do not apply to the code right or any electronic communications apparatus to which the code right could apply. 20
- (5) The terms of the agreement may provide for consideration to be payable – 25
- (a) as a lump sum or periodically,
  - (b) on the occurrence of a specified event or events, or
  - (c) in such other form or at such other time or times as the court may direct.

*Power to amend paragraph 23* 30

- 24 (1) The Secretary of State may by regulations amend paragraph 23 so that it requires that the amount of consideration referred to in sub-paragraph (1) of that paragraph –
- (a) must be assessed on the basis of the value of the right or agreement to the relevant person, and 35
  - (b) must not be assessed on the basis of the value to the operator of the right or agreement or having regard to the use which the operator intends to make of the land in question.
- (2) Regulations under sub-paragraph (1) may also repeal paragraph 23(4). 40
- (3) Before making regulations under this paragraph the Secretary of State must consult such persons as appear to the Secretary of State to be appropriate.



*What rights to the payment of compensation are there?*

- 25 (1) If the court makes an order under paragraph 19 the court may also order the operator to pay compensation to the relevant person for any loss or damage that has been sustained or will be sustained by that person as a result of the exercise of the code right to which the order relates. 5
- (2) An order under sub-paragraph (1) may be made –
- (a) at the time the court makes an order under paragraph 19, or
  - (b) at any time afterwards, on the application of the relevant person. 10
- (3) An order under sub-paragraph (1) may –
- (a) specify the amount of compensation to be paid by the operator, or
  - (b) give directions for the determination of any such amount. 15
- (4) Directions under sub-paragraph (3)(b) may provide –
- (a) for the amount of compensation to be agreed between the operator and the relevant person;
  - (b) for any dispute about that amount to be determined by arbitration. 20
- (5) An order under this paragraph may provide for the operator –
- (a) to make a lump sum payment,
  - (b) to make periodical payments,
  - (c) to make a payment or payments on the occurrence of an event or events, or 25
  - (d) to make a payment or payments in such other form or at such other time or times as the court may direct.
- (6) Paragraph 81 makes further provision about compensation in the case of an order under paragraph 19.

*Interim code rights* 30

- 26 (1) An operator may apply to the court for an order which imposes on the operator and that person, on an interim basis, an agreement between them which –
- (a) confers a code right on the operator, or
  - (b) provides for a code right to bind a person. 35
- (2) An order under this paragraph imposes an agreement on the operator and a person on an interim basis if it provides for them to be bound by the agreement –
- (a) for the period specified in the order, or
  - (b) until the occurrence of an event specified in the order. 40
- (3) The court may make an order under this paragraph if (and only if) the operator has given a notice under paragraph 19(2) stating that an agreement is sought on an interim basis and –
- (a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it, or 45

- (b) the court thinks that there is a good arguable case that the test in paragraph 20 for the making of an order under paragraph 19 is met.
- (4) Subject to sub-paragraphs (5) and (5), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 19 and an agreement imposed by it – 5
- (a) paragraph 19(3) (time at which operator may apply for agreement to be imposed);
  - (b) paragraph 21 (effect of agreement imposed under paragraph 19); 10
  - (c) in paragraph 22 (terms of agreement imposed under paragraph 19), sub-paragraphs (1) to (6) and (8);
  - (d) paragraph 23 (payment of consideration);
  - (e) paragraph 25 (payment of compensation); 15
  - (f) paragraph 81 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 19(3)(a) has not elapsed (and paragraph 19(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency. 20
- (6) Paragraphs 22, 23 and 25 apply by virtue of sub-paragraph (4) as if –
- (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and
  - (b) the duty in paragraph 22 to include terms as to the payment of consideration to that person in an agreement were a power to do so. 25
- (7) Sub-paragraph (8) applies if –
- (a) an order has been made under this paragraph imposing an agreement on an operator and a person in respect of any land, and 30
  - (b) on a subsequent application under paragraph 19 for an order to be made imposing an agreement on the operator and the person in respect of that land, the court decides not to make such an order. 35
- (8) From the time when the court’s decision is made, that person has the right to require the operator to remove any electronic communications apparatus placed on the land under the agreement imposed under this paragraph.

*Temporary code rights* 40

- 27 (1) This paragraph applies where –
- (a) an operator gives a notice under paragraph 19(2) to a person in respect of any land,
  - (b) the notice requires that person’s agreement in respect of a right which is to be exercisable (in whole or in part) in relation to electronic communications apparatus which is already installed on, under or over the land, 45

- (c) the notice states that the agreement is sought on a temporary basis, and
  - (d) the person has the right to require the removal of the apparatus as a result of paragraph 37 but, as a result of the operation of paragraph 39, the operator is not required to remove the apparatus. 5
- (2) The court may, on the application of the operator, impose on the operator and the person an agreement between them which confers on the operator such temporary code rights as appear to the court reasonably necessary for securing the objective in sub-paragraph (3). 10
- (3) That objective is that, until proceedings under paragraph 19 or 39 are determined, the service provided by the operator's network is maintained and the apparatus is properly adjusted and kept in repair. 15
- (4) Subject to sub-paragraphs (5) and (6), the following provisions apply in relation to an order under this paragraph and an agreement imposed by it as they apply in relation to an order under paragraph 19 and an agreement imposed by it –
  - (a) paragraph 19(3) (time at which operator may apply for agreement to be imposed); 20
  - (b) paragraph 21 (effect of agreement imposed under paragraph 19);
  - (c) in paragraph 22 (terms of agreement imposed under paragraph 19), sub-paragraphs (1) to (6) and (8); 25
  - (d) paragraph 23 (payment of consideration);
  - (e) paragraph 25 (payment of compensation);
  - (f) paragraph 81 (compensation where agreement imposed).
- (5) The court may make an order under this paragraph even though the period mentioned in paragraph 19(3)(a) has not elapsed (and paragraph 19(3)(b) does not apply) if the court thinks that the order should be made as a matter of urgency. 30
- (6) Paragraphs 22, 23 and 25 apply by virtue of sub-paragraph (4) as if –
  - (a) references to the relevant person were to the person mentioned in sub-paragraph (1) of this paragraph, and 35
  - (b) the duty in paragraph 22 to include terms as to the payment of consideration to that person in an agreement were a power to do so.
- (7) Sub-paragraph (8) applies where, in the course of the proceedings under paragraph 19, it is shown that a person with an interest in the land was entitled to require the removal of the apparatus immediately after it was installed. 40
- (8) The court must, in determining for the purposes of paragraph 19 whether the apparatus should continue to be kept on, under or over the land, disregard the fact that the apparatus has already been installed there. 45

## PART 5

## TERMINATION AND MODIFICATION OF AGREEMENTS

*Introductory*

- 28 This Part of this code makes provision about –
- (a) the continuation of code rights after the time at which they cease to be exercisable under an agreement, 5
  - (b) the procedure for bringing an agreement to an end,
  - (c) the procedure for changing an agreement relating to code rights, and
  - (d) the arrangements for the making of payments under an agreement whilst disputes under this Part are resolved. 10

*Application of this Part*

- 29 (1) This Part of this code applies to an agreement under Part 2 of this code, subject to sub-paragraphs (2) to (4).
- (2) This Part of this code does not apply to a lease of land in England and Wales if – 15
- (a) its primary purpose is not to grant code rights, and
  - (b) it is a lease to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other tenants) applies. 20
- (3) In determining whether a lease is one to which Part 2 of the Landlord and Tenant Act 1954 applies, any agreement under section 38A (agreements to exclude provisions of Part 2) of that Act is to be disregarded.
- (4) This Part of this code does not apply to a lease of land in Northern Ireland if – 25
- (a) its primary purpose is not to grant code rights, and
  - (b) it is a lease to which the Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5)) applies.
- (5) An agreement to which this Part of this code applies is referred to in this code as a “code agreement”. 30

*Continuation of code rights*

- 30 (1) Sub-paragraph (2) applies if –
- (a) a code right is conferred by, or is otherwise binding on, a person (the “site provider”) as the result of a code agreement, and 35
  - (b) under the terms of the agreement –
    - (i) the right ceases to be exercisable or the site provider ceases to be bound by it, or
    - (ii) the site provider may bring the code agreement to an end so far as it relates to that right. 40
- (2) Where this sub-paragraph applies the code agreement continues so that –

- (a) the operator may continue to exercise that right, and
  - (b) the site provider continues to be bound by the right.
- (3) Sub-paragraph (2) does not apply to a code right which is conferred by, or is otherwise binding on, a person by virtue of an order under paragraph 26 (interim code rights) or 27 (temporary code rights). 5
- (4) Sub-paragraph (2) is subject to the following provisions of this Part of this code.

*How may a person bring a code agreement to an end?*

- 31 (1) A site provider who is a party to a code agreement may bring the agreement to an end by giving a notice in accordance with this paragraph to the operator who is a party to the agreement. 10
- (2) The notice must –
- (a) comply with paragraph 86 (notices given by persons other than operators), 15
  - (b) specify the date on which the site provider proposes the code agreement should come to an end, and
  - (c) state the ground on which the site provider proposes to bring the code agreement to an end.
- (3) The date specified under sub-paragraph (2)(b) must fall – 20
- (a) after the end of the period of 18 months beginning with the day on which the notice is given, and
  - (b) after the time at which, apart from paragraph 30, the code right to which the agreement relates would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider. 25
- (4) The ground stated under sub-paragraph (2)(c) must be one of the following –
- (a) that the code agreement ought to come to an end as a result of substantial breaches by the operator of its obligations under the agreement; 30
  - (b) that the code agreement ought to come to an end because of persistent delays by the operator in making payments to the site provider under the agreement; 35
  - (c) that the site provider intends to redevelop all or part of the land to which the code agreement relates, or any neighbouring land, and could not reasonably do so unless the code agreement comes to an end;
  - (d) that the operator is not entitled to the code agreement because the test under paragraph 20 for the imposition of the agreement on the site provider is not met. 40

*What is the effect of a notice under paragraph 31?*

- 32 (1) Where a site provider gives a notice under paragraph 31, the code agreement to which it relates comes to an end in accordance with the notice unless – 45

