

## **LOCALISM BILL**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Localism Bill as brought from the House of Commons on 19th May 2011. They have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **BACKGROUND AND SUMMARY**

3. The Bill devolves more powers to councils and neighbourhoods and gives local communities greater control over local decisions like housing and planning.
4. The Bill contains numerous provisions in relation to Local Government. These include a general power of competence for Local Authorities, governance arrangements for Local Authorities including new provisions for directly elected mayors, the abolition of the standards board regime and requirements for Local Authorities to set senior pay policy statements.
5. A key element of the Bill is to provide for community empowerment with powers to enable people to instigate local referendums on any issue, to approve or veto in a referendum a council tax increase deemed to be excessive, to express an interest in running local authority services and to provide local community groups with an opportunity to bid to buy assets of community value.
6. Reform of the Planning system is another key element of the Bill with provisions to abolish regional strategies, provide for neighbourhood plans, make pre-application consultation compulsory, make changes to planning enforcement and in relation to nationally significant infrastructure.

7. The Bill contains provisions to reform social housing including measures to offer flexible tenancies for new social tenants, create a new system of council housing finance, provide assistance for tenants to exchange their social rented property, transfer the functions of the Tenants Services Authority to the Homes and Communities Agency and make changes to the system for tenants to make a complaint about their social landlord.
8. Finally, the Bill also contains a number of provisions for London that provide the mayor with additional powers to secure an Olympic legacy and incorporate the role of the Homes and Communities Agency in relation to London into the Greater London Authority.
9. Further background is included on these and other elements of the Bill in the “Overview of the Structure” section.
10. A glossary of terms and abbreviations used in these Explanatory Notes is provided at the end of these Notes.

## **OVERVIEW OF THE STRUCTURE**

### **PART 1: LOCAL GOVERNMENT**

11. Chapter 1 of the Bill provides local authorities with a general power of competence, so that they may do anything that an individual generally may do, other than that which is specifically prohibited. It also sets out the boundaries of the power, provides the Secretary of State with order making powers and sets out the procedure to be followed for any orders made using those powers.
12. Chapter 2 introduces a general power for relevant Fire and Rescue Authorities. It also extends the ability of Fire and Rescue Authorities to charge for services without an enabling statutory instrument, while specifying certain functions and services for which they may not charge.
13. Chapter 3 makes provision about local authority governance arrangements in England. It allows local authorities to return to the committee system, if they choose to do so, create new mayoral management arrangements. It also provides for the creation of directly elected mayors, subject to confirmatory referendums, in local authorities specified by order by the Secretary of State.
14. Chapter 4 clarifies the rules on bias and having a mind closed to argument, to ensure that councillors can freely discuss issues and then speak or vote on those issues.

15. Chapter 5 abolishes the Standards Board regime, which consists of interdependent elements such as the Standards Board for England and local authority standards committees, guidance, and legislation such as the model code of conduct for local authority councillors.

16. Chapter 6 sets out requirements for councils to prepare senior pay policy statements which they will then be required to follow when setting senior pay.

17. Chapter 7 repeals the duties relating to the promotion of democracy, the provisions about petitions to local authorities and schemes to encourage domestic waste reduction by payments and charges.

## **PART 2: EU FINES**

18. This part creates a power to recover funds from local authorities and other public authorities in England in order to pay all, or part of, a European Court of Justice financial sanction imposed for a failure of the United Kingdom to comply with an obligation under the EU treaties.

## **PART 3: NON-DOMESTIC RATES**

19. This Part contains four provisions in relation to business rates including changes to business rate supplements and non-domestic rates.

## **PART 4: COMMUNITY EMPOWERMENT**

20. Chapter 1 gives people, councillors and councils the power to instigate a local referendum on any local issue. Although these referendums will be non-binding, local authorities and other public authorities will be required to take the outcomes into account in decision making.

21. Chapter 2 sets out a power for local residents to approve or veto excessive council tax rises. Any local authority (including police and fire authorities) and larger parishes setting an increase above a threshold proposed by the Secretary of State and approved by the House of Commons would trigger a referendum of all registered electors in their area. The chapter also sets out a power for Welsh Ministers, by order, to determine the timing of Council Tax revaluations in Wales.

22. Chapter 3 enables voluntary and community bodies, charities, parish councils or public sector employees delivering the service, to express an interest in running a local authority service. Where it accepts an expression of interest, the local authority must carry out a procurement exercise for the running of that service.

23. Chapter 4 provides an opportunity for local community groups to bid to buy buildings or land which are listed, by the local authority, as assets of community value.

## **PART 5: PLANNING**

24. This Part makes provision for reforms to the planning system.

25. Chapter 1 enables the abolition of regional strategies, places a duty to cooperate on local planning authorities, county councils and other bodies and makes changes to the processes for adopting, examining and publishing development plan documents.

26. Chapter 2 limits the binding nature of the independent examiner recommendations on Community Infrastructure Levy charging schedules, provides for requiring charging authorities to pass Community Infrastructure Levy funds to other bodies and clarifies the definition of infrastructure for the purposes of the Community Infrastructure Levy.

27. Chapter 3 provides for the creation of neighbourhood development orders and plans, sets out the requirements they must meet and provides for appropriate charges and financial assistance. This Chapter also sets out how community right to build assets will be managed.

28. Chapter 4 provides for compulsory pre-application consultation for developments above certain thresholds.

29. Chapter 5 allows local authorities in England to decline to determine retrospective planning applications where enforcement action is being taken. It also allows authorities to apply to a magistrate's court to enable enforcement action after statutory time limits have been exceeded, where there is evidence of deliberate deception and it increases some penalties and adjusts certain time limits with respect to enforcement. Finally, it provides powers relating to unauthorised adverts and the defacement of premises.

30. Chapter 6 makes provision in relation to nationally significant infrastructure, particularly the abolition of the Infrastructure Planning Commission.

## **PART 6: HOUSING**

31. This Part makes provision for reforms to the way social housing is provided as well as the repeal of Home Information Packs.

32. Chapter 1 provides for a power for local housing authorities to determine what classes of persons are or are not qualifying persons to be allocated housing and enables authorities fully to discharge the main homelessness duty by arranging an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement.

33. Chapter 2 requires every local housing authority to publish a tenancy strategy and makes provision for local housing authorities and Private Registered Providers (social landlords) to offer flexible tenancies for new social tenants.

34. Chapter 3 provides for a new system of council housing finance through the termination of the Housing Revenue Account Subsidy System and the introduction of a self-financing system which will allow councils that operate a Housing Revenue Account to keep the rent received from their tenants.

35. Chapter 4 gives the social housing regulator the power to set a standard for registered providers in respect of assisting tenants with regard to mutual exchanges. It also provides that tenants who are shareholders of their landlord may benefit from payments which assist the tenant to move out of their social rented property into owner occupation of another dwelling.

36. Chapter 5 provides for the reform of regulation of social housing providers through abolishing the Tenant Services Authority and transferring its functions to the Homes & Communities Agency. It also provides for changes in the role of the regulator in relation to consumer matters.

37. Chapter 6 makes changes to the way in which a tenant may make a complaint about their social landlord to a housing ombudsman through introduction of a referral process. It also abolishes Home Information Packs.

## **PART 7: LONDON**

38. This Part contains a number of provisions for London that provide the Mayor of London with additional housing and regeneration powers, including the power to create Mayoral Development Corporations, and also makes changes to the governance of the Greater London Authority.

39. Chapter 1 amends the Greater London Authority's statutory framework, including giving the Greater London Authority new housing and regeneration powers. It also abolishes the London Development Agency and amends the Homes and Communities Agency's objects so that it has no functions in Greater London.

40. Chapter 2 enables the Mayor to establish a Mayoral Development Corporation for the purposes of securing regeneration of designated areas within Greater London.

41. Chapter 3 reforms aspects of the Greater London Authority's governance framework under the Greater London Authority Act 1999.

## **PART 8: GENERAL**

42. This Part contains supplementary provisions about orders and regulations about tax, consequential amendments, repeals, financial provisions, extent, commencement and the short title.

## **TERRITORIAL EXTENT AND APPLICATION**

43. Most of the provisions contained in the Bill extend to England and Wales only, with a small number of provisions extending to Scotland and Northern Ireland. These are shown in the table at Annex A.

### **Territorial application: Scotland**

44. Certain provisions in Chapter 6 of Part 5 (Nationally Significant Infrastructure Projects), and associate provisions in Part 8, extend to and apply in Scotland as the legislation they amend also extends to Scotland, albeit for very limited purposes relating to cross border pipelines. In addition, the tax provisions in clause 207 and Schedule 24, and amendments of enactments that extend to Scotland, also extend to Scotland.

45. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

### **Territorial application: Wales**

46. Most of the provisions in the Bill apply in England only. Some provisions also apply in Wales, or apply in Wales only. These are set out in Annex A and explained at the appropriate point in the commentary below.

47. At introduction the Bill included provisions which related to matters in Wales within the legislative competence of the National Assembly for Wales and which therefore required a legislative consent motion in the Assembly. In addition, the Bill

includes provisions applying to Wales which, while they do not relate to matters within the legislative competence of the Assembly, confer new functions on the Welsh Ministers or relate to matters in respect of which they already exercise functions.

## **Territorial application: Northern Ireland**

48. Apart from certain technical clauses in Part 8, the Bill does not extend to Northern Ireland.

## **Commentary on clauses**

### **Part 1: local government**

#### **Chapter 1: General Powers of Authorities**

##### ***Clause 1 - Local authority's general power of competence***

49. Clause 1 provides a general power of competence for local authorities. It gives local authorities the same power to act that an individual generally has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority - or any other public body - has done before, or may currently do. The clause defines the meaning of an 'individual' so as to avoid referring to the reduced powers exercised by for example a child. Subsections (4), (5) & (6) further define the extent of the power. Where the authority can do something under the power, the starting point is that there are to be no limits as to how the power can be exercised. For example, the power does not need to be exercised for the benefit of any particular place or group, and can be exercised anywhere and in any way. Subsection (7) gives effect to Schedule 1, which makes consequential amendments. The amendments to the Local Government Act 2000 mean that the well-being power provided in section 2 of that Act will no longer apply to English local authorities.

##### ***Clause 2 - Boundaries of the general power***

50. Clause 2 sets out the boundaries of the general power, requiring local authorities to act in accordance with statutory limitations or restrictions. Limitations that apply to existing powers that are overlapped by the general power are applied to the general power. So for instance if an existing power requires a particular procedure to be followed, the same procedure will apply to the use of the general power to do the same thing. It also applies any express prohibitions, restrictions and limitations within primary or secondary legislation, to the use of the general power. A distinction is drawn between restrictions in pre-commencement legislation, and those in post-commencement legislation. Restrictions in post-commencement legislation will only apply to the general power where they are expressed to do so.

51. Subsection (3) clarifies that the general power does not enable a local authority to make arrangements for the discharge of its functions or for governance beyond what is currently permitted.

***Clause 3 - Limits on charging in exercise of the general power***

52. Clause 3 restricts the ability of a local authority to charge for providing a service to a person using the general power, or where they are using an overlapped power. Local authorities can charge up to full cost recovery for discretionary services - that is those that they are not required by legislation to provide, unless specific charging powers exist. This is in line with the charging powers in section 93 of the Local Government Act 2003.

***Clause 4 - Limits on doing things for commercial purpose in exercise of the general power***

53. Clause 4 restricts the ability of a local authority to do things for a commercial purpose using the general power. These provisions reflect broadly the trading provisions in section 95 of the Local Government Act 2003. The power does not authorise authorities to trade in a service with a person to whom they are already statutorily obliged to provide it. They must also only trade commercially through a company.

***Clause 5 - Powers to make supplemental provision***

54. Clause 5(1) provides the Secretary of State with powers to remove or change statutory provisions that prevent or restrict use of the general power. Subsection (2) allows the Secretary of State to similarly amend or repeal etc legislation to remove overlaps between the general power and existing powers. Subsections (3) and (4) allow the Secretary of State to restrict what a local authority may do under the general power or to make its use subject to conditions. Subsection (7) provides that the Secretary of State must consult before exercising any of these powers. The duty to consult in clause 5(7) does not apply to orders made under clause 5(3) or (4) that only amend an early order so that apply to the further authority or disapply it in relation to a particular authority or authorities. Subsection (8) requires the Secretary of State to must consult Welsh Ministers if an order made under clause 5(1) is to have effect in Wales.

***Clause 6 - Limits on power under section 5(1)***

55. Clause 6(1) requires the Secretary of State to consider whether certain conditions, set out in subsection (2) have been met before exercising the delegated power in clause 5(1).



56. These conditions are: that the effect of the provision made by the order is proportionate to its policy objective, in other words that the minister considers that there is an appropriate relationship between the policy aim and the means chosen to achieve it; that the provision made by the order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons adversely affected by the order, including any new or increased burdens; that the provision does not remove any necessary protection such as protections in the areas of civil liberties, health and safety, the environment or national heritage; the provision will not prevent any person from continuing to exercise any right or freedom which the person might reasonably expect to continue to exercise such as, for example, rights conferred by the European Convention on Human Rights; and that the provision is not constitutionally significant. This last condition would allow orders to amend enactments which are considered to be constitutionally significant, but only if the amendments are not themselves constitutionally significant.

57. Subsections (3) and (4) prevent any orders under clause 5(1) from being used to delegate or transfer subordinate legislative powers. Subsection (5) prohibits an order made under clause 5(1) from abolishing or varying any tax.

58. The Minister is also required to set out in the explanatory document which he must lay before Parliament (clause 7(2)) why the Minister considers that these conditions are met.

#### ***Clause 7 - Procedure for orders under section 5***

59. Clause 7 sets out the procedure to be followed for orders made under clause 5 (1). This procedure is modelled on that set out in the Legislative and Regulatory Reform Act 2006 for a Legislative Reform Order. This means that the procedure to be followed (negative, affirmative or super-affirmative) can be determined by Parliament

#### ***Clause 8 - Interpretation of Chapter***

60. Clause 8 defines local authorities for the purposes of the Chapter. These are the bodies that will have the new power. By restricting the definition to 'eligible' parish councils, the clause provides power for the Secretary of State to set conditions by order as to which to parish councils will have the general power.

### **Chapter 2: Fire and Rescue Authorities**

#### ***Clause 9 – General powers of certain fire and rescue authorities***

61. Clause 9 inserts a new section 5A into the Fire and Rescue Services Act 2004 extending to a metropolitan county Fire and Rescue Authority, the London Fire and

Emergency Planning Authority and a combined Fire and Rescue Authority, in England or Wales, a power to do (a) anything it considers appropriate for the fulfilling of its statutory responsibilities, (b) anything it considers appropriate for purposes incidental to its statutory responsibilities (however indirectly incidental that might be) or (c) anything it considers to be connected with (a) or (b). This clause also sets out what it does not enable relevant fire and rescue authorities to do, for example it does not enable them to do anything that they are already prohibited from doing by any statute, or borrow money, or charge for any core services. This clause enables the Secretary of State or Welsh Ministers to specify by order anything that it is wanted to prevent Fire and Rescue Authorities from doing, subject to consultation.

62. New section 5C(1) provides the Secretary of State or Welsh Ministers with powers to remove or change statutory provisions that prevent or restrict use of the new power. Subsection (2) allows the Secretary of State or Welsh Ministers to amend or repeal etc legislation to remove overlaps between the general power and existing powers. Subsections (3) and (4) allow the Secretary of State or Welsh Ministers to restrict what a fire and rescue authority may do under the general power or to make its use subject to conditions. The clause provides that the Secretary of State or Welsh Ministers must consult before exercising any of these powers. The duty to consult in section 5C(6) does not apply to orders made under section 5C(3) or (4) that only amend an early order so as to apply it to further particular authorities or disapply it in relation to a particular authority or authorities.