- (a) within the period of three months beginning with the day on which the notice is given, the operator gives the site provider a counter-notice in accordance with sub-paragraph (3), and
- (b) within the period of three months beginning with the day on which the counter-notice is given, the operator applies to the court for an order under paragraph 34. 5
- (2) Sub-paragraph (1) does not apply if the operator and the site provider agree to the continuation of the code agreement.
- (3) The counter-notice must state – 10
- (a) that the operator does not want the existing code agreement to come to an end,
- (b) that the operator wants the site provider to agree to confer or be otherwise bound by the existing code right on new terms, or 15
- (c) that the operator wants the site provider to agree to confer or be otherwise bound by a new code right in place of the existing code right.
- (4) If, on an application under sub-paragraph (1)(b), the court decides that the site provider has established any of the grounds stated in the site provider’s notice under paragraph 31, the court must order that the code agreement comes to an end in accordance with the order. 20
- (5) Otherwise the court must make one of the orders specified in paragraph 34. 25

*How may a party to a code agreement require a change to the terms of an agreement which has expired?*

- 33 (1) An operator or site provider who is a party to a code agreement by which a code right is conferred by or otherwise binds the site provider may, by notice in accordance with this paragraph, require the other party to the agreement to agree that – 30
- (a) the code agreement should have effect with modified terms,
- (b) where under the code agreement more than one code right is conferred by or otherwise binds the site provider, that the agreement should no longer provide for an existing code right to be conferred by or otherwise bind the site provider, 35
- (c) the code agreement should –
- (i) confer an additional code right on the operator, or 40
- (ii) provide that the site provider is otherwise bound by an additional code right, or
- (d) the existing code agreement should be terminated and a new agreement should have effect between the parties which – 45
- (i) confers a code right on the operator, or
- (ii) provides for a code right to bind the site provider.
- (2) The notice must –

- (a) comply with paragraph 85 or 86, according to whether the notice is given by an operator or a site provider,
- (b) specify –
  - (i) the day from which it is proposed that the modified terms should have effect, 5
  - (ii) the day from which the agreement should no longer provide for the code right to be conferred by or otherwise bind the site provider,
  - (iii) the day from which it is proposed that the additional code right should be conferred by or otherwise bind the site provider, or 10
  - (iv) the day on which it is proposed the existing code agreement should be terminated and from which a new agreement should have effect,
- (as the case may be), and 15
- (c) set out details of –
  - (i) the proposed modified terms,
  - (ii) the code right it is proposed should no longer be conferred by or otherwise bind the site provider,
  - (iii) the proposed additional code right, or 20
  - (iv) the proposed terms of the new agreement,
- (as the case may be).
- (3) The day specified under sub-paragraph (2)(b) must fall –
  - (a) after the end of the period of 6 months beginning with the day on which the notice is given, and 25
  - (b) after the time at which, apart from paragraph 30, the code right would have ceased to be exercisable or to bind the site provider or at a time when, apart from that paragraph, the code agreement could have been brought to an end by the site provider. 30
- (4) Sub-paragraph (5) applies if, after the end of the period of 6 months beginning with the day on which the notice is given, the operator and the site provider have not reached agreement on the proposals in the notice.
- (5) Where this paragraph applies, the operator or the site provider may apply to the court for the court to make an order under paragraph 34. 35

*What orders may a court make on an application under paragraph 32 or 33?*

- 34 (1) This paragraph sets out the orders that the court may make on an application under paragraph 32(1)(b) or 33(5). 40
- (2) The court may order that the operator may continue to exercise the existing code right in accordance with the existing code agreement for such period as may be specified in the order (so that the code agreement has effect accordingly).
- (3) The court may order the modification of the terms of the code agreement relating to the existing code right. 45

- 
- (4) Where under the code agreement more than one code right is conferred by or otherwise binds the site provider, the court may order that the code agreement has effect so that it no longer provides for an existing code right to be conferred by or otherwise bind the site provider. 5
- (5) The court may order that the code agreement relating to the existing code right has effect so that –
- (a) it confers an additional code right on the operator, or
  - (b) it provides that the site provider is otherwise bound by an additional code right. 10
- (6) The court may order the termination of the code agreement relating to the existing code right (subject to sub-paragraph (10)), and order the operator and the site provider to enter into a new agreement which –
- (a) confers a code right on the operator, or 15
  - (b) provides for a code right to bind the site provider.
- (7) The terms of the new agreement are to be such as are agreed between the operator and site provider.
- (8) If the operator and the site provider are unable to agree on the terms of the new agreement, the court must on an application by either party make an order specifying those terms. 20
- (9) Paragraphs 22(2) to (8), 23, 25 and 81 apply to an order under sub-paragraph (8) as they apply to an order under paragraph 19; but the court must also have regard to the terms of the existing code agreement in determining the terms of the new agreement. 25
- (10) The existing code agreement continues until the new agreement takes effect.
- (11) This code applies to the new agreement as if it were an agreement under Part 2 of this code.
- (12) In determining which order to make under this paragraph, the court must have regard to all the circumstances of the case, and in particular to –
- (a) the operator’s business and technical needs,
  - (b) the use that the site provider is making of the land to which the existing code agreement relates, 35
  - (c) any duties imposed on the site provider by an enactment, and
  - (d) the amount of consideration payable by the operator to the site provider under the existing code agreement.
- (13) Where the court makes an order under this paragraph, it may also order the operator to pay the site provider the amount (if any) by which A exceeds B, where –
- (a) A is the amount of consideration that would have been payable by the operator to the site provider for the relevant period if that amount had been assessed on the same basis as the consideration payable as the result of order, and 45



- (b) B is the amount of consideration payable by the operator to the site provider for the relevant period.
- (14) In sub-paragraph (13) the relevant period is the period (if any) that—
  - (a) begins on the date on which, apart from the operation of paragraph 30, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and 5
  - (b) ends on the date on which the order is made. 10

*What arrangements for payment can be made pending determination of the application?*

- 35 (1) This paragraph applies where—
  - (a) a code right continues to be exercisable under paragraph 30 after the time at which, apart from the operation of that paragraph, the code right would have ceased to be exercisable or to bind the site provider or from which, apart from that paragraph, the code agreement could have been brought to an end by the site provider, and 15
  - (b) the operator or the site provider has applied to the court for an order under paragraph 32(1)(b) or 33(5). 20
- (2) The site provider may—
  - (a) agree with the operator that, until the application has been finally determined, the site provider will continue to receive the payments of consideration from the operator to which the site provider is entitled under the agreement relating to the existing code right, 25
  - (b) agree with the operator that, until that time, the site provider will receive different payments of consideration under that agreement, or 30
  - (c) apply to the court for the court to determine the payments of consideration to be made by the operator to the site provider under that agreement until that time.
- (3) The court must determine the payments under sub-paragraph (2)(c) on the basis set out in paragraph 23 (calculation of consideration). 35

## PART 6

### RIGHTS TO REQUIRE REMOVAL OF ELECTRONIC COMMUNICATIONS APPARATUS

#### *Introductory*

- 36 This Part of this code makes provision about—
  - (a) the cases in which a person with an interest in land has the right to require the removal of electronic communications apparatus, 40
  - (b) the means by which a person can discover whether apparatus is on land pursuant to a code right, and 45

- (c) the means by which a right to require removal can be enforced.

*When does a person have the right to require removal of electronic communications apparatus?*

- 37 (1) A person with an interest in land (a “landowner”) has the right to require the removal of electronic communications apparatus on, under or over the land if (and only if) one or more of the following conditions are met. 5
- (2) The first condition is that the landowner has never been bound by a code right entitling an operator to keep the apparatus on, under or over the land. 10  
This is subject to sub-paragraph (4).
- (3) The second condition is that a code right entitling an operator to keep the apparatus on, under or over the land has come to an end or has ceased to bind the landowner – 15
- (a) as the result of paragraph 32(1), or
- (b) as the result of an order under paragraph 32(4) or 34(4) or (6).  
This is subject to sub-paragraph (4).
- (4) The landowner does not meet the first or second condition if – 20
- (a) the land is occupied by a person who –
- (i) conferred a code right (which is in force) entitling an operator to keep the apparatus on, under or over the land, or
- (ii) is otherwise bound by such a right, and 25
- (b) that code right was not conferred in breach of a covenant enforceable by the landowner.
- (5) The third condition is that –
- (a) an operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land, but 30
- (b) the apparatus is not, or is no longer, used for the purposes of the operator’s network, and
- (c) there is no reasonable likelihood that the apparatus will be used for that purpose. 35
- (6) The fourth condition is that –
- (a) this code has ceased to apply to a person so that the person is no longer entitled under this code to keep the apparatus on, under or over the land,
- (b) the retention of the apparatus on, under or over the land is not authorised by a scheme contained in an order under section 117, and 40
- (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land.
- (7) The fifth condition is that – 45
- (a) the apparatus was kept on, under or over the land pursuant to –

- (i) a transport land right (see Part 7), or
- (ii) a street work right (see Part 8),
- (b) that right has ceased to be exercisable in relation to the land by virtue of paragraph 50(9) or 56(8), and
- (c) there is no other person with a right conferred by or under this code to keep the apparatus on, under or over the land. 5

*How does a person find out whether apparatus is on land pursuant to a code right?*

- 38 (1) A landowner may by notice require an operator to disclose whether –
- (a) the operator owns electronic communications apparatus on, under or over land in which the landowner has an interest or uses such apparatus for the purposes of the operator’s network, or 10
  - (b) the operator has the benefit of a code right entitling the operator to keep electronic communications apparatus on, under or over land in which the landowner has an interest. 15
- (2) The notice must comply with paragraph 86 (notices given by persons other than operators).
- (3) Sub-paragraph (4) applies if –
- (a) the operator does not, before the end of the period of three months beginning with the date on which the notice under sub-paragraph (1) was given, give a notice to the landowner that – 20
    - (i) complies with paragraph 85 (notices given by operators), and 25
    - (ii) discloses the information sought by the landowner,
  - (b) the landowner takes action under paragraph 39 to enforce the removal of the apparatus, and
  - (c) it is subsequently established that – 30
    - (i) the operator owns the apparatus or uses it for the purposes of the operator’s network, and
    - (ii) the operator has the benefit of a code right entitling the operator to keep the apparatus on, under or over the land.
- (4) The operator must nevertheless bear the costs of any action taken by the landowner under paragraph 39 to enforce the removal of the apparatus. 35

*How does a person enforce removal of apparatus?*

- 39 (1) A landowner who has the right to require the removal of electronic communications apparatus on, under or over land may, in accordance with this paragraph, require the operator whose apparatus it is – 40
- (a) to remove the apparatus, and
  - (b) to restore the land to its condition before the apparatus was placed on, under or over the land. 45

- (2) The landowner may give a notice to the operator requiring the operator –
- (a) to remove the apparatus, and
  - (b) to restore the land to its condition before the apparatus was placed on, under or over the land. 5
- (3) The notice must –
- (a) comply with paragraph 86 (notices given by persons other than operators), and
  - (b) specify the period within which the operator must complete the works. 10
- (4) The period specified under sub-paragraph (3) must be a reasonable one.
- (5) Sub-paragraph (6) applies if, within the period of 28 days beginning with the day on which the notice was given, the landowner and the operator do not reach agreement on any of the following matters – 15
- (a) that the operator will remove the apparatus;
  - (b) that the operator will restore the land to its condition before the apparatus was placed on, under or over the land; 20
  - (c) the time at which or period within which the apparatus will be removed;
  - (d) the time at which or period within which the land will be restored.
- (6) The landowner may make an application to the court for – 25
- (a) an order under paragraph 40(1) (order requiring operator to sell apparatus etc), or
  - (b) an order under paragraph 40(2) (order enabling landowner to sell apparatus etc).
- (7) If the court makes an order under paragraph 40(1), but the operator does not comply with the agreement imposed on the operator and the landowner by virtue of paragraph 40(5), the landowner may make an application to the court for an order under paragraph 40(2). 30
- What orders may the court make on an application under paragraph 39?* 35
- 40 (1) An order under this sub-paragraph is an order that the operator must, within the period specified in the order –
- (a) remove the electronic communications apparatus, and
  - (b) restore the land to its condition before the apparatus was placed on, under or over the land. 40
- (2) An order under this sub-paragraph is an order that the landowner may do any of the following –
- (a) remove or arrange the removal of the electronic communications apparatus;
  - (b) sell any apparatus so removed; 45
  - (c) recover the costs of any action under paragraph (a) or (b) from the operator;

- (d) recover from the operator the costs of restoring the land to its condition before the apparatus was placed on, under or over the land;
  - (e) retain the proceeds of sale of the apparatus to the extent that these do not exceed the costs incurred by the landowner as mentioned in paragraph (c) or (d). 5
- (3) An order under this paragraph may require the operator to pay compensation to the landowner for any loss or damage suffered by the landowner as a result of the presence of the apparatus on the land during the period when the landowner had the right to require the removal of the apparatus from the land but was not able to exercise that right. 10
- (4) Paragraph 81 makes further provision about compensation under sub-paragraph (3).
- (5) An order under sub-paragraph (1) takes effect as an agreement between the operator and the landowner that – 15
- (a) requires the operator to take the steps specified in the order, and
  - (b) otherwise contains such terms as the court may so specify.

PART 7 20

CONFERRAL OF TRANSPORT LAND RIGHTS AND THEIR EXERCISE

*Introductory*

- 41 This Part of this code makes provision about –
- (a) the conferral of transport land rights, and
  - (b) the exercise of transport land rights. 25

*Transport land and transport undertakers*

- 42 In this Part of this code –
- “transport land” means land which is used wholly or mainly –
- (a) as a railway, canal or tramway, or 30
  - (b) in connection with a railway, canal or tramway on the land;
- “transport undertaker”, in relation to transport land, means the person carrying on the railway, canal or tramway undertaking. 35

*Conferral of transport land rights*

- 43 (1) An operator may exercise a transport land right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code. 40

*The transport land rights*

- 44 (1) For the purposes of this code a “transport land right”, in relation to an operator, is—
- (a) a right to cross any transport land with a line;
  - (b) a right, for the purposes of crossing any transport land with a line—
    - (i) to install and keep the line and any other electronic communications apparatus on, under or over the transport land; 5
    - (ii) to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the transport land; 10
    - (iii) a right to carry out any works on the transport land for or in connection with the exercise of a right under sub-paragraph (i) or (ii); 15
    - (iv) a right to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade or operate the line or other electronic communications apparatus.
- (2) A line installed in the exercise of a transport land right need not cross the transport land in question by a direct route or the shortest route from the point at which the line enters the transport land. 20
- (3) But the line must not cross the transport land by any route which, in the horizontal plane, exceeds that shortest route by more than 400 metres. 25
- (4) The transport land rights do not authorise an operator to install a line or other electronic communications apparatus in any position on transport land in which the line or other apparatus would interfere with traffic on the railway, canal or tramway. 30

*Non-emergency works: when can an operator exercise the transport land rights?*

- 45 (1) Before exercising a transport land right in order to carry out non-emergency works, the operator must give the transport undertaker notice of the intention to carry out the works (“notice of proposed works”). 35
- (2) Notice of proposed works must contain a plan and section of the works; but, if the transport undertaker agrees, the notice may instead contain a description of the works (whether or not in the form of a diagram).
- (3) The operator must not begin the proposed works until the notice period has ended. 40
- (4) But the operator’s power to carry out the proposed works is subject to paragraph 46.
- (5) In this paragraph—  
“non-emergency works” means any works which are not emergency works under paragraph 47; 45

“notice period” means the period of 28 days beginning with the day on which notice of proposed works is given.

*What is the effect of the transport undertaker giving notice of objection to the operator?*

- 46 (1) This paragraph applies if an operator gives a transport undertaker notice of proposed works under paragraph 45. 5
- (2) The transport undertaker may, within the notice period, give the operator notice objecting to the proposed works (“notice of objection”).
- (3) If notice of objection is given, the operator or the transport undertaker may, within the arbitration notice period, give the other notice that the objection is to be referred to arbitration under paragraph 48 (“arbitration notice”). 10
- (4) In a case where notice of objection is given, the operator may exercise a transport land right in order to carry out the proposed works only if they are permitted under sub-paragraph (5) or (6). 15
- (5) Works are permitted in a case where –
- (a) the arbitration notice period has ended, and
  - (b) no arbitration notice has been given.
- (6) In a case where arbitration notice has been given, works are permitted in accordance with an award made on the arbitration. 20
- (7) In this paragraph –
- (a) “arbitration notice period” means the period of 28 days beginning with the day on which objection notice is given;
  - (b) expressions defined in paragraph 45 have the same meanings as in that paragraph. 25

*Emergency works: when can an operator exercise the transport land rights?*

- 47 (1) An operator may exercise a transport land right in order to carry out emergency works.
- (2) If the operator exercises a transport land right to carry out emergency works, the operator must give the transport undertaker an emergency works notice as soon as reasonably practicable after starting the works. 30
- (3) An “emergency works notice” is a notice which –
- (a) identifies the emergency works;
  - (b) contains a statement of the reason why the works are emergency works; and 35
  - (c) contains either –
    - (i) the matters which would be included in a notice of proposed works (if one were given in relation to the works), or 40
    - (ii) a reference to a notice of proposed works which relates to the works that are emergency works (if one has been given).

- (4) A transport undertaker may, within the compensation notice period, give the operator notice which requires the operator to pay compensation for loss or damage sustained in consequence of the carrying out of emergency works (“compensation notice”).
- (5) The operator must pay the transport undertaker any compensation which is required by a compensation notice (if given within the compensation notice period). 5
- (6) The amount of compensation payable under sub-paragraph (5) is to be agreed between the operator and the transport undertaker.
- (7) But if – 10
- (a) the compensation agreement period has ended, and
  - (b) the operator and the transport undertaker have not agreed the amount of compensation payable under sub-paragraph (6),
- the operator or the transport undertaker may give the other notice that the disagreement is to be referred to arbitration under paragraph 48. 15
- (8) A reference in this paragraph to emergency works includes a reference to any works which are included in a notice of proposed works but become emergency works before the operator is authorised by paragraph 46 or 47 to carry them out. 20
- (9) In this paragraph –
- “compensation agreement period” means the period of 28 days beginning with the day on which a compensation notice is given; 25
  - “compensation notice period” means the period of 28 days beginning with the day on which an emergency works notice is given;
  - “emergency works” means works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause – 30
    - (a) danger to persons or property,
    - (b) the interruption of any service provided by the operator’s network, or
    - (c) substantial loss to the operator, 35
 and any other works which it is reasonable (in all the circumstances) to carry out with those works;
  - “notice of proposed works” means such notice given under paragraph 45.

*What happens if a dispute about the transport land rights is referred to arbitration?* 40

- 48 (1) This paragraph applies if notice is given under paragraph 46(3) or 47(7) that the following matter (the “matter in dispute”) is to be referred to arbitration –
- (a) an objection to proposed works;
  - (b) a disagreement about an amount of compensation. 45
- (2) The matter in dispute is to be referred to the arbitration of a single arbitrator appointed –



- (a) by agreement between the parties, or
  - (b) in the absence of such agreement, by the President of the Institution of Civil Engineers.
- (3) If the matter in dispute is an objection to proposed works, the arbitrator has the following powers— 5
- (a) power to require the operator to give the arbitrator a plan and section in such form as the arbitrator thinks appropriate;
  - (b) power to require the transport undertaker to give the arbitrator any observations on such a plan or section in such form as the arbitrator thinks appropriate; 10
  - (c) power to impose on either party any other requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate); 15
  - (d) power to make an award—
    - (i) requiring modifications to the proposed works, and
    - (ii) specifying the terms on which, and the conditions subject to which, the proposed works may be carried out; 20
  - (e) power to award one or both of the following, payable to the transport undertaker—
    - (i) compensation for loss or damage sustained by that person in consequence of the carrying out of the works; 25
    - (ii) consideration for the right to carry out the works.
- (4) If the matter in dispute is a disagreement about an amount of compensation, the arbitrator has the following powers— 30
- (a) power to impose on either party any requirements which the arbitrator thinks appropriate (including a requirement to provide information in such form as the arbitrator thinks appropriate);
  - (b) power to award compensation, payable to the transport undertaker, for loss or damage sustained by that person in consequence of the carrying out of the emergency works. 35
- (5) The arbitrator may make an award conditional upon a party complying with a requirement imposed under sub-paragraph (3)(a), (b) or (c) or (4)(a).
- (6) In determining what award to make, the matters to which the arbitrator must have regard include the public interest in there being access to a choice of high quality electronic communications services. 40
- (7) The arbitrator’s power under sub-paragraph (3) or (4) to award compensation for loss includes power to award compensation for any increase in the expenses incurred by the transport undertaker in carrying on its railway, canal or tramway undertaking. 45
- (8) An award of consideration under sub-paragraph (3)(e)(ii) must be determined on the basis of what would have been fair and

reasonable if the transport undertaker had willingly given authority for the works to be carried out on the same terms, and subject to the same conditions (if any), as are contained in the award.