63. New section 5D of the general power requires the Secretary of State or Welsh Ministers to consider whether certain conditions, set out in subsection (2) have been met before exercising the delegated power in new section 5C(1). These conditions are: that the effect of the provision made by the order is proportionate to its policy objective, in other words that the minister considers that there is an appropriate relationship between the policy aim and the means chosen to achieve it; that the provision made by the order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons adversely affected by the order, including any new or increased burdens; that the provision does not remove any necessary protection such as civil liberties, health and safety, the environment or national heritage; the provision will not prevent any person from continuing to exercise any right or freedom which the person might reasonably expect to continue to exercise such as, for example, rights conferred by the European Convention on Human Rights; and that the provision is not constitutionally significant. This condition would allow orders to amend enactments which are considered to be constitutionally significant, but only if the amendments are not themselves constitutionally significant.

64. New section 5D(3) and (4) prevent any orders under section 5C(1) from being used to delegate or transfer subordinate legislative powers. New section 5D(5) prohibits an order made under clause 5C(1) from abolishing or varying any tax.

***Clause 10 – Fire and rescue authorities: charging***

65. Clause 10 sets out what Fire and Rescue Authorities, in England and Wales, must not charge for and empowers them to charge for anything else, subject to local consultation, and stipulates that any charges must only be for recovery of costs.

**Chapter 3: Governance**

***Clause 11 - New arrangements with respect to governance of English local authorities***

66. Clause 11 gives effect to Schedule 2 (new Part 1A of the Local Government Act 2000).

***Clause 12 - New local authority governance arrangements: amendments***

67. Clause 12 gives effect to Schedule 3 (minor and consequential amendments relating to local authority governance in England).

***Clause 13 - Changes to local authority governance in England: transitional provision etc***

68. Clause 13 allows the Secretary of State, by order, to make such transitional, transitory or saving provisions as he or she considers appropriate in connection with the coming into force of clauses 10 and 11 and Schedules 2 and 3.

***Schedule 2 - New arrangements with respect to governance of English local authorities***

***Part 1 – New Part 1A of the Local Government Act 2000***

69. Paragraph 1 of Schedule 2 inserts new Part 1A into the 2000 Act which makes provision in relation to local authority governance arrangements in England. Part 2 of the 2000 Act would be restricted to Wales by the amendments to the act made by Schedule.

***Part 1A – Arrangements with respect to local authority governance in England***

***Chapter 1: Permitted forms of governance***

***Section 9B: Permitted forms of governance for local authorities in England.***

70. This section specifies the forms of governance a local authority in England can operate. These are executive arrangements, a committee system, or prescribed arrangements.

*Section 9BA: Power of Secretary of State to prescribe additional permitted governance arrangements.*

71. This section provides that the Secretary of State may make regulations prescribing arrangements that local authorities in England may operate. It provides that the Secretary of State must have regard to any proposals received from a local authority when Secretary of State considers whether or how to make regulations under this section. Under subsection (5) a local authority can put forward a proposal asking the Secretary of State to make regulations under this section as long as the local authority:

- a) considers that the conditions set out in subsection (6) are met;
- b) can explain why those conditions have been met; and
- c) describes the provision that it thinks the regulations should make in respect of the way functions of the authority should be discharged and/or delegated under its proposal.

*Chapter 2: Executive Arrangements*

*Local authority executives*

*Section 9C: Local authority executives*

72. This section provides that an executive of a local authority in England must take the form of either:

- (a) a directly elected mayor who appoints two or more councillors of the authority to the executive, or
- (b) an executive leader, elected by full council, who appoints two or more councillors of the authority to the executive.

It also prevents the chairman or vice-chairman of the authority from being a member of the executive, and limits the number of councillors who can be on the executive to 10 (unless a different maximum number is specified in regulations).

### *Executive functions*

#### *Section 9D: Functions which are the responsibility of an executive*

73. This section provides the mechanism for determining which local authority functions are to be the responsibility of the executive. It allows the Secretary of State to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the authority are to be the responsibility of the executive unless specified in regulations made under this section.

### *Discharge of functions*

#### *Sections 9E to 9EC: Discharge of functions*

74. These sections set out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the mayor or leader to determine how functions which are the responsibility of the executive should be carried out.

### *Overview and scrutiny committees*

#### *Sections 9F to 9FE: Overview and scrutiny committees*

75. Section 9F requires local authorities to set up overview and scrutiny committees primarily in order to hold the executive to account. Members of the executive may not be members of an overview and scrutiny committee.

76. It also gives power to these committees to make reports and recommendations either to the executive or authority, on any aspect of council business. They also have the power to make reports and recommendations on other matters which affect the authority's area or its inhabitants.

77. This section also allows an overview and scrutiny committee to require officers and members of the executive to appear before it and invite any other person to appear before it. It gives the committee the power to review or scrutinise any executive decisions which have been made and recommend that they are reconsidered by those responsible; or else to arrange for the authority to review the decision and, where necessary, ask those responsible for the decision to reconsider. Any member of such a committee is able to ensure that any relevant matter is put on the agenda and discussed at the meeting of the committee.

*These notes refer to the Localism Bill  
as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

78. Section 9FA describes in detail how overview and scrutiny committees may carry out their functions, giving them the power to appoint sub-committees and make arrangements for these sub-committees to discharge any functions of the overview and scrutiny committee. Neither the overview and scrutiny committee nor any of its sub-committees may include any member of the authority's executive, but can include people who are not members of the authority. Overview and scrutiny committees are able to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights.

79. Section 9FB provides that local authorities (except parish councils and those district councils for an area for which there is a county council) must designate one of their officers as 'scrutiny officer' to perform the functions set out in this section. Subsection (4) provides that the local authority may not designate its head of paid service, monitoring officer or chief finance officer as its 'scrutiny officer'.

80. Section 9FC provides that local authorities must make provision to enable members of overview and scrutiny committees, and members of sub-committees, to refer matters to the committee or sub-committee. It also stipulates that such local authorities must make arrangements to enable councillors who are not members of either the committee or a sub-committee to refer 'local government matters' to overview and scrutiny committees.

81. Section 9FD makes further provision in relation to references of 'local government matters' to overview and scrutiny committees by councillors who are not members of the committee.

82. Section 9FE makes further provision about reports and recommendations of overview and scrutiny committees. It provides that overview and scrutiny committees may publish reports and recommendations and must, in writing, require the authority or executive to take steps set out in subsection (3). Subsections (4) to (6) describe how the local authority or executive must comply with notices made under subsection (3).

*Section 9FF: Reports and recommendations of overview and scrutiny committees: duties of certain partner authorities*

83. Section 9FF applies where a relevant committee makes a report or recommendations to an authority or an executive and the report or recommendations relate to a local improvement target which relates to a relevant partner authority and is specified in a local area agreement of the authority. It does not apply where the report or recommendations are made by a crime and disorder committee by virtue of subsection (1)(b) or (3)(a) of section 19 of the Police and Justice Act 2006.

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84. “Local improvement target” and “local area agreement” are defined in subsection (8) of section 9FF and have the same meanings as in Chapter 1 of Part 5 of the Local Government and Public Involvement in Health Act 2007.

85. The overview and scrutiny committee may give the relevant partner authority notice in writing requiring them to have regard to the report or recommendations in exercising their functions. A relevant partner authority which is a health service body i.e. a National Health Service Trust, an NHS Foundation Trust or a Primary Care Trust cannot be required to have regard to a report or recommendations made to that body under regulations made under section 244 of the National Health Service Act 2006. The relevant partner authority has a duty to comply with the requirement specified in the notice.

*Section 9FG: Publication etc of reports, recommendation and responses: confidential and exempt information*

86. Section 9FG makes provision in relation to an overview and scrutiny committee or a local authority excluding “confidential information” and “relevant exempt information” when publishing a document or providing a copy of it to a relevant partner authority. “Confidential information” is defined in subsection (8) and has the meaning given by section 100A(3) of the Local Government Act 1972. “Exempt information” is defined in subsection (8) and has the meaning given by section 100I of the 1972 Act but also includes exempt information under section 246 of the National Health Service Act 2006.

*Section 9FH: Overview and scrutiny committees of certain district councils: functions with respect to partner authorities*

87. Section 9FH allows the Secretary of State to make regulations enabling a district council in a two tier area to make reports and recommendations to its county council or to that county council’s executive, on matters relating to a local improvement target in the area’s local area agreement, where that local improvement target relates to a partner authority. Section 9FH(4) sets out that a partner authority for these purposes means the county council and any authority which is a partner authority of the county council other than the officer of police.

88. Section 9FH(3) provides that regulations may also apply or make provision corresponding to the duty of an authority or executive to respond to an overview and scrutiny committee, the duties of associated authorities to have regard to reports and recommendations and the treatment of reports and recommendations, and responses to them, which contain confidential and exempt information.

*Section 9FI: Overview and scrutiny committees: flood risk management*

89. Section 9FI requires lead local flood authorities to make arrangements for overview and scrutiny committees to review and scrutinise risk management authorities. Subsection (2) places risk management authorities under a duty to comply with a request made by an overview and scrutiny committee for information or a response to a report in relation to its flood or coastal erosion risk management functions. Subsection (4) provides for the Secretary of State to make regulations about this duty.

*Section 9FJ: Overview and scrutiny committees: provision of information etc by certain partner authorities*

90. Section 9FJ provides for the Secretary of State to make regulations which determine what information relevant partner authorities must provide to a relevant committee or may not disclose to such a committee. It also provides for the Secretary of State to make regulations which determine what information associated authorities must provide to the relevant district council committee or may not disclose to such a committee.

*Further provision in relation to executives*

*Sections 9G and 9GA: Meetings and access to information etc*

91. Sections 9G and 9GA allow the Secretary of State to specify in regulations which meetings of the executive or its committees must be open to the public and which must be held in private. Other than where specified in regulations, it will be for the executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the executive held in private or by individual members of the executive must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must be made available to the public. Regulations could ensure that failure by the executive to cause to have such a record made and failure by the proper officer of the authority to make the record public would be criminal offences.

92. Regulations under these sections would also be able to apply provisions of Part 5A of the Local Government Act 1972, with or without modifications, to meetings of the executive and its committees, whether held in public or in private. The regulations may make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees which are discharging functions which are the responsibility of the executive.



*Elected mayors*

*Sections 9H to 9HE: Elected mayors and mayoral management arrangements (mayor to be chief executive officer etc)*

93. Section 9H provides that an “elected mayor” means an individual elected to that post by local government electors in the authority’s area. The section provides that references in any enactment to a member or councillor of a local authority do not include the elected mayor, unless

- the Secretary of State has provided in regulations that an elected mayor is to be treated as a member or councillor for the purpose of an enactment; or
- contrary intention appears in an enactment.

94. The section also provides for the elections of mayors to take place on the same day as council elections, and that an elected mayor’s term of office is four years.

95. Section 9HA provides that an elected mayor may propose to his or her authority that it adopt mayoral management arrangements (i.e. the elected mayor becomes the chief executive officer of the authority) and that he or she should be able to issue reports (previously issued by the head of paid service) in relation to how the local authority co-ordinates the discharge of its various functions and in relation to the organisation of its staff. Section 9HD makes provision in relation to the procedure for considering reports where they are issued by an elected mayor or where they continue to be issued by the head of paid service.

96. Section 9HA(2) provides that under mayoral management arrangements, the elected mayor would be the most senior officer of the authority to whom the head of paid service shall report. It also provides that the elected mayor shall be remunerated rather than receiving an allowance. However, this does not mean that the elected mayor is an employee of the authority.

97. Section 9HB provides that where a local authority receives a proposal under section 9HA(1) the full council must meet to consider it and the arrangements, must be put in place unless two-thirds of the members present at the meeting vote against the proposal. If the arrangements are put in place then the mayor also has the reporting functions set out in the proposal. A local authority must set out details of the mayoral management arrangements it has adopted in its standing orders.

98. Section 9HC provides that where a local authority is operating the mayor and cabinet executive as a result of a referendum held by virtue of an order made by the Secretary of State under section 9N, if it has not done so already, it must adopt

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mayoral management arrangements within a reasonable time after the first election of its mayor and, in any event, within the first term of office of the mayor elected at that election. Such a local authority must set out details of the mayoral management arrangements it has adopted in its standing orders.

99. Section 9HE provides that where a local authority is operating mayoral management arrangements it must designate one of its officers to provide guidance and support to members of the authority. The designated person may not be the elected mayor. The local authority must provide the designated officer with such staff, accommodation and resources as, in the officer's opinion, is sufficient to operate their functions.

*Sections 9HF and 9HG: Power to transfer functions relating to public services to elected mayors*

100. Section 9HF provides that the Secretary of State may by order make provision to confer a local public service function on the elected mayor of a specified local authority. Such an order may also make provision about the discharge of a local public service function conferred on an elected mayor and in connection with the transfer of property, rights and liabilities in connection with the transfer of such functions. Section 9HF(9) defines the term "local public service function" for the purpose of this section.

101. Section 9HG provides a mechanism for elected mayors to apply to the Secretary of State to confer local public service functions on them. Section 9HG(2) provides that such an application may only be made in the first year of an elected mayor's term of office and must include such information and evidence as specified by the Secretary of State by regulations. It is envisaged that the Secretary of State will specify in regulations that the information and evidence to be included in an application must demonstrate that the elected mayor's campaign for election to office was at least in part on the basis of requesting that the Secretary of State confer additional powers on the office of mayor.

*Section 9HH: Power to amend enactments for the purpose of enabling head of paid service functions to be conferred on elected mayors*

102. Section 9HH gives the Secretary of State the power by order to amend any enactment for the purpose of enabling a local authority operating mayoral management arrangements to confer by resolution a head of paid service function on their elected mayor.

*Section 9HI: Mayoral management arrangements: failing councils*

103. Section 9HI provides that a local authority operating a mayor and cabinet executive, which is under a direction of the Secretary of State, under section 15(6) of the Local Government Act 1999 as a result of being a failing council, may not continue to operate the mayoral management arrangements unless the Secretary of State gives his consent. This section also provides that a mayoral authority, which is under such a direction, may not start operating mayoral management arrangements unless the Secretary of State gives his consent.

*Section 9HJ: Election as elected mayor and councillor*

104. Section 9HJ provides that no one may be the elected mayor and a councillor for the same authority. It also makes provision in relation to circumstances where an individual elected as mayor is already a councillor of the authority or stands for election as both mayor and councillor at the same elections.

*Section 9HK to 9HN: Mayoral elections*

105. Section 9HK enables the Secretary of State to make regulations providing for the timing of mayoral elections. It also empowers the Secretary of State to make provision by regulations in relation to the term of office of elected mayors and the filling of vacancies in the office of elected mayor.

106. Section 9HL and Schedule 2 to the 2000 Act describe the method for electing a directly elected mayor. This will normally be the Supplementary Vote (SV) unless there are fewer than three candidates where it will be First Past the Post. Section 9HM provides that entitlement to vote at elections of election mayors is the same as the electoral franchise for local government elected.

107. Section 9HN provides for the Secretary of State to make regulations regarding the conduct of elections for elected mayors. This includes a power to apply or modify any statutory provision relating to the conduct of elections. Before making any regulations under this section, the Secretary of State must consult the Electoral Commission.

*Section 9HO: Elected mayors: restricted posts*

108. Section 9HO provides that an elected mayor of a local authority may not also be that authority's head of paid service, monitoring officer, chief finance officer, director of children's services or director of adult social services. Section 9HO(2)(f) provides that the Secretary of State by regulations may specify other posts which an elected mayor may not hold.

*Leader and cabinet executives (England)*

*Section 9I: Election and term of office of leader*

109. This section provides what executive arrangements by a local authority operating a leader and cabinet executive may and must include with respect to the election of a leader and their term of office.

*Section 9IA: Removal of leader*

110. This section provides that executive arrangements by a local authority operating a leader and cabinet executive must include provision for the council to remove the executive leader by resolution. If such a resolution is passed then a new leader must be elected at the meeting where the leader is removed from office or at a subsequent meeting.

*Section 9IB: Leader to continue to hold office as councillor*

111. This section provides that the person who is the executive leader of a leader and cabinet executive remains a member of the council during the period that they are the leader. While they remain executive leader any enactment which provides for their early retirement as a councillor does not apply. This section does not affect anything by which the executive leader may cease to be a councillor otherwise than by retirement.