- (9) In this paragraph “party” means – 5
- (a) the operator, or
  - (b) the transport undertaker.

*When can a transport undertaker require an operator to alter communications apparatus?*

- 49 (1) A transport undertaker may give an operator notice which requires the operator to alter a line or other electronic communications apparatus specified in the notice (“notice requiring alterations”) on the ground that keeping the apparatus on, under or over transport land interferes with, or is likely to interfere with – 10
- (a) the carrying on of the transport undertaker’s railway, canal or tramway undertaking, or
  - (b) anything done or to be done for the purposes of its railway, canal or tramway undertaking. 15
- (2) The operator may, within the notice period, give the transport undertaker notice (“counter-notice”) specifying the respects in which the operator is not prepared to comply with the notice requiring alterations. 20
- (3) The operator must comply with the notice requiring alterations, within a reasonable time and to the reasonable satisfaction of the transport undertaker, if – 25
- (a) the notice period has ended, and
  - (b) no counter-notice has been given.
- (4) If counter-notice has been given (within the notice period), the transport undertaker may apply to the court for an order requiring the operator to alter any of the specified apparatus. 30
- (5) The court must not make an order unless it is satisfied that the order is necessary on one of the grounds mentioned in subparagraph (1).
- (6) In determining whether to make an order, the matters to which the court must also have regard include the public interest in there being access to a choice of high quality electronic communications services. 35
- (7) An order under this paragraph may take such form and be on such terms as the court thinks fit. 40
- (8) In particular, the order –
- (a) may impose such conditions, and
  - (b) may contain such directions to the operator or the transport undertaker,

as the court thinks necessary for resolving any difference between the operator and the transport undertaker and for protecting their respective interests.

- (9) In this paragraph –
- “notice period” means the period of 28 days beginning with the day on which notice requiring alterations is given; 5
  - “specified apparatus” means the line or other electronic communications apparatus specified in notice requiring alterations.

*What happens to the transport land rights if land ceases to be transport land?* 10

- 50 (1) This paragraph applies if an operator is exercising a transport land right in relation to land immediately before a time when it ceases to be transport land.
- (2) After that time, this Part of this code – except for paragraph 49 – continues to apply to the land as if it were still transport land (and, accordingly, the operator may continue to exercise any transport land right in relation to the land as if it were still transport land). 15
- (3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (9).
- (4) In the application of this Part of this code to land in accordance with sub-paragraph (2), references to the transport undertaker have effect as references to the occupier of the land. 20
- (5) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator –
- (a) to cross the land with any line that is not in place at the time when the land ceases to be transport land, or 25
  - (b) to install and keep any line or other electronic communications apparatus that is not in place at the time when the land ceases to be transport land.
- (6) But sub-paragraph (5) does not affect the power of the operator to replace an existing line or other apparatus (whether in place at the time when the land ceased to be transport land or a replacement itself authorised by this sub-paragraph) with a new line or apparatus which – 30
- (a) is not substantially different from the existing line or apparatus, and 35
  - (b) is not in a significantly different position.
- (7) The occupier of the land may, at any time after the land ceases to be transport land, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph (“notice of termination”). 40
- (8) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given.
- (9) On the date specified in notice of termination in accordance with sub-paragraph (8), the transport land rights cease to be exercisable in relation to the land in accordance with this paragraph. 45

*Offence: operators who do not comply with this Part of this code*

- 51 (1) An operator is guilty of an offence if the operator starts any works in contravention of any provision of paragraph 45, paragraph 46 or paragraph 47.
- (2) An operator guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 5
- (3) In a case where this Part of this code applies in accordance with paragraph 50, the reference in this paragraph to paragraph 45, paragraph 46 or paragraph 47 is a reference to that paragraph as it applies in accordance with paragraph 50. 10

## PART 8

## CONFERRAL OF STREET WORK RIGHTS AND THEIR EXERCISE

*Introductory*

- 52 This Part of this code makes provision about – 15
- (a) the conferral of street work rights, and
- (b) the exercise of street work rights.

*Streets and roads*

- 53 In this Part of this code – 20
- “road” means –
- (a) a road in Scotland which is a public road;
- (b) a road in Northern Ireland, other than any land comprised in the route of a special road (within the meaning of the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15))); 25
- “street” means a street in England and Wales which is a maintainable highway (within the meaning of Part 3 of New Roads and Street Works Act 1991), other than one which is a footpath, bridleway or restricted byway that crosses, and forms part of, any agricultural land or any land which is being brought into use for agriculture. 30

*Conferral of street work rights*

- 54 (1) An operator may exercise a street work right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code. 35

*The street work rights*

- 55 (1) For the purposes of this code a “street work right”, in relation to an operator, is –

- (a) a right to install and keep electronic communications apparatus in, on, under, over, along or across a street or a road;
  - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a); 5
  - (c) a right to carry out any works in, on, under, over, along or across a street or road for or in connection with the exercise of a right under paragraph (a) or (b); 10
  - (d) a right to enter any street or road to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).
- (2) The works that may be carried out under sub-paragraph (1)(c) include— 15
- (a) breaking up or opening a street or a road;
  - (b) tunnelling or boring under a street or a road;
  - (c) breaking up or opening a sewer, drain or tunnel.
- What happens to the street work rights if land ceases to be a street or road?* 20
- 56 (1) This paragraph applies if an operator is exercising a street work right in relation to land immediately before a time when the land ceases to be a street or road.
- (2) After that time, this Part of this code continues to apply to the land as if it were still a street or road (and, accordingly, the operator may continue to exercise any street work right in relation to the land as if it were still a street or road). 25
- (3) But sub-paragraph (2) is subject to sub-paragraphs (4) to (8).
- (4) The application of this Part of this code to land in accordance with sub-paragraph (2) does not authorise the operator to install or keep any electronic communications apparatus that is not in place at the time when the land ceases to be a street or road. 30
- (5) But sub-paragraph (4) does not affect the power of the operator to replace existing apparatus (whether in place at the time when the land ceased to be a street or road or a replacement itself authorised by this sub-paragraph) with new apparatus which— 35
- (a) is not substantially different from the existing apparatus, and
  - (b) is not in a significantly different position.
- (6) The occupier of land may, at any time after the land ceases to be a street or road, give the operator notice specifying a date on which this Part of this code is to cease to apply to the land in accordance with this paragraph (“notice of termination”). 40
- (7) That date specified in the notice of termination must fall after the end of the period of 12 months beginning with the day on which the notice of termination is given. 45

- (8) On the date specified in notice of termination in accordance with sub-paragraph (7), the street work rights cease to be exercisable in relation to the land in accordance with this paragraph.

## PART 9

## CONFERRAL OF TIDAL WATER RIGHTS AND THEIR EXERCISE

5

*Introductory*

- 57 This Part of this code makes provision about –
- (a) the conferral of tidal water rights, and
  - (b) the exercise of tidal water rights.

*Tidal water or lands*

10

- 58 In this Part of this code “tidal water or lands” includes –
- (a) any estuary or branch of the sea,
  - (b) the shore below mean high water springs, and
  - (c) the bed of any tidal water.

*Conferral of tidal water rights*

15

- 59 (1) An operator may exercise a tidal water right for the statutory purposes.
- (2) But that is subject to the following provisions of this Part of this code.

*The tidal water rights*

20

- 60 (1) For the purposes of this code a “tidal water right”, in relation to an operator, is –
- (a) a right to install and keep electronic communications apparatus on, under or over tidal water or lands;
  - (b) a right to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus on, under or over the tidal water or lands;
  - (c) a right to carry out any works on, under or over any tidal water or lands for or in connection with the exercise of a right under paragraph (a) or (b);
  - (d) a right to enter any tidal water or lands to inspect, maintain, adjust, alter, repair, upgrade or operate electronic communications apparatus which is installed or kept by the exercise of the right under paragraph (a).
- (2) The works that may be carried out under sub-paragraph (1)(c) include placing a buoy or seamark.

25

30

35

*Exercise of tidal water right: Crown land*

- 61 (1) An operator may not exercise a tidal water right in relation to land in which a Crown interest subsists unless agreement has been

given to the exercise of the right in relation to the land, in accordance with paragraph 100, in respect of that interest.

- (2) If, under a term of such an agreement (the “relevant term”), the amount of consideration payable in respect of a tidal water right exceeds the market value of the right, the relevant term may only be enforced so as to require payment of an amount of consideration which is equal to that market value. 5
- (3) For this purpose the market value of a tidal water right is the amount that, at the date when the relevant term was agreed, a willing buyer would have paid a willing seller for the agreement – 10
- (a) in a transaction at arm’s length, and
  - (b) on the basis that the buyer and seller were acting prudently and with full knowledge of the transaction.
- (4) The market value – 15
- (a) must be assessed on the basis of the value to the operator of the tidal water right and having regard to the use which the operator intends to make of the tidal waters or land in exercising that right (even if the operator may only use the tidal waters or land in that way pursuant to powers conferred by an enactment), and 20
  - (b) must not be assessed on the basis of the value of the tidal water right to the holder of the Crown interest.
- (5) The market value must be assessed on the assumption that there is more than one site which the operator could use for the purpose for which the operator intends to use the tidal waters or land in question (whether or not that is actually the case). 25

## PART 10

### UNDERTAKER’S WORKS AFFECTING ELECTRONIC COMMUNICATIONS APPARATUS

#### *Introductory* 30

- 62 This Part of this code makes provision about the carrying out of undertaker’s works by undertakers or operators.