*Section 9IC: No other means of removing leader*

112. This section applies to a local authority which operates a leader and cabinet executive. An executive leader may not be removed from office except in accordance with section 9IA or regulations under section 9ID.

*Section 9ID: Regulations*

113. This section allows the Secretary of State by regulations to make provision in relation to the election and removal from office of executive leaders, their terms of office and the filling of vacancies in the office of executive leader of a leader and cabinet executive to the extent provided in the regulations.

### *Chapter 3: The Committee System*

#### *Section 9J: Secretary of State power to prohibit delegation of functions etc*

114. Section 9J provides that the Secretary of State may by regulations specify or describe those functions or actions of a committee system local authority that are to be non-delegable functions or actions and specify or describe cases or circumstances in which any specified or described function or action is to be non-delegable. If these functions or actions are non-delegable then they must be carried out by the local authority and section 101 of the 1972 Act does not apply to them.

#### *Section 9JA: Overview and scrutiny committee*

115. Section 9JA states that a committee system local authority may by resolution appoint one or more committees as its overview and scrutiny committee or committees. There is, however, no statutory requirement for such local authorities to appoint an overview and scrutiny committee.

116. Under this section the Secretary of State may by regulations make provision about the functions, composition and procedure of a committee that has been appointed as an overview and scrutiny committee and also the appointment by committee system local authorities of joint committees and sub-committees as overview and scrutiny committees. Regulations made by the Secretary of State may include provision which applies or reproduces any provision of, or made under, sections 9F to 9FJ or paragraphs 6 to 13 of Schedule A1.

#### *Section 9JB: Overview and scrutiny: flood risk management*

117. Section 9JB makes provision for committee system local authorities that are lead local flood authorities to review and scrutinise the exercise by risk management authorities of flood risk management or coastal erosion risk management functions which may affect the local authority's area.

### *Chapter 4: Changing Governance Arrangements*

#### *Sections 9K and 9KA: Changing from one form of governance to another or from one form of executive to another*

118. These sections make provision for local authorities to change their forms of governance, to vary their executive arrangements so that they provide for a different form of executive, if they wish to.

*Section 9KB: Executive arrangements: other variation of arrangements*

119. This section makes provision for local authorities that operate executive arrangements to vary these if they wish to so that they differ from the existing arrangements in any respect but still provide for the same form of executive.

*Section 9KC: Resolution of local authority*

120. Section 9KC provides that a local authority must make a resolution if it wants to change its governance arrangements and outlines the steps that the local authority needs to undertake once a resolution to change governance arrangements has been passed.

121. This section also provides that a local authority which passes a resolution to change its governance arrangements, in the manner set out in sections 9K and 9KA ('Resolution A'), cannot pass another resolution ('Resolution B') that makes such a change until 5 years have elapsed since Resolution A was passed. This is unless Resolution B is approved in a referendum held in accordance with this Chapter.

122. Subsection (5) provides that the section does not apply in relation to a change to a mayor and cabinet executive as a result of an order made by Secretary of State under section 9N.

*Section 9L Implementation: change in form of governance or change in form of executive*

123. This section provides that if a local authority passes a resolution which makes a change in governance arrangements of the kind set out in section 9K or 9KA, on the third day after the 'relevant elections' the local authority must cease operating the old form of governance and start operating the new form of governance. Subsection (3) defines 'relevant elections', according to the form of governance that is proposed and by reference either to the appropriate elections of councillors or the first election of the mayor. Subsection (4) defines 'appropriate elections of councillors' for the purposes of subsection (3).

*Section 9M: Cases in which change is subject to approval in a referendum in accordance with sections 9MA and 9MB*

124. This section provides that a where a local authority proposes to change its governance arrangements by resolution, that change is subject to a referendum where either the proposed change is of a kind set out in sections 9K or 9KA and the implementation of the local authority's existing form of governance or executive was approved in a referendum under this Chapter, or where the authority resolves that the proposed change is to be subject to approval in a referendum.

*Section 9MA: Referendum: proposals by local authority*

125. This section applies to a local authority that wishes to make a change in governance arrangements that is subject to approval in a referendum and outlines what a local authority must do in such an event.

*Section 9MB: Requirement to hold and give effect to referendum*

126. This section applies to a local authority that wishes to make a change in governance arrangements that is subject to approval in a referendum and outlines what a local authority must do in such an event.

*Sections 9MC to 9ME: Referendum following petition, direction or order*

127. Section 9MC gives the Secretary of State a power to make regulations concerning public petitions in relation to whether a local authority should operate a certain form of governance arrangements. It provides that regulations made under this section could require a local authority to hold a referendum where it has received a petition signed by at least 5% of local electors. Regulations may specify matters such as the form of petitions (including electronic petitions), their verification, the timing of referendums, the action to be taken by a local authority on receipt of a petition, and the manner in which and times at which the number of electors required to sign the petition is to be calculated and publicised. Regulations may also vary the 5% threshold for petitions.

128. Section 9MD allows the Secretary of State to make regulations specifying circumstance in which the Secretary of State may direct a local authority to hold a referendum on whether to adopt a particular form of governance. The regulations may include provision as to the timing of the referendum and the action to be taken by the authority in relation to it.

129. Section 9ME enables the Secretary of State, by order, to require all local authorities, or all authorities of a particular description, to hold a referendum on a particular form of governance arrangements.

*Section 9MF: Further provision with respect to referendums*

130. Section 9MF provides that if a local authority holds a referendum (Referendum A), it may not hold, or be required to hold, another referendum (Referendum B) for ten years, except in the following circumstances:

*These notes refer to the Localism Bill  
as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

- a) where Referendum A was held by virtue of an order under section 9N and the proposal to continue to operate the mayoral and cabinet executive was rejected; or
- b) Referendum B is required by virtue of an order made by the Secretary of State under section 9N.

*Section 9MG: Voting in and conduct of referendums*

131. Section 9MG provides that entitlement to vote at referendums is the same as the electoral franchise for local government elections. This section gives the Secretary of State the power, by regulations, to make provision for the conduct of referendums. This includes a power to apply or modify any statutory provision relating to the conduct of elections or referendums. Before making any regulations under this section that include provision as to the question to be asked in a referendum, the Secretary of State must consult the Electoral Commission.

*Section 9N: Power to implement change to mayor and cabinet executive*

132. This section gives the Secretary of State the power by order to provide that on the relevant date a specified local authority shall cease operating its existing form of governance arrangements and start operating a mayor and cabinet executive. It also makes provision for the creation of a ‘shadow’ mayor in specified local authorities and sets out who the ‘shadow’ mayor will be.

133. The Secretary of State may also by order require a specified local authority to take steps in preparation for the move to the mayor and cabinet executive model.

*Section 9NA: Provisions applying to shadow mayors*

134. This section provides that ‘shadow’ mayors are to be treated as elected mayors for the purposes of this Part and any other enactment, subject to certain restrictions. It also provides that a ‘shadow’ mayor does not cease being a councillor of the local authority.

135. Section 9NA(2) provides that a shadow mayor is not to be treated as an elected mayor for the purposes of section 9HC. The result is that the local authority cannot be required, under that section, to adopt the mayoral management and reporting arrangements specified in section 9HA until mayor has been elected. A shadow mayor is a mayor for the purposes of section 9HA, but cannot propose to the local authority under that section that it adopt mayoral management arrangements until after a referendum has taken place confirming the change to a mayor and cabinet executive.



*Section 9NB: Requirement to provide for referendum on section 9N change*

136. Section 9NB provides that an order made under section 9N must make provision requiring a specified local authority to hold a referendum on whether it should continue to operate the mayor and cabinet model. An order made under section 9N may include provision on the timing of the referendum, the action to be taken by a specified local authority before and after a referendum and enabling the Secretary of State to take any such action should a local authority fail to do so.

*Section 9NC: Effect of section 9N change*

137. This section provides that should local people vote in favour of the mayor and cabinet executive at a referendum instigated by an order under section 9N, then the local authority may not move away from that governance model.

*Section 9ND: Variation of mayoral executive*

138. Section 9ND provides that a local authority may not resolve to vary its existing mayor and cabinet executive arrangements without the written consent of the elected mayor. This provision only applies to proposals to vary existing arrangements, and not to proposals for changes from one form of governance arrangements to another.

*Miscellaneous*

*Section 9O: General*

139. This section provides that a local authority may not cease operating a form of governance arrangements, or vary executive arrangements, other than in accordance with this Chapter.

*Chapter 5: Supplementary*

*Section 9P: Local authority constitution*

140. Section 9P requires a local authority to maintain a constitution and ensure that it is available for inspection by members of the public. The authority will have to supply a copy to anybody who requests one, upon payment of a reasonable fee. The constitution is to include the standing orders, a copy of the authority's code of conduct, if any, such information as the Secretary of State may direct and such other information as the authority considers appropriate. In the case of a local authority operating the committee system the constitution must also contain a statement as to whether it has an overview and scrutiny committee.

*Section 9Q: Guidance*

141. Section 9Q provides that a local authority must have regard to any guidance issued by the Secretary of State.

*Part 2 – New schedule A1 to the Local Government Act 2000*

142. Paragraph 2 of Schedule 1 inserts new Schedule A1 into the 2000 Act to make further provision in relation to executive arrangements in England.

*Schedule A1 – Executive arrangements in England: further provision*

143. Schedule A1 sets out further details of the working of executive governance arrangements and makes provision about the role of church and parent governors on overview and scrutiny committees.

144. For a mayor and cabinet executive, the arrangements must allow the mayor to determine the size of the executive (subject to a maximum of 10 members - unless a different maximum is specified under section 9C(5)). These arrangements must also require the mayor to appoint his or her own deputy mayor from amongst the executive.

145. For a leader and cabinet executive, the arrangements must allow the leader to determine the size of the executive (subject to a maximum of 10 members – unless a different maximum is specified under section 9C(5)). The arrangements must also require the leader to appoint his or her own deputy leader from amongst the executive.

146. The Schedule permits executive arrangements to cover such matters as the conduct of meetings, and similar matters in relation to meetings of committees of the executive. It also enables the Secretary of State to make regulations for appointment of an assistant for the mayor.

147. The Schedule also makes detailed provision about the appointment of church and parent governor representatives to overview and scrutiny committees.

*Schedule 3 - Minor and consequential amendments relating to local authority governance in England*

148. Schedule 3 contains amendments to provisions in the Local Government Act 1972, the Local Government Finance Act 1988, the Local Government and Housing Act 1989, the Social Security Act 1992, the Crime and Disorder Act 1998, the Local Government Act 2000, the Anti-social Behaviour Act 2003, the National Health Service Act 2006, the Police and Justice Act 2006 and the Local Democracy,

Economic Development and Construction Act 2009 which are consequential upon the provisions of clause 10 and Schedule 3.

#### **Chapter 4: Predetermination**

##### ***Clause 14 - Prior indications as to view of a matter not to amount to predetermination***

149. Clause 14 clarifies how the common law concept of “predetermination” applies to councillors in England and Wales. Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by councillors later judged to have predetermined views have been quashed. The clause makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.

150. Clause 14 applies to members of all councils in England and Wales to which there are direct elections - although it applies both to elected and to co-opted members of those councils, and also to members of National Parks Authorities and the Broads Authority.

#### **Chapter 5: Standards**

##### ***Clause 15 Amendments of existing provisions***

151. Clause 15, and the Schedule it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local authorities, the jurisdiction of the First Tier Tribunal in relation to local government standards in England and a codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the codes of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities is removed together with the requirement for relevant authorities to establish standards committees. The First Tier Tribunal loses its jurisdiction over councillor conduct issues.

152. The Schedule contains provision for Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the

Standards Board for England and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

***Clause 16 - Duty to promote and maintain high standards of conduct***

153. Clause 16 places a duty on a relevant authority to ensure that members and co-opted members maintain high standards of conduct. It also defines what a ‘co-opted member’ is and what a relevant authority is for the purpose of this Chapter.

***Clause 17 - Voluntary codes of conduct***

154. Clause 17 provides that a relevant authority may adopt a voluntary code of conduct. If an allegation of a breach of a code is made in writing, the authority must take a decision on whether or not to investigate the allegation and, if it is considered that an investigation is warranted, investigate in any way the authority sees fit.

***Clause 18 - Disclosure and registration of members’ interests***

155. Clause 18 provides for the establishment and maintenance of a register of members’ and co-opted members’ interests by the local authority by giving the Secretary of State power to make regulations to specify what interests must be recorded in that register. The regulations may make provision for restrictions on taking part in the business of the council to be imposed on a member or co-opted member with a registered or declared interest. The regulations may require the register to be available to the public and may make provision about exempting sensitive information from it.

***Clause 19 – Offence of breaching regulations under section 18***

156. Clause 19 makes it a criminal offence to fail, without reasonable excuse, to comply with obligations imposed by regulations under clause 18 to register or declare personal interests, or to take part in council business when prevented from so doing by such regulations. The penalty that the magistrates’ court may impose upon conviction is a fine of up to £5,000 and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution for the offence may be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but only by or on behalf of the Director of Public Prosecutions.

***Clause 20 - Amendment of section 16 following abolition of police authorities***

157. Clause 20 removes police authorities from the list of “relevant authorities” in clause 16. The Police Reform and Social Responsibility Bill contains provision for the abolition of police authorities and their replacement with police and crime commissioners. The clause will be commenced when police authorities cease to exist.

***Clause 21 – Transitional provision***

158. Clause 21 gives the Secretary of State power to make transitional provision in relation to the abolition of the Standards Board regime. Allegations of misconduct can be brought against a member up to the date when section 57A of the Local Government Act 2000 is repealed. The transitional provisions made under this clause will make provision for any such allegations to be transferred from the Standards Board for England to local standards committees, and may make provision for the penalties which can be imposed by those committees, and rights of appeal to be modified.

**Chapter 6: Pay Accountability**

**Local government: pay accountability**

***Clause 22 - Senior pay policy statements***

159. Clause 22(1) places a requirement on a relevant authority (being a local authority or fire authority, as defined) to prepare, annually, a statement setting out the authority's policy on the remuneration of its chief officers for the subsequent financial year (chief officers being the most senior officers of the authority). It may also set out the authority's policies relating to other terms and conditions applying to chief officers. In preparing its statement, the authority must have regard to any guidance issued or approved by the Secretary of State (if an English authority) or Welsh Ministers (if a Welsh authority) (see clause 24).

***Clause 23 - Supplementary provisions relating to senior pay policy statements***

160. Clause 24 requires the senior pay policy statement to be approved by, and allows the statement to be amended by, resolution of the authority. The statement may be amended during the financial year to which it applies. The statement must be published. The authority must have regard to any guidance issued or approved by the Secretary of State (if an English authority) or Welsh Ministers (if a Welsh authority) when performing its functions under this section (see clause 24).

***Clause 25 - Determinations relating to remuneration***

161. Clause 25 requires the relevant authority to comply with its senior pay policy statement for the relevant financial year when making a determination that relates to the remuneration, or other terms and conditions, of a chief officer of the authority.

***Clause 26 - Exercise of functions***

162. Clause 26 prevents the functions in this Chapter from being exercised by the executive of the authority, and prevents the passing of a resolution under this Chapter from being delegated by the authority to a committee or an individual officer.

**Chapter 7: Miscellaneous Repeals**

***Clause 28 - Repeal of duties relating to promotion of democracy***

163. This clause removes the requirements for principal local authorities, in England and Wales, to provide information to people about how local governance systems work, including information on the role of the council, councillors, other relevant public bodies and civic roles such as magistrates, and how people can get involved.

***Clause 29 – Repeal of provisions about petitions to local authorities***

164. This clause removes the requirements for principal local authorities in England and Wales to make, publish and comply with a scheme for the handling of petitions made to the authority, and to provide a facility for making petitions in electronic form to the authority. It also removes the powers of the Secretary of State and Welsh Ministers to make provision by order in relation to petitions schemes.