#### *Key definitions*

- 63 (1) In this Part of this code – 35
- “undertaker” means a person (including a local authority) of a description set out in any of the entries in the first column of the following table;
  - “undertaker’s works”, in relation to an undertaker of a description set out in a particular entry in the first column of the table, means works of the description set out in the corresponding entry in the second column of the table. 40

“undertaker”	“undertaker’s works”	
A person authorised by any enactment (whether public general or local) or by any order or scheme made under or confirmed by any enactment to carry on any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking	Works that the undertaker is authorised to carry out for the purposes of, or in connection with, the undertaking which it carries on	5  10
A person (apart from an operator) to whom this code is applied by a direction under section 106 of the Communications Act 2003	Works that the undertaker is authorised to carry out by or in accordance with any provision of this code	
Any person to whom this Part of this code is applied by any enactment (whenever passed or made)	Works for the purposes of which this paragraph is applied to the undertaker	15

(2) In this Part of this code –

- (a) a reference to undertaker’s works which interfere with a network is a reference to any undertaker’s works which involve, or are likely to involve, an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator’s network; 20
- (b) a reference to an alteration of any electronic communications apparatus is a reference to a temporary or permanent alteration of the apparatus. 25

*When can an undertaker carry out non-emergency undertaker’s works?*

- 64 (1) Before carrying out non-emergency undertaker’s works which interfere with a network, an undertaker must give the operator notice of the intention to carry out the works (“notice of proposed works”). 30
- (2) Notice of proposed works must specify –
- (a) the nature of the proposed undertaker’s works,
  - (b) the alteration of the electronic communications apparatus which the works involve or are likely to involve, and
  - (c) the time and place at which the works will begin. 35
- (3) The undertaker must not begin the proposed undertaker’s works (including the proposed alteration of electronic communications apparatus) until the notice period has ended. 40
- (4) But the undertaker’s power to alter electronic communications apparatus (in carrying out the proposed undertaker’s works) is subject to paragraph 65.
- (5) In this paragraph –



“non-emergency undertaker’s works” means any undertaker’s works which are not emergency works under paragraph 68;

“notice period” means the period of 10 days beginning with the day on which notice of proposed works is given.

5

*What is the effect of the operator giving counter-notice to the undertaker?*

65 (1) This paragraph applies if an undertaker gives an operator notice of proposed works under paragraph 64.

(2) The operator may, within the notice period, give the undertaker notice (“counter-notice”) stating either –

10

(a) that the operator requires the undertaker to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker’s works –

(i) under the supervision of the operator, and

15

(ii) to the satisfaction of the operator; or

(b) that the operator intends to make any alteration of the electronic communications apparatus that is necessary or expedient because of the proposed undertaker’s works.

(3) In a case where counter-notice contains a statement under subparagraph (2)(a), the undertaker must act in accordance with the counter-notice when altering electronic communications apparatus (in carrying out the proposed undertaker’s works).

20

(4) But, if the operator unreasonably fails to provide the required supervision, the undertaker must act in accordance with the counter-notice only insofar as it requires alterations to be made to the satisfaction of the operator.

25

(5) In a case where counter-notice contains a statement under subparagraph (2)(b) (operator intends to make alteration), the undertaker must not alter electronic communications apparatus (in carrying out the proposed undertaker’s works).

30

(6) But that does not prevent the undertaker from making any alteration of electronic communications apparatus which the operator fails to make within a reasonable time.

(7) Expressions defined in paragraph 64 have the same meanings in this paragraph.

35

*What expenses must the undertaker pay?*

66 (1) This paragraph applies if an undertaker carries out any non-emergency undertaker’s works in accordance with paragraph 64 (including in a case where counter-notice is given under paragraph 65).

40

(2) The undertaker must pay the operator the amount of any loss or damage sustained by the operator in consequence of any alteration being made to electronic communications apparatus (in carrying out the works).

45

- (3) The undertaker must pay the operator any expenses incurred by the operator in, or in connection with, supervising the undertaker when altering electronic communications apparatus (in carrying out the works).
- (4) Any amount which is not paid in accordance with this paragraph is to be recoverable by the operator from the undertaker in any court of competent jurisdiction. 5

*When can the operator alter apparatus in connection with non-emergency undertaker's works?*

- 67 (1) An operator may make an alteration of electronic communications apparatus if – 10
- (a) notice of proposed works has been given,
  - (b) the notice period has ended, and
  - (c) counter-notice has been given which states (in accordance with paragraph 65(2)(b)) that the operator intends to make the alteration. 15
- (2) If the operator makes any alteration in accordance with this paragraph, the undertaker must pay the operator – 20
- (a) any expenses incurred by the operator in, or in connection with, making the alteration; and
  - (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
- (3) Any amount which is not paid in accordance with sub-paragraph (2) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction. 25
- (4) Expressions defined in paragraph 64 have the same meanings in this paragraph.

*When can an undertaker carry out emergency undertaker's works?*

- 68 (1) An undertaker may, in carrying out emergency undertaker's works, make an alteration of any electronic communications apparatus kept on, under or over any land for the purposes of an operator's network. 30
- (2) The undertaker must give the operator notice of the emergency undertaker's works as soon as practicable after beginning them.
- (3) This paragraph does not authorise the undertaker to make an alteration of apparatus after any failure by the undertaker to give notice in accordance with subsection (2). 35
- (4) The undertaker must make the alteration to the satisfaction of the operator.
- (5) If the undertaker makes any alteration in accordance with this paragraph, the undertaker must pay the operator – 40
- (a) any expenses incurred by the operator in, or in connection with, supervising the undertaker when making the alteration; and

- (b) the amount of any loss or damage sustained by the operator in consequence of the alteration being made.
- (6) Any amount which is not paid in accordance with sub-paragraph (5) is to be recoverable by the operator from the undertaker in any court of competent jurisdiction. 5
- (7) In this paragraph “emergency undertaker’s works” means undertaker’s works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause –
  - (a) danger to persons or property, 10
  - (b) interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment, or
  - (c) substantial loss to the undertaker,and any other works which it is reasonable (in all the circumstances) to carry out with those works. 15

*Offence: undertakers who do not comply with this Part of this code*

- 69 (1) An undertaker, or an agent of an undertaker, is guilty of an offence if that person –
  - (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker’s works, and 20
  - (b) does so –
    - (i) without notice of proposed works having been given in accordance with paragraph 64, or
    - (ii) (in a case where such notice is given) before the end of the notice period under paragraph 64. 25
- (2) An undertaker, or an agent of an undertaker, is guilty of an offence if that person –
  - (a) makes an alteration of electronic communications apparatus in carrying out non-emergency undertaker’s works, and 30
  - (b) unreasonably fails to comply with any reasonable requirement of the operator under this Part of this code when doing so.
- (3) An undertaker, or an agent of an undertaker, is guilty of an offence if that person – 35
  - (a) makes an alteration of electronic communications apparatus in carrying out emergency undertaker’s works, and
  - (b) does so without notice of emergency undertaker’s works having been given in accordance with paragraph 68. 40
- (4) A person guilty of an offence under this paragraph is liable on summary conviction to –
  - (a) a fine not exceeding level 4 on the standard scale, if the service provided by the operator’s network is interrupted by the works or failure, or 45

- (b) a fine not exceeding level 3 on the standard scale, if that service is not interrupted.
- (5) This paragraph does not apply to a Northern Ireland department.

## PART 11

## OVERHEAD APPARATUS

5

*Introductory*

- 70 This Part of this code –
- (a) confers a power on operators to install and keep certain overhead apparatus, and
  - (b) imposes a duty on operators to affix notices to certain overhead apparatus. 10

*Power to fly lines*

- 71 (1) This paragraph applies where any electronic communications apparatus is kept on or over any land for the purposes of an operator's network. 15
- (2) The operator has the right, for the statutory purposes, to install and keep lines which –
- (a) pass over other land adjacent to, or in the vicinity of, the land on or over which the apparatus is kept,
  - (b) are connected to that apparatus, and 20
  - (c) are not, at any point where they pass over the other land, less than three metres above the ground or within two metres of any building over which they pass.
- (3) Sub-paragraph (2) does not authorise the installation or keeping on or over any land of – 25
- (a) any electronic communications apparatus used to support, carry or suspend a line installed under sub-paragraph (2), or
  - (b) any line which, as a result of its position, interferes with the carrying on of any business carried on on that land. 30
- (4) In this paragraph “business” includes a trade, profession or employment and includes any activity carried on by a body of persons (whether corporate or unincorporate).

*Duty to attach notices to overhead apparatus*

- 72 (1) This paragraph applies where – 35
- (a) an operator has, for the purposes of the operator's network, installed any electronic communications apparatus, and
  - (b) the whole or part of the apparatus is at a height of three metres or more above the ground. 40

- (2) The operator must, before the end of the period of three days beginning with the day after that on which the installation is completed, in a secure and durable manner attach a notice –
- (a) to every major item of apparatus installed, or
  - (b) if no major item of apparatus is installed, to the nearest major item of electronic communications apparatus to which the apparatus that is installed is directly or indirectly connected. 5
- (3) A notice attached under sub-paragraph (1) above –
- (a) must be attached in a position where it is reasonably legible, and 10
  - (b) must give the name of the operator and an address in the United Kingdom at which any notice of objection may be given under paragraph 74(5) in respect of the apparatus in question. 15
- (4) Any person giving such a notice at that address in respect of that apparatus is to be treated as having given that address for the purposes of paragraph 88(2).
- (5) An operator who breaches the requirements of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. 20
- (6) In any proceedings for an offence under this paragraph it is a defence for the person charged to prove that the person took all reasonable steps and exercised all due diligence to avoid committing the offence. 25

## PART 12

### RIGHTS TO OBJECT TO CERTAIN APPARATUS

#### *Introductory*

- 73 This Part of this code makes provision conferring rights to object to certain kinds of apparatus, and makes provision about – 30
- (a) the cases in which and persons by whom a right can be exercised, and
  - (b) the power and procedures of the court if an objection is made.