***Clause 30 – Schemes to encourage domestic waste reduction by payments and charges***

165. Clause 30 will remove sections 71 to 75 to Schedule 5 the Climate Change Act 2008 and so remove the powers for local authorities to pilot charge-and-reward waste reduction schemes. Local Authorities will still be free to introduce schemes which reward householders for waste reduction, under their well-being powers or general powers of competence, as appropriate, but will no longer need to complete the processes required under the Climate Change Act 2008.

**PART 2: EU Fines**

***Clauses 31, 32, 33, 34, 35, 36 and 37 - EU Fines***

166. Clause 31 sets out a discretionary power for a Minister of the Crown to require a local or public authority to pay all, or part of, any financial sanction imposed on the UK by the Court of Justice of the European Union for failure to comply with a judgment of that court for breaching EU law. This requirement is imposed by a Minister issuing an EU financial sanction notice to a local or public authority under clause 33, having complied with the requirements of clause 32 to serve a warning

notice on the authority first. The Secretary of State is required to publish a statement of policy which will set out the general principles on how the power should be exercised and amounts determined to which a Minister must have regard when exercising the power.

167. Before a local or public authority is required to make a payment in relation to an EU financial sanction, a Minister is required under Clause 32 to give a warning notice to the local or public authorities which the Minister believes may have caused or contributed to the infraction of EU law for which the EU financial sanction was imposed. The warning notice must set out the Minister's reasons for those beliefs, and the proposed criteria for determining whether the authority's act or omission caused or contributed to the infraction of EU law, whether an authority should be required to make a payment in respect of the financial sanction and the amount of any payment. It must also set out the process and the timetable for determining those matters which must include enabling the local or public authority to make representations to the Minister.

168. Clause 33 sets out the process to be followed by a Minister in giving an EU financial sanction notice to a local or public authority. A notice may only be given if the Minister is satisfied that the act or omission of the authority has caused or contributed to the breach of EU law. The notice must specify the act or omission, set out the Minister's reasons as to why an authority should pay and specify the amount required and the period over which the payment should be made, thus allowing the Minister to specify an amount which is fair and proportionate. Before issuing a notice, the Minister must have regard to the effect of any required payment on an authority's finances.

169. Because the European Court of Justice can impose periodic penalty payments in respect of any continuing breach of its judgments, for example daily or monthly fines, clause 34 enables the Minister to issue a further warning notice to an authority in respect of further periodic penalty payments that have accrued since the first EU financial sanction notice. If the Minister believes that an act or omission of an authority may have caused or contributed to the continuing infraction of EU law for which the penalty was imposed, and that it would be appropriate to consider requiring the authority to make a further payment, the Minister can issue a further warning notice. The clause requires the Minister to set out the procedure and timetable for making the final decision in the notice, mirroring the requirements for the initial warning notice, but allows the authority an opportunity to make further representations to the Minister, limited to any change of circumstances since the most recent financial sanction notice or anything relevant to whether the authority should be required to make a payment and the amount.

170. Clause 35 enables the Minister to issue a further EU financial sanction notice to an authority if the Minister is satisfied that an act or omission of the authority has

caused or contributed to the relevant continuing infraction of EU law. The clause sets out what the notice must specify, and the procedural requirements mirror those required in relation to the initial EU financial sanction notice.

171. Clause 36 defines a local authority as a county council or district council in England or a London Borough Council, the Greater London Authority, the City of London and the Council of the Isles of Scilly. It also empowers the Secretary of State to designate authorities exercising public functions in England as public authorities to whom the power might apply, subject to the exclusions listed.

172. Clause 37 defines some of the terms used in this Part.

### **PART 3: NON-DOMESTIC RATES**

#### ***Business Rate Supplements***

##### ***Clause 38 – Ballot for imposition and certain variations of a business rate supplement***

173. Clause 38 amends the Business Rate Supplements Act 2009 to provide that all proposals for the imposition of a Business Rate Supplement will require approval by a ballot of all persons eligible to vote, as opposed to the current position where a ballot is only required if the Business Rate Supplement is to fund more than one third of the total cost of the project to which the Business Rate Supplement relates. Clause 38(6) also requires that certain further information about the result of any ballot is to be published in the initial and final prospectuses for the Business Rate Supplement. The amendments would not apply in relation to a Business Rate Supplement that has already been imposed as the time the amendments come into force (whether or not the Business Rate Supplement is payable at that time).

#### ***Non-Domestic Rates***

##### ***Clause 39 – Non-domestic rates: discretionary relief***

174. Clause 39 amends section 47 of the Local Government Finance Act 1988 to replace the limited circumstances in which local authorities can currently give discretionary relief with a power to grant relief in any circumstances. This is subject to the condition that, except in the limited circumstances specified, the local authority may only grant relief if it would be reasonable to do so having regard to the interests of council tax payers in its area. The amendments also require a local authority to have regard to any relevant guidance issued by the Secretary of State (or, in relation to Wales, the Welsh Ministers) when deciding whether to grant relief under section 47.



***Clause 40 - Small business relief***

175. Clause 40 amends section 43 of the Local Government Finance Act 1988 to enable the Secretary of State to make provision for a new small business rate relief scheme (made under section 43) which does not require ratepayers to apply for small business rate relief in some or all cases. In those cases (if any) where an application is required, it will still be a criminal offence if the applicant knowingly or recklessly makes a false statement in that application.

***Clause 41 - Cancelling of liability to backdated non-domestic rates***

176. Clause 41 amends the Local Government Finance Act 1988 to provide a power for the Secretary of State to prescribe by regulations conditions for the cancellation of certain backdated non-domestic rates, but only where a property is shown in a local non-domestic rating list compiled on 1st April 2005 as the result of an alteration of the list made after the list was compiled. The regulations are subject to the negative procedure.

**PART 4: COMMUNITY EMPOWERMENT**

**Chapter 1: Local Referendums**

***Duty to hold local referendum***

***Clause 42 - Duty to hold local referendum***

177. Clause 42 provides that a principal local authority must hold a local referendum if certain conditions are met. It sets out the conditions under which a local authority must hold a local referendum. Broadly, these are receipt of a valid petition from local people, or a request from one or more members of the authority, or if the authority passes a resolution.

***Triggers for local referendum***

***Clause 43 - Petition for local referendum***

178. Clause 43 sets out what makes a petition valid. It says that a local authority may provide a facility for making petitions by electronic means and stipulates that the authority must publish the criteria for a valid electronic petition.

***Clause 44 - The required percentage***

179. Clause 44 provides that the threshold for a valid petition calling for a local referendum is five percent of local electors for the area. However, under clause 44 an authority may hold a referendum even if the threshold is not met.

***Clause 45 - Request for referendum***

180. Clause 45 sets out the conditions for a valid request by members of an authority to that authority to hold a local referendum on behalf of local electors.

***Clause 46 - Duty to determine appropriateness of referendum***

181. Clause 46 provides that where an authority receives a petition or a request to hold a local referendum, the authority must determine whether it is appropriate to hold one or not. But this does not apply if a petition is received by a district council that is part of a county council and the question stated in the petition or request relates to the functions of a partner authority of the county council.

***Clause 47 - Grounds for determination***

182. Clause 47 stipulates the grounds on which a local authority may decide not to hold a referendum in response to a petition or request.

***Clause 48 - Action following determination in response to petition***

183. Subsection (1) provides that where a local authority has decided under clause 43 that it is appropriate to hold a referendum, it must notify the petition organiser of the decision and publish it as it thinks fit. Subsection (2) stipulates that the notification must be in writing, but could be in electronic form if the petition was made to the authority by electronic form or if the petition organiser had agreed to accept notification by such means.

184. Subsection (3) provides that the authority must arrange to hold the referendum in accordance with clauses 51 to 54.

185. Subsection (4) stipulates that where the authority decides not to hold a referendum, it must notify the petition organiser giving reasons for the decision. The authority must publish those reasons when it publishes its decision, provided it does not think it would be inappropriate to do so.

***Clause 49 - Action following determination in response to request***

186. Clause 49 provides that if the authority determines it is appropriate to hold a referendum following a request, it must hold a meeting to decide on a resolution for a referendum. If the authority determines it is not appropriate to hold a referendum, it must publish the reason for the determination.

***Clause 50 - Resolution for local referendum***

187. Clause 50 specifies that if an authority passes a resolution to hold a local referendum, it must make arrangements to hold one in accordance with clauses 51 to 54.

***Arrangements for local referendum***

***Clause 51 - Question to be asked in local referendum***

188. Clause 51 provides that the authority must decide the question to be asked in the local referendum, but must consult before changing the wording originally proposed, and must publish its decision about this.

***Clause 52 - Date of referendum***

189. Clause 52 provides that the authority is to decide the date of a local referendum. It sets out the parameters within which these dates must fall.

***Clause 53 - Publicity for and in relation to local referendum***

190. Clause 53 provides that an authority must publicise the fact that a local referendum is taking place, the date and the question to be asked and may incur reasonable expenditure on publicity supporting or opposing a question put in a referendum triggered by a petition or a request.

***Clause 54 – Voting in and conduct of local referendums***

191. Clause 54 stipulates who is entitled to vote in a local referendum. It empowers the Secretary of State to make regulation about the conduct of local referendums including, when, where and how the voting in such referendums is to take place and how the votes are to be counted. These regulations may also provide for the combination of local referendum polls with polls at other elections.

### ***Consequences of local referendum***

#### ***Clause 55 - Consequences of local referendum***

192. Clause 55 outlines what authorities should do following a referendum. An authority must consider the steps it proposes to take and publish its decision and reasons. It must inform any partner authority which has influence over the matter to which the referendum relates of the referendum results. The partner authority must also decide what to do and publish its decision and reasons.

### ***Supplementary***

#### ***Clause 56 - Application to parish councils***

193. Clause 56 empowers the Secretary of State to make regulations about the holding of referendums by parish councils. Regulations could, for instance, be made to modify and update the existing parish polls and/ or apply any of these provisions on local referendums to parish councils.

#### ***Clause 57 - Discharge of functions***

194. Clause 57 provides that the function of passing any resolution in relation to these referendums is one which has to be discharged by the full council, and not by the executive, a committee, or an officer. In the case of the Greater London Authority, passing a resolution is the responsibility of both the Mayor and the Assembly acting together.

#### ***Clause 58 - Interpretation***

195. Clause 58 explains the meanings of some words or expressions used in this Chapter.

## **Chapter 2: Council Tax Referendums**

#### ***Clause 59 - Referendums relating to council tax increases***

196. Clause 59 of the Bill inserts a new Chapter 4ZA into Part I of the Local Government Finance Act 1992 (“the 1992 Act”). This is set out in Schedule 5. References to sections in what follows are references to the proposed new sections of the 1992 Act.

197. Section 52ZB sets out the duty on billing authorities, major precepting authorities and local precepting authorities to each determine whether their relevant

198. Section 52ZC provides that a set of principles determined by the Secretary of State will be used to decide whether an authority's relevant basic amount of council tax for the year is excessive. One or more principles may be set. The set of principles must include a comparison between the relevant basic amount of council tax for the year under consideration, and the preceding year. Two different relevant basic amounts of council tax are applicable to the area of the Greater London Authority because the special expense of the Metropolitan Police Authority relates to only part of the Greater London Authority's area. The different amounts are defined as the unadjusted relevant basic amount and the adjusted relevant basic amount in section 52ZX(3). Principles which apply to the Greater London Authority may only make a comparison between unadjusted relevant basic amounts of council tax, a comparison between adjusted relevant basic amounts of council tax or a comparison between unadjusted relevant basic amounts of council tax and a comparison between adjusted relevant basic amounts of council tax. A comparison between unadjusted relevant basic amounts of council tax and adjusted relevant basic amounts of council tax cannot therefore be made. Other than the principle comparing relevant basic amounts of council tax, the Secretary of State can determine other principles. One of the other principles could potentially include a *de minimis* threshold or thresholds. This may state that neither council tax increases, nor a basic amount of council tax would be considered excessive if these are below a specified threshold level.

199. This section also provides that the Secretary of State may determine principles for particular categories of authority. The principles must be applied to all authorities falling within that category. Where the Secretary of State determines categories and an authority does not fall within any category, its relevant basic amount of council tax for the financial year cannot be determined as excessive. Where no categories are determined, any principles determined will apply to all authorities.

200. Section 52ZD provides that the principles for a financial year must be specified in a report to be laid before the House of Commons before the date on which the local government finance report for the year is approved by resolution of the House of Commons. Where the report is not laid, or not approved by resolution of the House of Commons, no principles can take effect and no authority's relevant basic amount of council tax can be determined as excessive for the year under consideration.

201. Section 52ZE provides the Secretary of State with the power to make a report setting alternative notional amounts to be used in place of an authority's relevant basic amount of council tax for the preceding year. The alternative notional amounts will be used when making a comparison with an authority's relevant basic amount of council tax for the year under consideration to determine whether its council tax is excessive.

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as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

An alternative notional amount report may be made when an authority did not exist at the beginning of the financial year preceding the one under consideration, or where the functions of an authority have changed. This is to enable a like-for-like comparison of council tax changes for the purposes of determining whether an amount of council tax is excessive by reference to the principles. The amount should be set out in a report that may relate to more than one authority. It must contain such explanations as the Secretary of State thinks desirable of the need for an alternative notional amount to be calculated and the method of calculation, and must be laid before the House of Commons. The report takes effect if approved by resolution of the House of Commons.

202. Section 52ZF sets out what a Billing authority must do if it sets an excessive council tax increase. It must make substitute calculations which will have effect, in the event that the authority's proposed excessive increase in council tax is rejected in a referendum or the authority fails to hold a referendum when it is required to do so. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be below the amount which is considered excessive under the principles.

203. Section 52ZG provides that a Billing authority must make arrangements to hold a referendum where the Billing authority itself has set an excessive increase in council tax. The referendum can be held at any time of the authority's choosing subject to this being no later than the first Thursday in May or a date specified by the Secretary of State by Order.

204. Section 52ZH requires the Billing authority to inform the Secretary of State of the result of the referendum. Where the result of the referendum is that an authority's excessive increase in council tax is rejected the authority's substitute calculations have effect for the financial year.

205. Section 52ZI sets out the position where a Billing authority is required to hold a referendum but, for any reason, fails to do so by the deadline date which would be either the first Thursday in May, or another date the Secretary of State may specify by Order. In such circumstances, the authority's substitute calculations will have effect.

206. Section 52ZJ provides that where a major precepting authority sets an excessive council tax increase it must make substitute calculations, which will have effect in the event that the authority's proposed council tax increase is rejected in a referendum. The substitute calculations will also have effect where a referendum is not held on an excessive increase by the required date. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be below that which is considered excessive under the principles. The section outlines the different methods of calculation which are required by (i) all major precepting

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authorities except the Greater London Authority and (ii) the Greater London Authority, to reflect the different way in which it must make its calculations.

207. Section 52ZK provides that where a major precepting authority has set an excessive increase in council tax it should notify each appropriate Billing authority that its council tax is excessive and that the Billing authority is therefore required to hold a referendum. The section outlines the different calculations which must be included in the notification for (i) all major precepting authorities except the Greater London Authority and (ii) the Greater London Authority, to reflect the different way in which it calculates its basic amount of council tax. The date by which the notification is to be given is to be prescribed by the Secretary of State in regulations.

208. Section 52ZL provides that where a local precepting authority sets an excessive council tax increase it must make substitute calculations which will have effect in the event that the authority's proposed increase is rejected in a referendum. The substitute calculations will also have effect where a referendum is not held on an excessive increase by the required date. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be an amount below that which is considered excessive under the principles.

209. Section 52ZM requires that where a local precepting authority has set an excessive amount of council tax it must notify its appropriate Billing authority that it is required to hold a referendum. The section sets out the calculations which must be included in the notice. The date by which the notification is to be given is to be prescribed by the Secretary of State in regulations.

210. Section 52ZN provides that where a major or local precepting authority sets an excessive amount of council tax and gives the required notification to a Billing authority, the Billing authority must make arrangements to hold a referendum. The referendum can be held at any time of the Billing authority's choosing subject to this being no later than the first Thursday in May or a date specified by the Secretary of State by Order. However, where a precepting authority sets an excessive increase in relation to which two or more Billing authorities must organise a referendum, the referendums must be held on the first Thursday in May or such other date as the Secretary of State may specify by Order. This section provides that, subject to any regulations made by the Secretary of State, the Billing authority can recover the costs of holding a referendum triggered by a precepting authority from that precepting authority.

211. Section 52ZO requires that the precepting authority must inform the Secretary of State of the result of the referendum. Where the result of the referendum is that an authority's increase in council tax is rejected the authority's substitute calculations have effect for the financial year.

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212. Section 52ZP sets out the position where a Billing authority is required to hold a referendum on behalf of a precepting authority but, for any reason, fails to do so by the deadline date of the first Thursday in May or such other date as is specified by Order. In such circumstances, the precepting authority's substitute calculations have effect.

213. Section 52ZQ allows the Secretary of State to make regulations concerning the conduct of referendums. It also allows the Secretary of State to make provision in regulations to combine polls where more than one referendum on a council tax increase is being held or where other elections or referendums are being held.

214. Sections 52ZR to 52ZW make provision for a situation in which an authority is in financial difficulty. Under section 52ZR if it appears to the Secretary of State that an authority will be unable to discharge its functions in an effective manner, or unable to meet its financial obligations unless it sets a council tax increase which exceeds the principles determined under section 52ZC, the Secretary of State may direct that the referendums provisions do not apply to the authority for a financial year. In the case of the Greater London Authority, a direction may be given where it appears to the Secretary of State that one or more of the Greater London Authority's constituent bodies will be unable to discharge its functions in an effective manner or one or more of the bodies will be unable to meet its financial obligations unless it sets a council tax increase which exceeds the principles. The Greater London Authority's constituent bodies are the Mayor of London, the London Assembly or a functional body. For the Greater London Authority, a direction may only be given after the authority has calculated its council tax for the financial year. For other authorities, a direction may also be given before the authority has calculated its council tax for the financial year. A direction may not be given in any case where an authority's relevant basic amount of council tax for the financial year has been rejected in a referendum.

215. Under sections 52ZS and 52ZT, where a direction is given to a Billing authority or a major precepting authority other than the Greater London Authority, the direction must state the amount that is to be the authority's council tax requirement for the financial year. Where the direction is given before the authority has calculated its council tax, the authority is required to comply with the Secretary of State's direction when calculating its council tax for the financial year. If the direction is given after the authority has calculated its council tax the authority must make substitute calculations to comply with the direction.

216. Under section 52ZU, where a direction is given in relation to the Greater London Authority, the direction must state the amount that is to be the council tax requirement for the relevant constituent body. The Greater London Authority must then make substitute calculations in relation to the relevant constituent body to comply with the direction and it may also make substitute calculations for other constituent bodies. Where the substitute calculations result in an increase in the consolidated



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council tax requirement for the Greater London Authority, or the council tax calculations made for the Greater London Authority would differ from the last relevant calculations made, the Greater London Authority must make substitute calculations. The increase in the Greater London Authority's consolidated council tax requirement as a result of the substitute calculations must not exceed the increase which was required to be made to the component council tax requirement for the relevant constituent body to comply with the direction.

217. Section 52ZV provides that where a direction is given in relation to a local precepting authority, the direction must state the amount that is to be the amount of the local precepting authority's council tax requirement for the financial year. This amount is to be treated as the authority's council tax requirement for the year.

218. Section 52ZW sets out the time period in which an authority must make substitute calculations where it is required to so after a direction has been issued. Where a Billing authority fails to make the required calculations within the time period stated it will have no power to transfer any amount from its collection fund to its general fund. This restriction will continue to apply until the authority makes the required substitute calculations. Where a precepting authority fails to make the required substitute calculations within the relevant time period, no Billing authority to which it has power to issue a precept will be able to pay anything in respect of a precept issued until the precepting authority makes those calculations and issues any precept that is required to be issued in substitution.

219. Section 52ZX sets out the meaning of an authority's relevant basic amount of council tax and how this should be calculated. Two different definitions of the relevant basic amount of council tax are applicable to the area of the Greater London Authority. The unadjusted relevant basic amount of council tax relates to the area of the Greater London Authority in relation to which the special expense of the Metropolitan Police Authority does not apply. The adjusted relevant basic amount of council tax relates to the part of the Greater London Authority's area to which the special expense of the Metropolitan Police Authority does apply.

220. Section 52ZY provides that the Secretary of State may require an authority to supply information for the purpose of the performance of his functions under this Chapter. Where an authority fails to comply, the Secretary of State may exercise his functions based on such estimates and assumptions as he sees fit. The Secretary of State may also take account of any other available information.

221. Clause 59 also gives effect to Schedule 6

222. Schedule 6 makes further amendments in relation to council tax referendums. In particular, it amends Chapter 4A of the 1992 Act which deals with the limitation of council tax and precepts so that the Secretary of State will no longer have the power to

cap council tax increases and the provisions of this Chapter will only continue to apply in relation to Wales.

223. A number of other amendments are made in the Schedule. Paragraphs 33 to 37 amend Schedule 6 to the Greater London Authority Act 1999 so that the procedure for determining the Greater London Authority's consolidated council tax requirement includes a duty to prepare and approve a substitute consolidated council tax requirement. This duty will apply if the amount determined as the Greater London Authority's consolidated council tax requirement for the year results in a relevant basic amount of council tax which does not comply with the principles approved under section 52ZD. The amount determined as the authority's substitute consolidated council tax requirement under Schedule 6 will be used when the Greater London Authority makes substitute calculations under section 52ZJ.

***Clauses 60, 61, 62, 63, 64, 65 and 66 - Local authority requisite calculations***

224. Taken together clauses 60 to 66 amend the calculations ("the requisite calculations") which Billing authorities, major precepting authorities and local precepting authorities in England must make to determine their basic amounts of council tax for a financial year. The principal effect of the clauses is to replace the obligation to calculate a budget requirement for a financial year with an obligation to calculate a council tax requirement. This change has been made possible in relation to England by the repeal of the Secretary of State's power to cap an authority's budget requirement (see generally paragraphs 4 to 28 of Schedule 6) and the introduction of referendums in relation to council tax increases (see clause 56 and Schedule 6).

225. Under current legislation an authority's budget requirement for a financial year is the amount that the authority requires from council tax, revenue support grant, redistributed non-domestic rates and certain other income sources in order to finance its budget for the year. Powers in the 1992 Act and the Greater London Authority Act 1999 ("the 1999 Act") are used to make annual Alteration of Requisite Calculations Regulations in relation to England the purpose of which is to ensure that the requisite calculations for local authorities in England operate appropriately each financial year. In particular, those Regulations ensure that the correct items are taken into account in the respective calculations of an authority's budget requirement and its basic amount of council tax.

226. The changes which are being made by clauses 60 to 66 are intended to place local authority requisite calculations on a simpler footing and to avoid the need for regulations each financial year.

227. Under the new provisions an authority's council tax requirement for a financial year is the amount that the authority requires from council tax alone in order to finance its budget for the year and this amount is used to calculate the authority's basic

amount of council tax. This approach simplifies the council tax calculations, since it avoids the need to deduct revenue support grant, redistributed non-domestic rates and the other income sources from the authority's budget requirement before the authority's council tax is calculated.

228. The new provisions also make explicit reference to "proper practices". Proper practices for these purposes are the accounting practices that govern the preparation of local authorities' annual accounts. Including references to proper practices in the requisite calculations simplifies and clarifies the operation of those calculations.

#### ***Clause 60 – References to proper accounting practices***

229. Clause 60 amends the definition of "proper practices" in section 21 of the Local Government Act 2003 so that that section applies to the 1992 and the 1999 Acts. This amendment enables the term "proper practices" to be used in the amendments which are made to those Acts by clauses 61 to 66.

#### ***Clause 61 – Council tax calculations by Billing authorities in England***

230. Clause 61 inserts new sections 31A and 31B into the 1992 Act. In relation to England these provisions will replace sections 32 and 33 of the 1992 Act which currently require a Billing authority to calculate its budget requirement and basic amount of council tax for a financial year.

231. New section 31A requires a Billing authority to calculate its council tax requirement each financial year. A Billing authority is required to calculate its expected outgoings and income for the year under new section 31A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 31A(4)).

232. New section 31A(5) to (9) specifies rules in relation to the calculations and new section 31A(10) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 11th March in the financial year preceding that to which they relate (new section 31A(11)).

233. New section 31B(1) requires a Billing authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A Billing authority's council tax base must be calculated in accordance with regulations made by the Secretary of State (new section 31B(3)) and this amount must be notified to the major precepting authorities that have power to issue precepts to the Billing authority within the prescribed period (see the definition of item T in new section 31B(1)).

***Clause 62 – Council tax calculations by major precepting authorities in England***

234. Clause 62 inserts new sections 42A and 42B into the 1992 Act. In relation to England these provisions will replace sections 43 and 44 of the 1992 Act which currently require a major precepting authority (other than the Greater London Authority) to calculate its budget requirement and basic amount of council tax for a financial year.

235. The provisions operate in a similar way to new sections 31A and 31B. New section 42A requires a major precepting authority to calculate its council tax requirement each financial year. A major precepting authority is required to calculate its expected outgoings and income for the year under new section 42A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 42A(4)).

236. New section 42A(5) to (10) specifies rules in relation to the calculations and new section 42A(11) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 1st March in the financial year preceding that to which they relate (see section 41(5) of the 1992 Act).

237. New section 42B(1) requires a major precepting authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A major precepting authority's council tax base is the aggregate of the amounts which are calculated by the Billing authorities to which the authority issues precepts as their council tax bases for their areas or parts of their areas (see the definition of item T in new section 42B(1)). These calculations must be made in accordance with regulations made by the Secretary of State (new section 42B(3)).

***Clause 63 – Calculation of council tax requirement by the Greater London Authority***

238. Clause 63 amends sections 85 and 86 of the 1999 Act.

239. Currently section 85 of the 1999 Act requires the Greater London Authority to calculate component budget requirements for each of the constituent bodies and a consolidated budget requirement for the Greater London Authority as a whole. That section is amended so that the Greater London Authority is instead required to calculate component and consolidated council tax requirements (see generally clause 61(1) to (9)). As with other major precepting authorities the calculations must be made before 1st March in the financial year preceding that to which they relate (see section 41(5) of the 1992 Act).

240. Section 86 of the 1999 Act specifies rules in relation to the calculations made under section 85 of that Act. Those rules are amended in consequence of the

amendments made to sections 85, 88 and 89 of the 1999 Act (see generally clause 61(10) to (15)).

241. In particular, new subsections (4D) to (4F) of section 86 enable the Secretary of State to prescribe amounts of grant which the Greater London Authority must use in making calculations in respect of the Mayor's Office for Policing and Crime<sup>1</sup> under section 85 of the 1999 Act. These new subsections have been inserted as a result of amendments to sections 88 and 89 of the 1999 Act and the changes are more fully explained in relation to clause 64 below.

***Clause 64 – Calculation of basic amount of council tax by the Greater London Authority***

242. Clause 64 makes amendments to sections 88 and 89 of the 1999 Act and the way in which the Greater London Authority calculates its basic amounts of tax under those sections. These amendments are consequential to the amendments made by clause 63.

243. Currently the Metropolitan Police Authority exercises functions in relation to the metropolitan police district. That area constitutes part only of the Greater London Authority's area and as a result the Greater London Authority is required to calculate two basic amounts of council tax-

- a basic amount (calculated under section 88 of the 1999 Act) for that part of its area which is outside the metropolitan police district, and
- a basic amount (calculated under section 89 of the 1999 Act) for that part of its area which is within the metropolitan police district.

244. As currently drafted the basic amount calculated under section 88 of the 1999 Act does not include the component budget requirement of the Metropolitan Police Authority, whereas that calculated under section 89 of the Act does.

245. In addition, as currently drafted the 1999 Act enables the Secretary of State to prescribe amounts in relation to certain grants which represent the portion of those grants which relate to defraying the Metropolitan Police Authority's budget requirement in whole or in part (see items P1 and P2 in sections 88(2) and 89(4) of the 1999 Act). In other words, the Secretary of State is able to prescribe amounts of grant which the Greater London Authority must allocate to the Metropolitan Police Authority.

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<sup>1</sup> Subject to the Police Reform and Social Responsibility Bill completing its passage through Parliament, the functions which are currently exercised by the Metropolitan Police Authority under the 1999 Act will be exercised by the Mayor's Office for Policing and Crime.

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246. The amendments to section 88 of the 1999 Act (see clause 64(1) to (5)) alter the way in which the basic amount of council tax is calculated under that section. The basic amount of council tax under section 88 is calculated by dividing the Greater London Authority's consolidated council tax requirement by the Greater London Authority's council tax base for the whole of its area. However, the council tax requirement of the Mayor's Office for Policing and Crime<sup>2</sup> is excluded from the calculation (see generally new subsection (2) of section 88 of the 1999 Act).

247. The amendments to section 89 of the 1999 Act (see clause 64(6) to (9)) also alter the way in which the basic amount of council tax is calculated under that section. The amount of council tax payable in respect of the Mayor's Office for Policing and Crime is calculated by dividing the council tax requirement for that body by the council tax base for the metropolitan police area (see generally new subsection (4) of section 89 of the 1999 Act).

248. As part of the amendments made by clauses 63 and 64, items P1 and P2 are omitted from sections 88 and 89 of the 1999 Act and replaced by new subsections (4D) to (4F) of section 86 of that Act. These new subsections will play a similar role in relation to the calculations for the Mayor's Office for Policing and Crime as items P1 and P2 currently play in relation to the calculations for the Metropolitan Police Authority.

***Clause 65– Council tax calculations by local precepting authorities in England***

249. Clause 65 inserts new sections 49A and 49B into the 1992 Act. In relation to England these provisions will replace sections 50 and 51 of the 1992 Act which currently require a local precepting authority to calculate a budget requirement for a financial year and enable such an authority to make substitute calculations for that year.

250. New section 49A requires a local precepting authority to calculate its council tax requirement each financial year. A local precepting authority is required to calculate its expected outgoings and income for the year under new section 49A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 49A(4)).

251. New section 49B enables a local precepting authority to calculate a substitute council tax requirement for a financial year, but the substitute calculations have no

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<sup>2</sup> As mentioned above, subject to the Police Reform and Social Responsibility Bill completing its passage through Parliament the Metropolitan Police Authority will be replaced by the Mayor's Office for Policing and Crime.

effect if the amount calculated would exceed that previously calculated by the authority.

***Clause 66 – Council tax: minor and consequential amendments***

252. Clause 66 and Schedule 7 make a number of minor and consequential amendments to other enactments as a consequence of the provisions in clauses 60 to 65. In particular, a number of provisions in the 1992 Act are amended so that they apply in relation to Wales only.

***Clause 67 – Council tax revaluations in Wales***

253. Clause 67 amends the Local Government Finance Act 1992 to provide the Welsh Ministers with the power, by order, to determine the timing of Council Tax revaluations in Wales, rather than being bound to the timetable for Wales currently set out by the Local Government Finance Act 1992. This provides Welsh Ministers with the option to cancel the planned 2015 council tax revaluation in Wales. The orders are subject to the affirmative resolution procedure in the Assembly.

**Chapter 3: Community Right to Challenge**

***Clauses 68, 69, 70, 71, 72 and 73 - The Community Right to Challenge***

254. Clause 68 requires a relevant authority, defined as including a county council, a district council or a London borough council, to consider an expression of interest submitted by a voluntary or community body, charity, parish council, or employees of the authority in relation to providing or assisting in providing a service provided by or on behalf of the local authority. This clause also defines terms used in the rest of this chapter.

255. Clause 69 enables a relevant authority to set out periods when an expression of interest can be submitted. Any such period must be published. Where no period is specified, an expression of interest may be submitted at any time.

256. Clauses 70 and 71 require a relevant authority that has received an expression of interest to consider it and respond by either accepting it, with or without modification, and running a procurement exercise for the service; or rejecting it. Any modification can only be made where the expression of interest would otherwise be rejected and must be agreed by the body submitting it. An authority must notify the body that submitted an expression of interest of their decision, including the reasons where it decides to reject or modify, and publish this. The relevant authority must consider how both the expression of interest and the procurement exercise might promote or improve the social, economic or environmental well-being of the

authority's area. An expression of interest can be withdrawn by the submitting body at any time.