#### *When and by whom can a right to object be exercised?* 35

- 74 (1) A right to object under this Part of this code is available where, pursuant to the right in paragraph 59, an operator keeps electronic communications apparatus installed on, under or over tidal water or lands.
- (2) In that case a person has a right to object under this Part of this code if the person – 40
- (a) is an occupier of, or has an interest in, the tidal water or lands,

- (b) is not bound by a code right enabling the operator to keep the apparatus installed on, under or over the tidal water or lands, and
- (c) is not a person with the benefit of a Crown interest in the tidal water or lands. 5
- (3) A right to object under this Part of this code is available where an operator keeps a line installed over land pursuant to the right in paragraph 71.
- (4) In that case a person has a right to object under this Part of this code if the person – 10
- (a) is an occupier of, or has an interest in, the land, and
- (b) is not bound by a code right enabling the operator to keep the apparatus installed over the land.
- (5) A right to object under this Part of this code is available where – 15
- (a) electronic communications apparatus is kept on or over land for the purposes of an operator’s network, and
- (b) the whole or any part of that apparatus is at a height of three metres or more above the ground.
- (6) In that case a person has a right to object under this Part of this code if – 20
- (a) the person is an occupier of, or has an interest in, any neighbouring land, and
- (b) because of the nearness of the neighbouring land to the land on or over which the apparatus is kept – 25
- (i) the enjoyment of the neighbouring land is capable of being prejudiced by the apparatus, or
- (ii) any interest in that land is capable of being prejudiced by the apparatus.
- (7) There is no right to object under this Part of this code in respect of the apparatus if the apparatus – 30
- (a) replaces any electronic communications apparatus which is not substantially different from the new apparatus, and
- (b) is not in a significantly different position.

*How may a right to object be exercised?*

- 75 (1) A person with a right to object under this Part (“the objector”) may exercise the right by giving a notice to the operator. 35
- (2) The right to object that the person has, and the procedure that applies to that right, depends on whether –
- (a) the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed (see paragraph 76), or 40
- (b) the notice is given after the end of that period (see paragraph 77).

*What is the procedure if the objection is made within 12 months of installation?*

- 76 (1) This paragraph applies if the notice is given before the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.
- (2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld. 5
- (3) The court must uphold the objection if the following conditions are met. 10
- (4) The first condition is that the apparatus appears materially to prejudice the objector's enjoyment of, or interest in, the land by reference to which the objection is made.
- (5) The second condition is that the court is not satisfied that the only possible alterations of the apparatus will – 15
- (a) substantially increase the cost or diminish the quality of the service provided by the operator's network to persons who have, or may in future have, access to it,
- (b) involve the operator in substantial additional expenditure (disregarding any expenditure caused solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the apparatus has been unnecessarily installed), or 20
- (c) give to any person a case at least as good as the objector has to have an objection under this paragraph upheld. 25
- (6) If the court upholds an objection under this paragraph it may by order do any of the following –
- (a) direct the alteration of the apparatus to which the objection relates;
- (b) authorise the installation (instead of the apparatus to which the objection relates), in a manner and position specified in the order, of any apparatus specified in the order; 30
- (c) direct that no objection may be made under this paragraph in respect of any apparatus the installation of which is authorised by the court. 35
- (7) Where an objector has both given a notice under paragraph 75 and applied for compensation under any of the other provisions of this code –
- (a) the court may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of, and 40
- (b) if the court makes an order under this paragraph, it may provide in that order for some or all of the compensation otherwise payable under this code to the objector not to be so payable, or, if the case so requires, for some or all of any compensation paid under this code to the objector to be repaid to the operator. 45

(8) For the purposes of sub-paragraph (5)(c), the court has the power on an application under this paragraph to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit.

(9) This paragraph is subject to paragraph 78. 5

*What is the procedure if the objection is made later than 12 months after installation?*

77 (1) This paragraph applies if the notice is given after the end of the period of 12 months beginning with the date on which installation of the apparatus was completed.

(2) At any time after the end of the period of two months beginning with the date on which the notice is given, but before the end of the period of four months beginning with that date, the objector may apply to the court to have the objection upheld. 10

(3) The court may uphold the objection only if it is satisfied that – 15  
 (a) the alteration is necessary to enable the objector to carry out a proposed improvement of the land by reference to which the objection is made, and  
 (b) the alteration will not substantially interfere with any service which is or is likely to be provided using the operator’s network. 20

(4) If the court upholds an objection under this paragraph it may by order direct the alteration of the apparatus to which the objection relates.

(5) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the court thinks fit. 25

(6) But the court must not include any such modifications, terms or conditions in its order without the consent of the objector, and if such consent is not given may refuse to make an order under this paragraph. 30

(7) An order made under this paragraph must, unless the court otherwise thinks fit, require the objector to reimburse the operator in respect of any expenses which the operator incurs in or in connection with the execution of any works in compliance with the order. 35

(8) This paragraph is subject to paragraph 78.

(9) In this paragraph “improvement” includes development and change of use.

*What limitations are there on the court’s powers under paragraph 76 or 77?*

78 (1) This paragraph applies where the court is considering making – 40  
 (a) an order under paragraph 76 directing the alteration of any apparatus or authorising the installation of any apparatus, or



- (b) an order under paragraph 77 directing the alteration of any apparatus.
- (2) The court must not make the order unless it is satisfied—
  - (a) that the operator has all such rights as it appears to the court appropriate that the operator should have for the purpose of making the alteration or, as the case may be, installing the apparatus, or 5
  - (b) that—
    - (i) the operator would have all those rights if the court, on an application under paragraph 19, imposed an agreement on the operator and another person, and 10
    - (ii) it would be appropriate for the court, on such an application, to impose such an agreement.
- (3) For the purposes of avoiding the need for the agreement of any person to the alteration or installation of any apparatus, the court has the same powers as it would have if an application had been duly made under paragraph 19 above for an order imposing such an agreement. 15
- (4) For the purposes of this paragraph, the court has the power on an application under paragraph 76 or 77 to give the objector directions for bringing the application to the notice of such other interested persons as it thinks fit. 20

#### PART 13

#### RIGHTS TO LOP TREES 25

##### *Rights to lop trees*

- 79 (1) This paragraph applies where—
  - (a) a tree or other vegetation overhangs a street in England and Wales or Northern Ireland or a road in Scotland, and
  - (b) the tree or vegetation— 30
    - (i) obstructs, or will or may obstruct, relevant electronic communications apparatus, or
    - (ii) interferes with, or will or may interfere with, such apparatus.
- (2) In sub-paragraph (1) “relevant electronic communications apparatus” means electronic communications apparatus which— 35
  - (a) is installed, or about to be installed, on land, and
  - (b) is used, or to be used, for the purposes of an operator’s network.
- (3) The operator may, by notice to the occupier of the land on which the tree or vegetation is growing, require the tree to be lopped or the vegetation to be cut back to prevent the obstruction or interference. 40
- (4) If, within the period of 28 days beginning with the day on which the notice is given, the occupier of the land on which the tree is 45

growing gives the operator a counter-notice objecting to the lopping of the tree or cutting back of the vegetation, the notice has effect only if confirmed by an order of the court.

- (5) Sub-paragraph (6) applies if at any time a notice under sub-paragraph (3) has not been complied with and – 5
- (a) the period of 28 days beginning with the day on which the notice was given has expired without a counter-notice having been given, or
  - (b) an order of the court confirming the notice has come into force. 10
- (6) The operator may cause the tree to be lopped or the vegetation to be cut back.
- (7) Where the operator lops a tree or cuts back vegetation in exercise of the power in sub-paragraph (6) the operator must do so in a husband-like manner and in such a way as to cause the minimum damage to the tree or vegetation. 15
- (8) Sub-paragraph (9) applies where –
- (a) a notice under sub-paragraph (3) is complied with (either without a counter-notice having been given or after the notice has been confirmed), or 20
  - (b) the operator exercises the power in sub-paragraph (6).
- (9) The court must, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or cutting back of the vegetation or who has incurred expenses in complying with the notice, order the operator to pay that person such compensation in respect of the loss or damage as it thinks fit. 25

#### PART 14

##### COMPENSATION UNDER THE CODE

###### *Introductory*

- 80 This Part of this code makes provision about compensation under this code. 30

###### *Compensation where agreement imposed or apparatus removed*

- 81 (1) This paragraph applies to the following powers of the court to order an operator to pay compensation to a person – 35
- (a) the power in paragraph 25(1) (compensation where order made imposing agreement on person);
  - (b) the power in paragraph 40(3) (compensation in relation to removal of the apparatus from the land).
- (2) Depending on the circumstances, the power of the court to order the payment of compensation for loss or damage includes power to order payment for – 40
- (a) expenses (including reasonable legal and valuation expenses, subject to the provisions of any enactment about

- the powers of the court by whom the order for compensation is made to award costs),
- (b) diminution in the value of the land, and
  - (c) costs of reinstatement.
- (3) For the purposes of assessing such compensation for diminution in the value of land, the following provisions apply with any necessary modifications as they apply for the purposes of assessing compensation for the compulsory purchase of any interest in land – 5
- (a) in relation to England and Wales, rules (2) to (4) set out in section 5 of the Land Compensation Act 1961; 10
  - (b) in relation to Scotland, rules (2) to (4) set out in section 12 of the Land Compensation (Scotland) Act 1963;
  - (c) in relation to Northern Ireland, rules (2) to (4) set out in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)). 15
- (4) In the application of this paragraph to England and Wales, section 10(1) to (3) of the Land Compensation Act 1973 (compensation in respect of mortgages, trusts of land and settled land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act. 20
- (5) In the application of this paragraph to Scotland, section 10(1) and (2) of the Land Compensation (Scotland) Act 1973 (compensation in respect of restricted interests in land) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part 1 of that Act. 25
- (6) In the application of this paragraph to Northern Ireland, Article 13(1) to (3) of the Land Acquisition and Compensation (Northern Ireland) Order 1973 (SI 1973/1896 (NI 21)) (compensation in respect of mortgages, trusts for sale and settlements) applies in relation to such compensation for diminution in the value of land as it applies in relation to compensation under Part II of that Order. 30
- (7) Where a person has a claim for compensation to which this paragraph applies and a claim for compensation under any other provision of this code in respect of the same loss, the compensation payable to that person must not exceed the amount of that person’s loss. 35

*Compensation for injurious affection to neighbouring land etc*

- 82 (1) This paragraph applies where a right conferred by or in accordance with any provision of Parts 2 to 9 of this code is exercised by an operator. 40
- (2) In the application of this paragraph to England and Wales, compensation is payable by the operator under section 10 of the Compulsory Purchase Act 1965 (compensation for injurious affection to neighbouring land) as if that section applied in relation to injury caused by the exercise of such a right as it applied in 45

relation to injury caused by the execution of works on land that has been compulsorily acquired.

- (3) In the application of this paragraph to Scotland, compensation is payable by the operator under section 6 of the Railway Clauses Consolidation (Scotland) Act 1845 as if that section applied in relation to injury caused by the exercise of such a right as it applied in relation to injury caused by the execution of works on land that has been taken or used for the purpose of a railway. 5
- (4) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (3), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Scotland. 10
- (5) In the application of this paragraph to Northern Ireland, compensation is payable by the operator under Article 18 of the Land Compensation (Northern Ireland) Order 1982 (SI 1982/712 (NI 9)) as if that section applied in relation to injury caused by the execution of works on land that has been compulsorily acquired. 15
- (6) Any question as to a person's entitlement to compensation by virtue of sub-paragraph (5), or as to the amount of that compensation, is, in default of agreement, to be determined by the Lands Tribunal for Northern Ireland. 20
- (7) Compensation is payable on a claim for compensation under this paragraph only if the amount of the compensation exceeds £50. 25
- (8) Compensation is payable to a person under this paragraph irrespective of whether the person claiming the compensation has any interest in the land in relation to which the right referred to in sub-paragraph (1) is exercised.
- (9) Compensation under this paragraph may include reasonable legal and valuation expenses, subject to the provisions of any enactment about the powers of the court or tribunal by whom an order for compensation is made to award costs. 30

*No other compensation available*

- 83 Except as provided by any provision of Parts 2 to 13 of this code or this Part, an operator is not liable to compensate any person for, and is not subject to any other liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with any provision of those Parts. 35

PART 15 40

#### NOTICES UNDER THE CODE

*Introductory*

- 84 This Part makes provision –

- (a) about requirements for the form of notices given under this code by operators,
- (b) about requirements for the form of notices given under this code by persons other than operators, and
- (c) about procedures for giving notices. 5

*Notices given by operators*

- 85 (1) A notice given under this code by an operator must—
- (a) explain the effect of the notice,
  - (b) explain which provisions of this code are relevant to the notice, and 10
  - (c) explain the steps that may be taken by the recipient in respect of the notice.
- (2) If OFCOM have prescribed the form of a notice which may or must be given by an operator under a provision of this code, a notice given by an operator under that provision must be in that form. 15
- (3) A notice which does not comply with this paragraph is not a valid notice for the purposes of this code.
- (4) Sub-paragraph (3) does not prevent the person to whom the notice is given from relying on the notice if the person chooses to do so.
- (5) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact. 20

*Notices given by others*

- 86 (1) Sub-paragraph (2) applies to a notice given under paragraph 31(1), 33(1), 38(1) or 39(2) by a person other than an operator. 25
- (2) If OFCOM have prescribed the form of a notice given under the provision in question by a person other than an operator, the notice must be in that form.
- (3) A notice which does not comply with sub-paragraph (2) is not a valid notice for the purposes of this code. 30
- (4) Sub-paragraph (3) does not prevent the operator to whom the notice is given from relying on the notice if the operator chooses to do so.
- (5) Sub-paragraph (6) applies to a notice given under any other provision of this code by a person other than an operator if— 35
- (a) OFCOM have prescribed the form of a notice given under that provision by a person other than an operator,
  - (b) the notice is given in response to a notice given by an operator, and 40
  - (c) the operator has, in giving the notice, drawn the person's attention to the form prescribed by OFCOM.

- (6) The notice is a valid notice for the purposes of this code, but the person giving the notice must bear any costs incurred by the operator as a result of the notice not being in that form.
- (7) In any proceedings under this code a certificate issued by OFCOM stating that a particular form of notice has been prescribed by them as mentioned in this paragraph is conclusive evidence of that fact. 5

*Prescription of notices by OFCOM*

- 87 (1) OFCOM must prescribe the form of a notice to be given under each provision of this code that requires a notice to be given. 10
- (2) OFCOM may from time to time amend or replace a form prescribed under sub-paragraph (1).
- (3) Before prescribing a form for the purposes of this code, OFCOM must consult operators and such other persons as OFCOM think appropriate. 15
- (4) Sub-paragraph (1) does not apply to the amendment or replacement of a form prescribed under sub-paragraph (1).

*Procedures for giving notice*

- 88 (1) A notice given under this code must not be sent by post unless it is sent by a registered post service or by recorded delivery. 20
- (2) For the purposes, in the case of a notice under this code, of section 394 of this Act (service of notifications and other documents) and section 7 of the Interpretation Act 1978 (references to service by post), the proper address of a person (“P”) is –
- (a) if P has given the person giving the notice an address for service under this code, that address, and 25
- (b) otherwise, the address given by section 394.
- (3) Sub-paragraph (4) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of a person who is the occupier of land for the purposes of this code. 30
- (4) A notice may be given under this code to the occupier –
- (a) by addressing it to a person by the description of “occupier” of the land (and describing the land), and
- (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land. 35
- (5) Sub-paragraph (6) applies if it is not practicable, for the purposes of giving a notice under this code, to find out after reasonable enquiries the name and address of the owner of an interest in land. 40
- (6) A notice may be given under this code to the owner –

- (a) by addressing it to a person by the description of “owner” of the interest (and describing the interest and the land), and
- (b) by delivering it to a person who is on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to a conspicuous object on the land. 5

## PART 16

### ENFORCEMENT AND DISPUTE RESOLUTION

#### *Introductory* 10

- 89 This Part of this code makes provision about –
- (a) the court or tribunal by which agreements and rights under this code may be enforced,
  - (b) the meaning of references to “the court” in this code, and
  - (c) the power of the Secretary of State by regulations to confer jurisdiction under this code on other tribunals. 15

#### *Enforcement of agreements and rights*

- 90 An agreement under this code, and any right conferred by this code, may be enforced –
- (a) in the case of an agreement imposed by a court or tribunal, by the court or tribunal which imposed the agreement, 20
  - (b) in the case of any agreement or right, by any court or tribunal which for the time being has the power to impose an agreement under this code, or
  - (c) in the case of any agreement or right, by any court of competent jurisdiction. 25

#### *Meaning of “the court”*

- 91 (1) In this code “the court” means –
- (a) in relation to England and Wales, the county court,
  - (b) in relation to Scotland, the sheriff, and 30
  - (c) in relation to Northern Ireland, a county court.
- (2) Sub-paragraph (1) is subject to provision made by regulations under paragraph 92.

#### *Power to confer jurisdiction on other tribunals*

- 92 (1) The Secretary of State may by regulations provide for a function conferred by this code on the court to be exercisable by any of the following –
- (a) in relation to England and Wales, the First-tier Tribunal;
  - (b) in relation to England and Wales, the Upper Tribunal;
  - (c) in relation to Scotland, the Lands Tribunal for Scotland; 40
  - (d) in relation to Northern Ireland, the Lands Tribunal for Northern Ireland.

- (2) Regulations under sub-paragraph (1) may make provision for the function to be exercisable by a tribunal to which the regulations apply –
- (a) instead of by the court, or
  - (b) as well as by the court. 5
- (3) The Secretary of State may by regulations make provision –
- (a) requiring proceedings to which regulations under sub-paragraph (1) apply to be commenced in the court or in a tribunal to which the regulations apply;
  - (b) enabling the court or such a tribunal to transfer such proceedings to a tribunal which has jurisdiction in relation to them by virtue of such regulations or to the court. 10
- (4) The power in section 402(3)(c) for regulations under sub-paragraph (1) or (3) to make consequential provision includes power to make provision which amends, repeals or revokes or otherwise modifies the application of any enactment. 15

*Applications to the court*

- 93 Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210) makes provision about the time within which certain applications to the court under this code must be determined. 20

*Appeals in Northern Ireland*

- 94 Article 60 of the County Courts (Northern Ireland) Order 1980 (ordinary appeals from the county court in civil cases) is to apply in relation to any determination of the court in Northern Ireland under this code in the same manner as it applies in relation to any decree of the court made in the exercise of the jurisdiction conferred by Part 3 of that Order. 25

## PART 17

## SUPPLEMENTARY PROVISIONS 30

*Relationship between this code and existing law*

- 95 (1) This code does not authorise the contravention of any provision of an enactment passed or made before the coming into force of this code.
- (2) Sub-paragraph (1) does not apply if and to the extent that an enactment makes provision to the contrary. 35

*Relationship between this code and agreements with operators*

- 96 (1) This code does not affect any rights or liabilities arising under an agreement to which an operator is a party.
- (2) Sub-paragraph (1) does not apply in relation to paragraph 61(2) to (5), paragraph 95 or Parts 3 to 6 of this code. 40



*Ownership of property*

- 97 The ownership of property does not change merely because the property is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this code. 5

*Conduits*

- 98 (1) This code does not authorise an operator to do anything inside a relevant conduit without the agreement of the authority with control of the conduit.
- (2) The agreement of the authority with control of a public sewer is sufficient in all cases to authorise an operator to exercise any of the rights under this code in order to do anything wholly inside that sewer. 10
- (3) In this paragraph the following expressions have the same meanings as in section 98 of the Telecommunications Act 1984— 15
- (a) “public sewer” and “relevant conduit”;
  - (b) references to the authority with control of a relevant conduit.

*Duties for OFCOM to prepare codes of practice*

- 99 (1) OFCOM must prepare and publish a code of practice dealing with— 20
- (a) the provision of information for the purposes of this code by operators to persons who occupy or have an interest in land;
  - (b) the conduct of negotiations for the purposes of this code between operators and such persons; 25
  - (c) the conduct of operators in relation to persons who occupy or have an interest in land adjoining land on, under or over which electronic communications apparatus is installed;
  - (d) such other matters relating to the operation of this code as OFCOM think appropriate. 30
- (2) OFCOM must prepare and publish standard terms which may (but need not) be used in agreements under this code.
- (3) OFCOM may from time to time— 35
- (a) amend or replace a code of practice or standard terms published under this paragraph;
  - (b) publish the code or terms as amended or (as the case may be) the replacement code or terms.
- (4) Before publishing a code of practice or standard terms under this paragraph, OFCOM must consult operators and such other persons as OFCOM think appropriate. 40
- (5) Sub-paragraph (4) does not apply to—
- (a) the publication of amendments to a code of practice or standard terms, or

- (b) the publication of a replacement code or replacement terms.