257. Clause 72 allows the Secretary of State to make further provision in regulations about the procedure to be followed by a body submitting an expression of interest and a relevant authority receiving it. A relevant authority exercising functions in relation to Chapter 3 must also have regard to any guidance issued by the Secretary of State.

258. Clauses 68, 69, 70 and 71 provide for a number of matters to be specified by the Secretary of State in regulations, including: changes to defined terms; what an expression of interest should contain; the grounds for rejecting an expression of interest; and the time periods associated with various elements of the process, including the minimum period that an authority can set out for submitting expression of interests, the minimum period between an expression of interest being received and a procurement exercise starting, and the time by which an authority must respond to an expression of interest.

259. Clause 73 authorises the Secretary of State to provide advice and assistance in relation to the community right to challenge, either directly or through others. This could include financial assistance to a relevant body, such as a grant or loan, or education and training.

#### **Chapter 4: Land of Community Value**

##### ***Clause 74 - Lists of assets of community value***

260. This clause places a duty on local authorities in England and Wales to maintain a list of assets of community value. The clause specifies that assets will be removed from the list after 5 years (unless already removed) with a power to the appropriate authority (the Secretary of State for England and the Welsh Ministers for Wales) to amend that period. The local authority can determine the form and content of the list, subject to any specific requirements set out in regulations.

##### ***Clauses 75 and 90 - Land of community value***

261. Clause 75 enables the appropriate authority to make provision which will determine whether a building or other land is of community value. Clause 90 provides that this Chapter applies to the Crown.



***Clauses 76, 77 and 78 - Procedures for including land on the list***

262. Clause 76 provides for procedures by which land may be included on the list, by community nomination or as specified by the appropriate authority in regulations (which may also specify details regarding nominations and listing by the local authority on its own initiative). It also provides for regulations to set out procedures that local authorities will be required to follow in considering whether to list. Clause 77 requires a local authority to consider a community nomination, and to accept it if the land nominated is in the authority's area and is of community value. It also requires the local authority to give the nominator written reasons for not listing the land. Clause 78 requires local authorities to give notice to specified persons of inclusion on or removal from the list together with a description of the statutory provisions. It also gives the appropriate authority power to make additional provisions about giving notice.

***Clause 79 - Review of decision to include land in list***

263. This clause gives the owner of the land a right to have the decision to list it reviewed by the local authority, specifies what the local authority must do if the review reverses the decision, and provides for the appropriate authority in regulations to set out the procedure for carrying out such reviews. It also includes a power to provide for an appeal against the review decision.

***Clause 80 - List of land nominated by unsuccessful community nominations***

264. This clause requires local authorities also to maintain a list of assets that have been nominated unsuccessfully through the community nomination process, and specifies that it should include the reasons why the nomination was unsuccessful. The local authority can determine the form and content of the list, subject to any specific requirements set out in regulations by the appropriate authority.

***Clause 81 - Publication and inspection of the list***

265. This clause places a duty on local authorities to publish both lists, to make them available for free inspection within its area, and provide one copy, free of charge, to anyone who asks for one. Further details about how this duty is carried out can be specified in regulations by the relevant authority.

***Clauses 82, 83 and 84 - Moratorium on the disposal of listed assets***

266. Clause 82 prohibits the owner of listed land from entering into a relevant disposal of it except where specified conditions are satisfied. These conditions provide for notification to the local authority by the owner of an intention to make a relevant

disposal, and for either an interim moratorium or a full moratorium then to apply. They also provide for a protected period when no further moratorium will apply. Power is included for the appropriate authority in regulations to specify the lengths of these three periods. Clause 83 defines a relevant disposal as being a disposal with vacant possession of a freehold estate or the grant, assignment or surrender of a lease of at least 25 years. Power is included to amend the definition. Clause 84 specifies what the local authority must do on receiving notice under clause 82 from the owner.

#### ***Clause 85 - Compensation***

267. This clause gives the appropriate authority power to provide for payment of compensation.

#### ***Clause 86 - Local land charge***

268. This clause provides for the listing of an asset of community value to be a local land charge, administered by the listing local authority.

#### ***Clause 87 - Enforcement***

269. Clause 84 enables regulations to be made by the appropriate authority in order to reduce or prevent contravention of the provisions.

#### ***Clauses 88 and 89 – Advice and assistance***

270. Clause 88 authorises the Secretary of State to do anything the Secretary of State considers appropriate for the purpose of providing advice or assistance to anyone in England in relation to Chapter 4 of Part 4. This includes doing anything the Secretary of State considers appropriate for giving advice or the making of arrangements to provide advice or assistance to community interest groups in connection with bidding for, or acquiring, land listed as being of community value (including considering whether to bid and preparing bids); or in connection with the consideration of bringing, or preparations to bring, such land into effective use. Things that may be done under the clause include direct financial assistance (such as grants, loans, guarantees or indemnities), or the making of arrangements for such assistance. Clause 89 makes parallel provision in relation to assistance by Welsh Ministers in Wales.

#### ***Clauses 91 and 92 - Definitions***

271. These clauses define “local authority” (in England and in Wales) and “owner” for the purposes of this Chapter. For any listed land the owner will be either the freeholder or the qualifying leaseholder most distant from the freeholder. A qualifying

leasehold estate must have been granted for at least 25 years. Powers are included for the appropriate authority to amend both definitions.

***Clause 93 - Interpretation of Chapter: general***

272. “Appropriate authority” is defined as meaning the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales.

**PART 5: PLANNING**

***Chapter 1: Plans and Strategies***

***Clause 94 - Abolition of Regional Strategies***

273. Clause 94 provides for the abolition of the regional planning tier, by repealing Part 5 of the Local Democracy, Economic Development and Construction Act 2009, which only applies in relation to England. This removes responsible regional authorities which are made up of the relevant leaders’ board and regional development agency. Provision is also made in the clause for the revocation of Regional Strategies.

274. This clause also provides for the revocation of any order that saved structure plan policies made under the Town and Country Planning Act 1990, so that those policies will cease to have effect. Currently, such saved policies form part of the development plan. Finally, this clause provides for the necessary consequential amendments to primary legislation, which are set out in Schedules 8 and 25.

***Clause 95 - Duty to co-operate in relation to planning of sustainable development***

275. Clause 95 provides for a duty on local authorities, county councils and other bodies to co-operate with each other. Those other bodies will be defined in regulations. Cooperation includes constructive and active engagement as part of an ongoing process to maximise effective working on the preparation of development plan documents, other local development documents and marine plans in relation to strategic matters including sustainable development that would have significant wider impacts.

276. Those that are subject to the requirements of the duty will be expected to consider whether to consult on and prepare, and enter into and publish, agreements on joint planning approaches. Local planning authorities will also be expected to consider whether to prepare joint local development documents.

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as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

277. Local authorities, county councils and prescribed bodies that are subject to the requirements of the duty to cooperate will also be required to have regard to the activities of other bodies, also to be prescribed in regulations.

278. At independent examination local authorities will have to provide evidence that they have complied with the duty if their plans are not to be rejected by the examiner.

279. This clause also makes provision that local authorities and other bodies must have regard to guidance issued by the Secretary of State about how they should comply with this duty.

***Clause 96 - Local development schemes***

280. Clause 96 amends section 15 of the Planning and Compulsory Purchase Act 2004. Section 15 sets out the roles of the Local Planning Authority, the Secretary of State and Mayor of London in relation to a local planning authority's local development scheme. The local development scheme sets out certain matters related to how the local planning authority is going to plan for development in its area. This includes the contents and timing of proposed development plan documents. These schemes are submitted to the Secretary of State or the Mayor of London who can direct that the scheme should be modified.

281. This clause will amend section 15 so that local planning authorities will have to publish up to date information direct to the public on the scheme, including their compliance with their timetable for the preparation or revision of development plan documents. They will no longer be required to submit the local development scheme to the Secretary of State or, if a London borough, the Mayor of London. The Secretary of State and Mayor of London will retain powers to direct changes, but will only be able to use them for the purpose of ensuring effective plan coverage.

***Clause 97 - Adoption and withdrawal of development plan documents***

282. Clause 97 amends sections 20 to 23 of the Planning and Compulsory Purchase Act 2004. Section 20 provides that every development plan document must be submitted for independent examination to a planning inspector - a person appointed on behalf of the Secretary of State. The inspector produces a report determining whether or not the document is suitable for adoption; the inspector can also recommend modifications to the draft document. The local planning authority is bound, under section 23, to implement the inspector's recommendations.

283. This clause will amend section 20 so that the inspector must recommend adoption where the inspector considers that it would be reasonable to conclude that the

document satisfies the statutory requirements and can be considered sound. During the examination the local planning authority will have the power to request recommendations for modifications from the inspector that would make the document suitable for adoption. If the local planning authority does not make this request, the inspector will be unable to recommend any modifications.

284. This clause will amend section 23 so that local planning authorities do not have to implement inspectors' recommendations. They will still only be able to adopt the development plan document if the inspector has recommended adoption. Where the inspector has not recommended adoption, the authority will be able to adopt after following the inspector's modifications or make their own modifications and re-submit the draft document to the inspector for examination. The authority will also be able to make non-material changes before adoption.

285. Section 22 restricts a local planning authority from withdrawing a development plan document after it has been submitted to the inspector. They can only do so if the inspector recommends withdrawal or the Secretary of State directs withdrawal. This clause will amend section 22 so that a local planning authority can withdraw a development plan document at any time before its adoption. The local planning authority will no longer require a recommendation from the person carrying out the examination or a direction from the Secretary of State. The Secretary of State retains the power to direct withdrawal, but this power has now been moved to section 21 so that it is with the Secretary of State's other powers.

#### ***Clause 98 - Local development: monitoring reports***

286. Clause 98 amends section 35 of the Planning and Compulsory Purchase Act 2004. Section 35 requires local planning authorities to make an annual report to the Secretary of State about the implementation of their local development schemes and local development policies. This clause will amend this requirement so that local planning authorities must publish this information direct to the public at least yearly in the interests of transparency. The local planning authority is no longer required to send a report to the Secretary of State. The Secretary of State has powers to make regulations prescribing the timing, content and form of reports.

### **Chapter 2: Community Infrastructure Levy**

#### ***Clause 99 - Community infrastructure levy: approval of charging schedules***

287. This clause makes amendments to Part 11 of the Planning Act 2008 concerning the Community Infrastructure Levy. The Community Infrastructure Levy may be charged by "charging authorities" (normally the local planning authority) in accordance with a charging schedule. A charging authority must, before approving a charging schedule, submit a draft to an independent examiner and implement any

recommendations made by the examiner. The draft charging schedule must be accompanied by a declaration that the charging authority has complied with all the relevant requirements in drafting the charging schedule.

288. The effect of this clause is to change the relationship between the charging authority and the examiner. The charging authority will no longer be required to submit a declaration to the examiner with the draft charging schedule. The examiner will now consider whether the charging authority has complied with the relevant requirements within Part 11 of the 2008 Act and the Community Infrastructure Levy Regulations, which will now be referred to as “drafting requirements”. Any recommended modifications to the draft charging schedule made by the examiner will no longer be binding on the charging authority.

289. One of these drafting requirements is that the charging authority must have used appropriate available evidence to inform the charging schedule. The clause enables the Secretary of State to make regulations that set out how this test is to be applied.

290. Where the examiner considers that the charging authority has not complied with the drafting requirements and that no modifications are capable of securing compliance, the examiner must recommend that the draft charging schedule should be rejected and a charging authority will continue to be bound by this recommendation. Otherwise, the clause requires the examiner to recommend approval and the charging authority will have discretion over how they respond to any recommended modifications.

291. If the examiner has identified a failure to comply with the drafting requirements, the charging authority may only approve the charging schedule after they have had regard to the examiner’s recommendations and reasons and have made such modifications as are necessary to secure compliance. But these modifications need not be the same as those recommended by the examiner. In such a case, the clause requires the charging authority to draft a report saying how they have amended the draft charging schedule so as to comply with the drafting requirements. The clause enables the Secretary of State to make regulations about the form or content of such a report.

#### ***Clause 100 - Use of Community Infrastructure Levy***

292. This clause amends to Part 11 of the Planning Act 2008, concerning the Community Infrastructure Levy. First, the clause provides clarification on the general purpose of the Community Infrastructure Levy, confirming that it may be spent on the ongoing costs of providing infrastructure. Provisions for regulations to set out activities relating to maintenance, operation and promotion that may or may not be funded by the Community Infrastructure Levy are also included.

293. This clause also provides regulation-making provisions on directing charging authorities to pass funds raised through the Community Infrastructure Levy to other bodies to spend on infrastructure. This clause sets out the framework for this process, providing for regulations to provide the details including: the area in which it will apply; the bodies it will apply to; the amount timings of payments; monitoring, accounting and reporting responsibilities of charging authorities; and when funding is to be returned to the charging authority.

### **Chapter 3: Neighbourhood Planning**

#### ***Clause 101 –Neighbourhood planning***

294. Clause 101 amends the Town and Country Planning Act 1990 by inserting a number of new sections and two Schedules (Schedules 4B and 4C) into that Act. These new provisions will allow for planning permission to be granted through neighbourhood development orders – including a category of such orders to be known as “Community Right to Build Orders”. In addition, the effect of subsection (1) of the clause will be to amend the Planning and Compulsory Purchase Act 2004 to make provision in that Act on a new category of development plan – neighbourhood development plans. These plans and orders will be made by local planning authorities on the initiative of parish councils or neighbourhood forums.

#### ***Schedule 9 – Neighbourhood Planning***

295. Part 1 of Schedule 9 inserts a number of new sections into the Town and Country Planning Act 1990 relating to neighbourhood development orders (a number of which will also apply in relation to neighbourhood development plans because of new section 38C of the Planning and Compulsory Purchase Act 2004 – which is inserted by paragraph 7 of the Schedule). New sections 61E to 61O are explained below.

296. New section 61E empowers either a parish council or a neighbourhood forum (as “qualifying bodies”) to initiate the process for making a neighbourhood development order. It also places a duty on local planning authorities to make a neighbourhood development order, if there is a referendum vote in favour of the order. This is except in the narrow circumstances in which the authority considers that making the order would be incompatible with any EU obligation (a term which is defined in Schedule 1 to the European Communities Act 1972) or any of the rights under the European Convention on Human Rights which are referred to in section 1 of the Human Rights Act 1998. The new section also confers powers on the Secretary of State to make regulations about the procedure to be followed by a local planning authorities where it intend to refuse to make a neighbourhood development order despite a “yes” vote in a referendum.. For example, requirements to consult before

making a final decision could be imposed, as well as requirements for the local planning authority to give notice that they propose to refuse to an order.

297. New section 61F (which will also apply in relation to neighbourhood development plans) sets out the circumstances in which qualifying bodies are authorised to bring forward proposals for neighbourhood development orders. In relation to any neighbourhood area (see section 61G) which has a parish council, only a parish council (all or part of whose area is within the neighbourhood area) may make proposals for a plan or order. These proposals must be made with the consent of any other parish council for the area and proposals must be made one at a time (see subsections (1), (2) and (9)). In relation to neighbourhood areas without a parish council, only a person or body which has been designated as a “neighbourhood forum” for the particular neighbourhood area by the local planning authority may bring forward proposals (see subsections (3) to (7)). The conditions that must be met by an organisation seeking to be designated as a neighbourhood forum are set out in subsection (5), though regulations may either add to those conditions or specify other categories of organisations that can become neighbourhood forums. Existing residents associations or civic groups may become neighbourhood forums. Subsection (7) requires local planning authorities to have regard to the desirability of designating forums which meet certain criteria relating to the membership and purpose of the forum.

298. New section 61G provides for a system under which local planning authorities are to designate neighbourhood areas, where they have received an application for an area to be designated as such either from a parish council or a body that could potentially be a neighbourhood forum. “Neighbourhood areas” consist of the areas that neighbourhood development plans and orders can be made in respect of. It is expected that in many cases these areas will follow the boundaries of existing parishes for which there is a parish council (see subsection (4)). This is unless the local planning authority concerned considers that some other area is more suitable for the purposes of neighbourhood planning.

299. New section 61H allows for neighbourhood areas to be designated which cross local planning authority boundaries. It also provides (in subsections (2) and (3)) the Secretary of State with regulation-making powers to adapt the provisions in the Bill relating to neighbourhood planning to ensure the appropriate operation of neighbourhood planning in such areas. For example, regulations could specify that local planning authorities must consult each other before deciding whether to approve a plan or order for referendum or that they may only take such a decision when acting jointly through a committee.

300. New section 61I places restrictions on the contents of neighbourhood development orders (for example, they cannot relate to more than one neighbourhood area). In addition, subsection (1) permits orders to grant either site specific planning



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301. New section 61J sets out a number of descriptions of development (“excluded development”) which neighbourhood development orders or plans cannot relate to (because of section 61I). For example, paragraph (a) has the effect to exclude mining related development.

302. New section 61K allows neighbourhood development orders to give planning permission either with or without conditions. Regulation-making powers in subsection (3) allow for parish councils to be given the option of determining decisions on conditions within neighbourhood development orders.

303. New section 61L allows for the Secretary of State and a local planning authority (with the consent of the Secretary of State) to revoke a neighbourhood development order and allows regulations to be made prescribing actions to be taken in relation to the revocation of an order.

304. New section 61M sets out the conditions for legal challenges in relation to decisions on neighbourhood development orders, requiring that challenges are filed within 6 weeks of the decision being published.

305. New section 61N requires local planning authorities to have regard to any guidance issued by the Secretary of State relating to neighbourhood development orders.

306. New section 61O allows for example regulations to regulate the decision-making of local planning authorities in relation to neighbourhood development orders. Provision might be made, for example, as to whether decisions may be delegated prescribe the extent to which local planning authorities may delegate decision-making, for example, to officers or committees or whether decisions need to be taken by the executive (in the case of a local authority) or by a majority of those members presents at the meeting of an authority.

307. New section 61P makes provision for a particular type of neighbourhood development order - a “community right to build order”. Details of the provisions are set out in Schedule 4C to the Town and Country Planning Act 1990 inserted by Schedule 11 to the Bill (see below).

308. Part 2 of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to empower parish councils and neighbourhood forums to propose neighbourhood development plans. Unlike neighbourhood development orders, these do not give

planning permissions but instead set out policies in relation to the development and use of land in a defined neighbourhood area (see new section 38A(2)).

309. The amendments to section 38 of the Planning and Compulsory Purchase Act 2004 made by paragraph 6 of Schedule 9 mean that neighbourhood development plans, once they are made, will become part of the development plan for an area. Consequently, by virtue of section 38(6) of that Act certain decisions will need to be made in accordance with neighbourhood development plans unless material considerations indicate otherwise. Such decisions include decisions on applications for the grant of planning permission and appeals against the refusal of such applications.

310. New section 38A (inserted by paragraph 7 of the Schedule) requires local planning authorities to make a neighbourhood development plan if a referendum has been held and more than half of those voting are in favour of the proposed plan. As with neighbourhood development orders, there are narrow circumstances in which a local planning authority may refuse here – for example, where the authority considers that making the plan would be incompatible with any EU obligation.

311. New section 38B deals with the form and contents of neighbourhood development plans, requiring, for example, that they must specify the period for which they are to have effect and that they cannot relate to the classes of excluded development set out in new section 61J of the Town and Country Planning Act 1990 – such as development falling within Annex 1 of the European Impact Assessment Directive (Council Directive 85/337/EEC). This section also specifies that only one neighbourhood development plan may be made for each neighbourhood area. A regulation-making power is provided (section 38B(4)) which enables provision to be made, for example, on whether any maps need to be incorporated into a plan to show the extent of a policy and to what scale those maps should be.

312. New section 38C applies new provisions which are to be inserted into the Town and Country Planning Act 1990 on neighbourhood development orders to neighbourhood development plans (as if they were orders but with the necessary modification). Therefore, the provisions on revocation and modification of orders in new section 61L apply in relation to plans (though this does not need to be done by order – see subsection (3)), as do those on legal challenges by judicial review (new section 61M). Similarly, because of section 38C(5) the provision in Schedule 10 (described below) will not only apply in relation to the making of neighbourhood development orders, but plans as well.

### ***Schedule 10 – Process for Making of Neighbourhood Development Orders***

313. Schedule 10 makes further provisions about making neighbourhood development orders and plans by inserting a new Schedule 4B into the Town and Country Planning Act 1990.

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314. Paragraph 1 of the new Schedule makes provision in connection with proposals to local planning authorities for neighbourhood development orders or plans. It allows the Secretary of State to prescribe the form of any such proposals in regulations and to require that other documents and information must accompany them. In addition, the Secretary of State may set minimum standards for the documentation which need to be submitted along with proposal for plans or orders. These standards, as well as requirements set out in regulations under this paragraph would be mandatory – i.e. a failure to meet them would result in an application being rejected – see paragraph 6(2).

315. Paragraph 2 allows a qualifying body to withdraw its proposals for a plan or order at any time before the local planning authority makes a decision on the examiner's recommendations. Because of paragraph 7 each draft plan and order will be subject to examination by an independent person who will report back to the local planning authority recommending either that the plan or order is refused or put to a referendum (with or without modifications).

316. Paragraph 3 places a duty on local planning authorities to provide advice and assistance to qualifying bodies in developing proposals for plans or orders. This support could involve providing technical advice on how to draw up an order or plan or facilitating consultations with the public on proposals. There is no requirement here on local planning authorities to provide financial assistance.

317. Paragraphs 4 to 6 set out the arrangements for neighbourhood development orders and plans before they are submitted to independent examination. Paragraph 4 allows the Secretary of State to prescribe further requirements in regulations that must be complied with before proposals are submitted to a local planning authority. Again a failure to comply with these requirements will be a ground upon which a local planning authority is to reject an application. The regulations may make provision on procedural matters, for example, about ensuring that applicants consult and involve the public at an early stage of their proposals, or notify statutory bodies (such as Natural England or the Highways Agency) about their proposals so that they have an opportunity to influence their development.

318. Paragraph 5 allows a local planning authority to decline repeat proposals. These are proposals which are similar to other ones which have been made up to two years previously and which were refused by a local planning authority or which did not get sufficient votes in a referendum.

319. Paragraph 6 sets out matters which the local planning authorities must be satisfied with before proposals for a plan or order can be submitted to independent examination. They includes checking whether the body making the application is a qualified applicant – i.e. a parish council or authorised neighbourhood forum, and that the application meets the requirements set out in legislation and regulations. The local

320. Paragraphs 7 to 11 set out the arrangements for the independent examination of proposed orders and plans.

321. Paragraph 7 empowers the local planning authority to appoint an examiner, but only with the agreement of the parish council or neighbourhood forum. The Secretary of State may appoint an examiner if no agreement can be reached. The paragraph also requires that the examiner is independent of the body making the proposals and the local planning authority, and that he or she must not have any interest in land affected by the proposals and must have appropriate qualifications and experience.

322. Paragraph 8 lists the matters that the examiner must consider in their examination of the proposed plan or order. These include whether the plan or order is appropriate having regard to national policy, whether it is in general conformity with the strategic policies in the local development plan and whether the order is compatible with EU obligations. There is also a basic condition relating only to orders (see new section 38C(5)(d) of the Planning and Compulsory Purchase Act 2004) relating to the appropriateness of an order having regard to considerations relating to listed buildings and conservation areas (paragraphs 8(2)(b) and (c) and (3) to (5)). The examiner will also consider whether the referendum area should extend beyond the neighbourhood area to which the draft order or plan relates. The paragraph also provides a power to require the examiner to consider such matters as are prescribed in regulations - for example, taking into account an environmental impact assessment.

323. Paragraph 9 prescribes the general rule that the examination will take the form of consideration of written representations but allows for oral representations, for example, where this is necessary to ensure people get a fair chance to put their case. Where there are to be oral representations, the paragraph sets out those bodies who are entitled to be heard, including the parish council or neighbourhood forum promoting the plan or order and the local planning authority. The Secretary of State is given power to prescribe by regulation additional persons who will be entitled to make oral representations at any hearing held into a neighbourhood plan or order. For example, it may be appropriate to permit certain statutory parties to provide oral evidence on a particular issue where they have relevant expertise.

324. Paragraph 10 sets out how the examiner must report on proposals for an order or plan, including recommendations on whether or the proposals should be put to referendum, or whether any modifications are needed so that the proposals can go to referendum, and whether the referendum area should be extended beyond the neighbourhood area. It may be appropriate to extend the referendum beyond the neighbourhood area to which a plan or order relates if, for example, proposals include development close to the boundary of a neighbourhood area which would have

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impacts on an adjoining area. The examiner will be obliged to give reasons for recommending a particular course of action and to provide a summary of his or her main findings.

325. Paragraph 11 gives the Secretary of State the power to make regulations in connection with the independent examination and sets out examples of what provision can be made. For example, regulations may require that notice is given of the time and place of an examination and how that is given and may regulate the procedure at an examination.

326. Paragraph 12 sets out the issues to be considered by the local planning authority, following an independent examination, in deciding whether or not a proposed plan or orders should be put to a referendum and whether or not it should be modified. These considerations include the recommendations of the examiner and like the examiner, for example, whether the proposals are appropriate having regard to national policy and whether they are in general conformity with the strategic policies in the local development plan. The Secretary of State is given power to prescribe matters other than the recommendations in the report that the local planning authority must take into account. This is to ensure that relevant material is considered by the local planning authority before it reaches a decision on a draft order or plan.

327. Paragraph 13 provides for the situation where the local planning authority proposes to make a decision that differs from that recommended by the examiner because of new evidence, a new fact or a different view taken by the authority in relation to a particular fact. In such a case, the local planning authority may decide to refer the issue to independent examination. The Secretary of State is given power to make regulations relating to this independent examination. But in any event, in such circumstances the local planning authority is obliged to invite representations on what they propose from such persons as are prescribed in regulations and by implication, take these into account before reaching a final view.

328. A referendum must be held on a plan or order once it is approved (with or without modifications) under paragraph 12. Paragraph 14 sets out provision in relation to such referendums, including who is entitled to vote in them (see subsections (4) and (5)) and which local authorities are responsible for making arrangements for them (see subsections (2) and (3)). The Secretary of State is given the power to make provision in regulations about these referendums under paragraph 15 – such as about how they are to be conducted (e.g. how postal voting can occur) or to impose duties on local authorities to publicise the time and place of a referendum. Before making these regulations, the Electoral Commission must be consulted by the Secretary of State.

***Schedule 11 – Neighbourhood Planning: Community Right to Build Orders***

329. Schedule 11 inserts a new Schedule 4C to the Town and Country Planning Act 1990 which makes special provision about a particular type of neighbourhood development order called a community right to build order providing for community led site specific development. It gives a power for community organisations to apply for such an order to be made and sets out how the provisions in respect of neighbourhood development orders should apply to such an application. The Schedule sets out powers to disapply or modify certain enfranchisement rights in relation to land the development of which is authorised by a community right to build order.

***Clause 102 - Charges for meeting costs relating to neighbourhood planning***

330. This clause confers a power on the Secretary of State to make regulations (with the consent of the Treasury and requiring the approval of the House of Commons) for the imposition of charges in relation to development authorised by neighbourhood development orders. The charges may either be set out in the regulations or the charges may be decided upon by local planning authorities for their areas, if this is what the regulations allow for (see clause 102(4)). The purpose of these charges is to allow local planning authorities to recover costs which they have incurred in putting neighbourhood development plans or orders in place.

331. A charge will be payable to a local planning authority when development authorised by an order is commenced (see subsection (3)). In addition, the regulation-making powers permit liability for the charge to be imposed on owners or developers (see subsections (6)(e) and (7)) and for arrangements to be made for other persons to assume liability for the charge in advance of development being commenced (see subsection (6)(a)).

***Clause 103 - Regulations under section 102: collection and enforcement***

332. This clause specifies that any regulations made under clause 102 must include provisions on the collection of the charge (such as allowing for payments by instalments) and its enforcement. Whilst regulations might be made for different methods of enforcement, the clause requires that at a minimum the enforcement of the charge is to be by treating it as a civil debt, which is recoverable through the magistrates' courts (see subsection (3)).

***Clause 104 -- Regulations under section 102: supplementary***

333. Clause 104 makes supplementary provision in connection with charges imposed under the regulations. For example, local planning authorities have a duty imposed on them (see subsection (6)) to have regard to guidance issued by the

Secretary of State in relation to functions they might have under the regulations. Also, a power is provided in subsections (1) and (2) to prescribe in the regulations the procedures that must be followed by local planning authorities in relation to the charge. The provisions could include, for example, requirements for a local planning authority to publicise any charges on the internet (before they become payable) and to make a copy of them available at their principal offices or consult publicly before setting any charges.

***Clause 105 - Financial assistance to neighbourhood development***

334. This clause authorises the Secretary of State to give financial assistance in connection with neighbourhood planning. The powers could be used, for example, to help fund a neighbourhood forum to develop a draft neighbourhood plan or order or to give assistance to help establish such a forum or a community right to build organisation or to support an education campaign about neighbourhood planning.

***Clause 106 – Consequential amendments***

335. This clause (by giving effect to Schedule 12 to the Bill) makes consequential amendments in connection with neighbourhood planning.

**Chapter 4: Consultation**

***Clause 107 – Consultation before applying for planning permission***

336. Clause 107 amends the Town and Country Planning Act 1990 by inserting new sections to require prospective developers to consult local communities before submitting planning applications for certain developments.

337. New section 61W requires any person who intends to apply for planning permission for development of a prescribed description first to consult the local community and any specified persons, so that they may collaborate or comment. The prospective developer must have regard to any advice that the local planning authority may have provided.

338. New section 61X requires the developer to have regard to any comments or responses generated by the consultation undertaken in accordance with section 61W, when deciding whether to make any changes to their proposals before submitting their planning applications.

339. Section 61Y enables the Secretary of State to set out further provisions as to how the consultation required under section 61W should be undertaken in practice.

340. Subsection (2) amends section 62 of the Town and Country Planning Act 1990 so that an account of the consultation undertaken in accordance with section 61W must accompany any planning application for development to which the new duty applies, in order to make it valid.

## **Chapter 5: Enforcement**

### ***Clause 108 - Retrospective planning permission***

341. Subsection (2) inserts new section 70C into the Town and Country Planning Act 1990 – it provides that a local planning authority may decline to determine a retrospective planning application if an enforcement notice has been issued in relation to any part of the development.

342. Subsection (4) amends section 174 of the Town and Country Planning Act 1990 to provide that if a retrospective planning application has been made, but an enforcement notice has been issued before the time for making a decision has expired, the developer cannot then appeal against the enforcement notice on the ground in section 174(2)(a) (that planning permission ought to be granted – “ground (a)”).

343. Subsections (5) and (6) amend section 177 of the Town and Country Planning Act 1990 such that the Secretary of State may only grant planning permission when allowing an enforcement appeal if the appeal was made under ground (a) and that only ground (a) appeals result in a deemed application for planning permission.

### ***Clause 109 - Time limits for enforcing concealed breaches of planning control***

344. Clause 109(1) allows enforcement action to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.

345. In order to use these powers, the local planning authority must apply to the magistrates’ Court for a “planning enforcement order” within six months of the day on which the apparent breach came to the authority’s knowledge. If an order is granted, the authority has one year to take enforcement action. The authority can also apply for a planning enforcement order before the time limits for taking action have expired, as the expiry date may be in dispute.

346. The authority must serve a copy of the application on the persons on whom they would be required to serve an enforcement notice. Anyone served would be able to appear in Court when the application was heard.



347. A magistrates' court may make the order only if satisfied, on the balance of probabilities, that a person's actions (including representations or inaction) have resulted in, or contributed to, full or partial concealment of the apparent breach.