*Application of this code to the Crown*

- 100 (1) This code applies in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists. 5
- (2) In this code “Crown interest” means –
- (a) an interest which belongs to Her Majesty in right of the Crown,
  - (b) an interest which belongs to Her Majesty in right of the Duchy of Lancaster, 10
  - (c) an interest which belongs to the Duchy of Cornwall, or
  - (d) an interest which belongs to a Government department or which is held in trust for Her Majesty for the purposes of a Government department. 15
- (3) This includes, in particular –
- (a) an interest which belongs to Her Majesty in right of Her Majesty’s Government in Northern Ireland, and
  - (b) an interest which belongs to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department. 20
- (4) Where an agreement is required by this code to be given in respect of any Crown interest subsisting in any land, the agreement must be given by the appropriate authority.
- (5) Where a notice under this code is required to be given in relation to land in which a Crown interest subsists, the notice must be given by or to the appropriate authority (as the case may require). 25
- (6) In this paragraph “the appropriate authority” means –
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or, as the case may be, the government department that has the management of the land in question; 30
  - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy of Lancaster; 35
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) in the case of land belonging to Her Majesty in right of Her Majesty’s Government in Northern Ireland, the Northern Ireland department having the management of the land in question; 40
  - (e) in the case of land belonging to a government department or a Northern Ireland department or held in trust for Her Majesty for the purposes of a government department or a Northern Ireland department, that department. 45

- (7) Any question as to the authority that is the appropriate authority in relation to any land is to be referred to the Treasury, whose decision is final.
- (8) Paragraphs 51 (offence in relation to transport land rights) and 72(5) (offence in relation to notices on overhead apparatus) do not apply where this code applies in the case of the Secretary of State or a Northern Ireland department by virtue of section 106(3)(b). 5

*Meaning of “occupier”*

- 101 (1) References in this code to an occupier of land are to the occupier of the land for the time being. 10
- (2) References in this code to an occupier of land, in relation to a footpath or bridleway that crosses and forms part of agricultural land, are to the occupier of that agricultural land.
- (3) Sub-paragraph (4) applies in relation to land which is—
  - (a) a street in England and Wales or Northern Ireland, other than a footpath or bridleway within sub-paragraph (2), or 15
  - (b) a road in Scotland, other than such a footpath or bridleway.
- (4) References in this code to an occupier of land—
  - (a) in relation to such a street in England and Wales, are to the street managers within the meaning of Part 3 of the New Roads and Street Works Act 1991, 20
  - (b) in relation to such a street in Northern Ireland, are to the street managers within the meaning of the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)), and 25
  - (c) in relation to such a road in Scotland, are to the road managers within the meaning of Part 4 of the New Roads and Street Works Act 1991.
- (5) Sub-paragraph (6) applies in relation to land which—
  - (a) is unoccupied, and 30
  - (b) is not a street in England and Wales or Northern Ireland or a road in Scotland.
- (6) References in this code to an occupier of land, in relation to land within sub-paragraph (5), are to—
  - (a) the person (if any) who for the time being exercises powers of management or control over the land, or 35
  - (b) if there is no person within paragraph (a), to every person whose interest in the land would be prejudicially affected by the exercise of a code right in relation to the land.
- (7) In this paragraph—
  - (a) “agricultural land” includes land which is being brought into use for agriculture, and 40
  - (b) references in relation to England and Wales to a footpath or bridleway include a restricted byway.

*Arbitrations in Scotland*

- 102 Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitrations carried out under or by virtue of this code, that Act applies as if it were in force in relation to those arbitrations.

*General interpretation*

5

- 103 (1) In this code—

“agriculture” and “agricultural”—

- (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,  
 (b) in relation to Scotland, have the same meanings as in the Town and Country Planning (Scotland) Act 1997, and  
 (c) in relation to Northern Ireland, have the same meanings as in the Agriculture Act (Northern Ireland) 1949;

10

15

“bridleway” and “footpath”—

- (a) in relation to England and Wales, have the same meanings as in the Highways Act 1980,  
 (b) in relation to Scotland, have the same meanings as Part 3 of the Countryside (Scotland) Act 1967, and  
 (c) in relation to Northern Ireland, mean a way over which the public have, by virtue of the Access to the Countryside (Northern Ireland) Order 1983 (SI 1983/1895 (NI 18)), a right of way (respectively) on horseback and on foot;

20

25

“code agreement” has the meaning given by paragraph 29(5);

“Crown interest” has the meaning given by paragraph 100(2) and (3);

“enactment” includes—

- (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978,  
 (b) an enactment comprised in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,  
 (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and  
 (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation;

30

35

“land” does not include electronic communications apparatus;

40

“landowner” has the meaning given by paragraph 37(1);

“lease” includes (except in relation to Scotland) any leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such a tenancy but not a mortgage by demise or sub-demise;

45

“relevant person” has the meaning given by paragraph 19(1);

“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;

“road”—

- (a) in relation to Scotland, has the same meaning as in Part 4 of the New Roads and Street Works Act 1991;
- (b) in relation to Northern Ireland, has the same meaning as in the Roads (Northern Ireland) Order 1993 (SI 1993/3160 (NI 15));
- “site provider” has the meaning given by paragraph 30(1);
- “street” –
- (a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991, and
- (b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (SI 1995/3210 (NI 19)).
- (2) In this code, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.”

## SCHEDULE 9

Section 49

### THE ELECTRONIC COMMUNICATIONS CODE: CONSEQUENTIAL AMENDMENTS

#### *Landlord and Tenant Act 1954 (c. 56)*

- 1 In section 23 of the Landlord and Tenant Act 1954 (tenancies to which provisions on security of tenure for business etc tenants apply) after subsection (4) insert –
- “(5) This Part does not apply to a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code).”

#### *Landlord and Tenant Act 1987 (c. 31)*

- 2 In section 4(2) of the Landlord and Tenant Act 1987 (disposals which are not relevant disposals for purposes of tenants’ right of first refusal) after paragraph (da) insert –
- “(da) the conferral of a code right under Schedule 3A to the Communications Act 2003 (the electronic communications code);”.

#### *Landlord and Tenant (Covenants) Act 1995 (c. 30)*

- 3 In section 5 of the Landlord and Tenant (Covenants) Act 1995 (tenant released from covenants on assignment of tenancy), after subsection (4) insert –
- “(5) This section is subject to paragraph 15(4) of Schedule 3A to the Communications Act 2003 (which places conditions on the release of an operator from liability under an agreement granting code rights under the electronic communications code).”

*Business Tenancies (Northern Ireland) Order 1996 (SI 1996/725 (NI 5))*

- 4 In Article 4(1) of the Business Tenancies (Northern Ireland) Order 1996 (tenancies to which the Order does not apply) after paragraph (k) insert –
- “(l) a tenancy the primary purpose of which is to grant code rights within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code).”
- 5

*Land Registration Act 2002 (c. 9)*

- 5 The Land Registration Act 2002 is amended as follows.
- 6 In Schedule 1 (unregistered interests which override first registration) after paragraph 9 insert –
- “Rights under the electronic communications code*
- 9A A code right within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), other than a right conferred by a lease.”
- 15
- 7 In Schedule 3 (unregistered interests which override registered dispositions) after paragraph 9 insert –
- “Rights under the electronic communications code*
- 9A A code right within the meaning of Schedule 3A to the Communications Act 2003 (the electronic communications code), other than a right conferred by a lease.”
- 20

*Communications Act 2003 (c. 21)*

- 8 The Communications Act 2003 is amended as follows.
- 9 (1) Section 394 (service of notifications and other documents) is amended as follows.
- 25
- (2) In subsection (2) omit paragraph (d).
- (3) After subsection (10) insert –
- “(11) In its application to Schedule 3A this section is subject to paragraph 88 of that Schedule.”
- 10 (1) Section 402 (power of Secretary of State to make orders and regulations) is amended as follows.
- 30
- (2) In subsection (2) after paragraph (a) insert –
- “(aa) regulations under paragraph 24 of Schedule 3A,
- (ab) regulations under paragraph 92 of that Schedule which amend, repeal or modify the application of primary legislation.”
- 35
- (3) After subsection (2) insert –
- “(2A) A statutory instrument containing (whether alone or with other provisions) –

- (a) regulations under paragraph 24 of Schedule 3A, or
  - (b) regulations under paragraph 92 of that Schedule which amend, repeal or modify the application of primary legislation,  
may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.” 5
- (4) After subsection (3) insert –
- “(4) In this section “primary legislation” means –
  - (a) an Act of Parliament,
  - (b) a Measure or Act of the National Assembly for Wales, 10
  - (c) an Act of the Scottish Parliament, or
  - (d) Northern Ireland legislation.”

*Consequential repeals*

- 11 In consequence of the amendments made by section 49 and this Schedule, Schedule 3 to the Communications Act 2003 is repealed. 15

# Infrastructure Bill [HL]

---

---

A

## B I L L

To make provision for strategic highways companies and the funding of transport services by land; to make provision for the control of invasive non-native species; to make provision about nationally significant infrastructure projects; to make provision about town and country planning; to make provision about the Homes and Communities Agency and Mayoral development corporations; to make provision about the Greater London Authority so far as it exercises functions for the purposes of housing and regeneration; to make provision about Her Majesty's Land Registry and local land charges; to make provision to enable building regulations to provide for off-site carbon abatement measures; to make provision for giving members of communities the right to buy stakes in local renewable electricity generation facilities; to make provision about maximising economic recovery of petroleum in the United Kingdom; to provide for a levy to be charged on holders of certain energy licences; to enable Her Majesty's Revenue and Customs to exercise functions in connection with the Extractive Industries Transparency Initiative; to make provision for underground access to deep-level land for the purposes of exploiting petroleum or deep geothermal energy; to make provision about renewable heat incentives; to make provision about the reimbursement of persons who have paid for electricity connections; to make provision to enable the Public Works Loan Commissioners to be abolished; to make provision about the electronic communications code; and for connected purposes.

*Brought from the Lords*

---

*Ordered to be Printed, 15 January 2015*

---

© Parliamentary copyright House of Commons 2015

*This publication may be reproduced under the terms of the Open Parliament Licence, which is published at [www.parliament.uk/site-information/copyright](http://www.parliament.uk/site-information/copyright)*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx

Bill 154

(xxxxx)

55/4

xxxbarxxx