348. Subsection (2) provides for planning enforcement orders to be included in the local planning authority's enforcement register.

***Clause 110 - Planning offences: time limits and penalties***

349. Clause 110 makes amendments to a number of planning-related offences. Subsection (2) raises the maximum penalty from level 3 on the standard scale (£1,000) to level 4 (£2,500) for failure to comply with a breach of condition notice under section 187A of the Town and Country Planning Act 1990.

350. Most offences prosecuted in the Magistrates' Court must be brought within six months of commission. In some cases it is not clear when an offence was committed, which can lead to difficulties in bringing forward a prosecution.

351. Sub-sections (3) and (4) provide that prosecution for the offences of lopping or damaging a protected tree under section 210(4), and of contravening regulations on the control of advertisements in section 224(3) of the Town and Country Planning Act 1990, may be brought within six months of sufficient evidence of the offence coming to the prosecutor's knowledge (but no more than three years after the offence was committed).

***Clause 111 - Powers in relation to: unauthorised advertisements; defacement of premises***

352. Subsection (1) of clause 111 inserts four new sections at the end of Chapter 3 of Part 8 of the Town and Country Planning Act 1990. New section 225A allows a local planning authority to remove any display structure in their area which, in their opinion, is used for the display of illegal advertisements. This is not effective against a structure in a building to which the public have no right of access.

353. Before taking any action, the local planning authority must serve a removal notice on the person responsible for the erection and maintenance of the structure, provided they can identify him. If not, the authority must fix the removal notice to the structure or display it in the vicinity and serve a copy on the occupier of the land, if one is known or can be identified. If the removal notice is not complied with within the time allowed (at least 22 days), the authority may remove the structure and recover its expenses from anyone served with the removal notice. A person who can satisfy the authority that he was not responsible for either the erection or maintenance of the structure cannot be required to pay the expenses.

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as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

354. If the authority damages any land or chattels in removing the structure, they must pay compensation, but not for damage to the structure removed or for damage reasonably caused in moving the structure.

355. New section 225B allows local planning authorities to take action against persistent fly-posting on ‘surfaces’. They may serve an action notice on the owner or occupier of the land where the surface is situated if it is known or can be discovered. If not, they may fix the notice to the surface. The action notice requires the owner or occupier to take specified measures to prevent or reduce the frequency of the unauthorised advertisements. At least 29 days must be allowed for action to be taken. If action is not taken, the authority may take the specified action itself and recover its expenses from the owner or occupier. Action cannot be taken if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.

356. There is a right of appeal to the Magistrates’ Court against a section 225B notice. However, in an appeal against cost recovery the applicant cannot raise any matter on which they could have appealed the notice itself – those being that the sign is not detrimental to amenity or offensive; that the notice is materially defective; that the time allowed to comply with the notice is insufficient; or that it should have been served on another person.

357. New section 225D modifies the notice procedure for statutory undertakers. If a notice under section 225B is served on a statutory undertaker, it can serve a counter-notice on the local planning authority specifying alternative measures which would have the same effect as the notice in dealing with fly-posting.

358. Subsection (2) of clause 111 inserts new Chapters 4 and 5 into Part 8 of the Town and Country Planning Act 1990. New section 225E allows local planning authorities to take action against signs (graffiti) which it considers to be detrimental to the amenity of the area or offensive. The authority may serve a notice on the occupier of the premises requiring them to remove or obliterate the sign allowing at least 15 days to comply. If there appears to be no occupier, the authority may fix the notice to the surface. If action is not taken within the time specified, the authority may take the action itself and recover its expenses from the person who should have done it. Action cannot be taken if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.

359. New sections 225F and 225G provide that the local planning authority must give 28 days’ notice of their intention to serve a notice under section 225E to the owners of letter boxes and bus shelters and other street furniture.

360. There is a right of appeal to the magistrates’ court against a section 225E notice. However, in an appeal against cost recovery the applicant cannot raise any matter on which they could have appealed the notice itself – those being that the sign

is not detrimental to amenity or offensive; that the notice is materially defective; that the time allowed to comply with the notice is insufficient; or that it should have been served on another person.

361. New section 225I provides for the local planning authority to remove signs at the request of the owner or occupier of premises at that person's expense.

362. New section 225J in Chapter 5 modifies the provisions to enter land and do works to remove hoardings, fly-posters or graffiti so far as they apply to the operational land of transport statutory undertakers (except airports). The power can only be exercised if the local planning authority has given 28 days' notice of its intention to do so. The statutory undertaker can serve a counter notice which would prevent the action being taken on safety or operational grounds or to protect other works or apparatus.

363. This clause replaces provisions of certain London Local Authorities Acts that apply only in relation to London with provisions that apply throughout England.

## **Chapter 6: Nationally Significant Infrastructure Projects**

### ***Clause 112 - Abolition of Infrastructure Planning Commission***

364. Clause 112 provides for the abolition of the Infrastructure Planning Commission. All property, rights and liabilities of the Infrastructure Planning Commission will transfer to the Secretary of State. The transfer will be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 if it would not otherwise be treated as a relevant transfer under those regulations. Clause 112 also introduces Schedule 13.

### ***Schedule 13 - Infrastructure Planning Commission: transfer of functions to Secretary of State***

365. Schedule 13 makes amendments consequential to the abolition of the Infrastructure Planning Commission including amendments transferring its functions to the Secretary of State. In particular, the amendments enable the Secretary of State to appoint an inspector, or a panel of three to five inspectors, to examine an application and make a recommendation to the Secretary of State as to the decision to be made on the application. The Secretary of State must decide the application in accordance with any relevant national policy statement, subject to specified exceptions.

366. A number of other amendments are made by Schedule 13, including the following:

*These notes refer to the Localism Bill  
as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

- Paragraph 3 amends section 4 of the Planning Act 2008 to provide for the Secretary of State to charge fees in connection with specified functions
- Paragraph 6 repeals provision for the Secretary of State to prescribe non-compulsory model provisions.

***Clause 119 - Claimants of compensation for effects of development***

367. Clause 119 amends section 52 of the Planning Act 2008 to provide an additional power for the Secretary of State to authorise an applicant (or a proposed applicant) to serve a notice on certain people requiring them to provide information.

368. At present, the power in section 52 enables the Infrastructure Planning Commission to authorise an applicant (or a proposed applicant) to serve a notice on certain people (those falling within one of the categories specified in section 52(3)), requiring them to provide the applicant with the names and addresses of people with an interest in the land to which the application relates.

369. The additional power enables the Secretary of State to authorise an applicant (or a proposed applicant) to serve a notice on those same people, requiring them to provide the applicant with the names and addresses of persons entitled to make a relevant claim (as defined in subsection (14)). For this additional power, the definition of land is widened to include land in respect of which a relevant claim may be made.

370. New subsection (14) defines a relevant claim as:

- (a) a claim under section 10 of the Compulsory Purchase Act 1965 (compensation where satisfaction not made for compulsory purchase of land or not made for injurious affection resulting from compulsory purchase);
- (b) a claim under Part 1 of the Land Compensation Act 1973 (compensation for depreciation of land value by physical factors caused by public works); or
- (c) a claim under section 152(3) of the Planning Act 2008.

***Clause 113 - Transitional provision in connection with abolition***

371. Clause 113 enables the Secretary of State to make transitional provision governing how applications, or proposed applications, to the Infrastructure Planning Commission should be handled once the Infrastructure Planning Commission has been abolished. This clause provides the Secretary of State with a power of direction to enable:

- the effect after abolition of things done before abolition to be specified

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- the Act as it applied before abolition to continue to apply, with modifications if necessary
- the Act as it applies after abolition to apply with modifications
- Commissioners appointed to a panel or as a single Commissioner to continue to provide this service after abolition
- other transitional and savings provision to be made.

***Clause 114 - National Policy Statements***

372. Subsections (2) to (7) and (13) amend sections 5, 6 and 9 of the Planning Act 2008 to require House of Commons approval of National Policy Statements and material amendments to existing National Policy Statements. House of Commons approval is required in addition to complying with the existing consultation, publicity and Parliamentary scrutiny arrangements in sections 7 and 9. A draft National Policy Statement or amendment to an existing National Policy Statement (a “proposal”) must be laid before Parliament and can only be designated if the House of Commons resolves within 21 sitting days that it should be proceeded with, or that period ends without the House of Commons resolving that it should not be proceeded with.

373. Subsection (8) inserts a new section 6A into the 2008 Act. The rule in new section 6A(2) provides that if a proposal is an amended version of an earlier proposal, further consultation need not be carried out if the earlier proposal was consulted on, and the amendments do not materially affect the policy. In a situation where the amendments do materially affect the policy, the rule in new section 6A(3) provides that it is sufficient for further consultation to be limited to the material amendments.

374. New section 6A(4) provides that, where a proposal is laid before parliament for approval of the House of Commons, it is not necessary to comply with the Parliamentary scrutiny requirements in section 9(2) to (7) in relation to that proposal if they have been complied with in relation to an earlier version of that proposal.

375. Section 8 of the Planning Act 2008 requires the Secretary of State to consult with certain local authorities on publicity requirements in relation to a proposal where the policy set out in the proposal identifies locations as suitable or potentially suitable for specified descriptions of development. Subsections (9) to (12) of clause 109 amend section 8 to bring it in line with the provisions amended by clause 112.

***Clause 115 - Power to alter effect of requirement for development consent on other consent regimes***

376. Section 33 of the Planning Act 2008 provides that where a project requires development consent it will no longer require certain other consents listed in that section, for instance consent under section 36 of the Electricity Act 1989. Clause 115

amends section 33 of the Planning Act 2008 to give the Secretary of State the ability to amend section 33 in an affirmative procedure order, to add or remove a type of consent or vary the cases in relation to which a type of consent is required.

***Clause 116 - Secretary of State's directions in relation to projects of national significance***

377. Clause 116 amends section 35 of the Planning Act 2008. It would allow the Secretary of State to direct that a development is to be treated as requiring development consent under that Act before any application has been made in relation to the development.

378. This clause also inserts a new section 35A into that Act, which provides a timetable for dealing with requests for the Secretary of State to exercise the powers of direction in section 35. A request for a direction must specify the development to which it relates, and explain why the conditions in section 35(1)(b) and (c) are met. The Secretary of State must make a decision on a request within 28 days of the date the request is made, unless the Secretary of State asks for further information from the person who made the request, in which case the Secretary of State must make a decision within 28 days of the information being provided.

***Clause 117 - Pre-application consultation with local authorities***

379. Sections 42 to 44 of the Planning Act 2008 require the applicant to consult certain persons and categories of person about a proposed application for an order granting development consent, including certain local authorities. Clause 117 amends section 43 to alter the local authorities required to be consulted. At present, where development is sited in a two-tier local authority area, all authorities which share a boundary with the upper-tier authority must be consulted. The effect of the amendments to section 43 is that, where development is sited in a two-tier local authority area, lower-tier district authorities will only need to be consulted if they share a boundary with the lower-tier district authority in which the development is sited.

***Clause 118 - Reform of duties to publicise community consultation statement***

380. Section 47 of the Planning Act 2008 requires the applicant to prepare and publish a statement setting out how the applicant proposes to consult local people about a proposed application. At present, this statement must be published in a newspaper circulating in the vicinity of the land, and in such manners as prescribed by the Secretary of State. Clause 118 amends section 47 of the Planning Act to remove the requirement for the statement to be published in a newspaper in full. Instead, the statement must be made available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land. The applicant must

also publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected.

***Clause 120 - Rights of entry for surveying etc in connection with applications***

381. Clause 120 amends section 53 of the Planning Act 2008 to clarify that entry to land may be authorised for the purpose of fulfilling the requirements of the Environmental Impact Assessment and Habitats Directives (85/337/EC and 92/43/EC).

382. The amendments also remove the requirements that the application must be likely to seek authority to compulsorily purchase the land, and for compliance with the section 42 consultation requirements, before rights of entry can be granted.

***Clause 121 - Procedural changes relating to applications for development consent***

383. Clause 121 amends sections 88, 89 and 102 of the Planning Act 2008, and inserts new sections 88A, 102A and 102B.

384. Subsection (8) amends section 102 to amend the definition of interested party for the purposes of Chapter 4 of Part 6 of the Act. New subsection (1ZA) provides that a person ceases to be an interested party upon notifying the Examining authority in writing that the person no longer wishes to be an interested party.

385. Subsection (9) inserts new sections 102A and 102B. Section 102A provides that a person may make a request to become an interested party where they believe that they fall within one or more of the categories in section 102B and they were not notified of the acceptance of the application by the applicant.

386. Section 88 requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it must hold a preliminary meeting, inviting the applicant and each other interested party. Subsection (5) amends section 88 to provide that the Examining authority must also invite each statutory party and each local authority within new section 88A (inserted by subsection (6)) to the preliminary meeting.

387. Section 89 requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. The Examining authority must inform every interested party of its decisions. Subsection (7) amends section 89 to provide that the Examining authority must also inform each statutory party and local authority invited to the meeting under section 88 of those decisions, and that those persons may notify the Examining authority if they wish to become interested parties.

388. Subsections (2) to (4) make amendments which are consequential on the other amendments made by the clause.

***Clause 122 - Development consent subject to requirement for further approval***

389. At present, section 120 of the Planning Act 2008 enables a consent order to require subsequent approval by the Secretary of State or another person (e.g. a local authority) for a matter connected with the development after the consent order has been granted. This subsequent approval is akin to planning conditions which may be imposed under the Town and Country Planning system.

390. However, a limitation exists under section 120(2), in that a requirement for subsequent approval can only be imposed if an equivalent requirement could have been imposed under one of the consent regimes listed in section 33(1) (that is those regimes under which applications had to be made before the introduction of the Planning Act 2008).

391. Clause 122 would allow the order to impose a requirement for subsequent approval whether or not an equivalent requirement could have imposed under the consent regimes listed in section 33(1).

***Clause 123 - Changes to notice requirements for compulsory acquisition***

392. Section 134 of the Planning Act 2008 requires a person (the prospective purchaser) who has been authorised to acquire land compulsorily to serve a notice about this on persons with certain interests in that land. Clause 123 amends section 134 to remove the requirement for a copy of the order to be served instead requiring a copy of the order to be made available, at a place in the vicinity of the land, for inspection by the public at all reasonable hours.

393. The definition of ‘compulsory acquisition notice’ (subsection (7)) is also amended to include a requirement that it must state where and when a copy of the order is available for inspection.

**Chapter 7: Other planning matters**

***Clause 124 - Applications for planning permission: local finance considerations***

394. Clause 124 amends section 70(2) of the Town and Country Planning Act 1990. This existing provision sets out the matters to which regard is to be had when determining a planning application. It currently specifies that these matters are to be the development plan for the area and any other material considerations. The clause adds an additional set of matters by means of a new subsection (2)(b). These matters



are “local finance considerations” (a phrase which is defined in a new subsection (4)) in so far as they are material to the application.

395. The new provision applies to England only. It is not intended to change the current position about what lawfully can or must be taken into account in the determination of a planning application. Moreover, it is not intended to ascribe any particular weight to “local finance considerations”. It will remain for the decision-maker, such as the local planning authority, to decide this in the context of each application. Instead, the amendment is simply clarificatory. It makes clear to decision-makers (without the need to consult case law) that local finance considerations are capable of being taken into account when determining a planning application – in so far as they are material to the application.

## **PART 6: HOUSING**

### **Chapter 1: Allocation and Homelessness**

#### *Allocation*

##### *Clauses 126, 127, 128 - Allocation*

396. Clauses 126, 127 and 128 make reforms to the legislation on the allocation of social housing under Part 6 of the Housing Act 1996 (the 1996 Act). They give local housing authorities in England the power to determine what classes of persons are or are not qualifying persons to be allocated housing and take existing social tenants out of the scope of Part 6, with the exception of those who must be given reasonable preference for an allocation.

#### *Homelessness*

##### *Clause 129, 130 –Duties to homeless persons*

397. Clause 129 enables a local authority in England or Wales fully to discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant’s agreement. Tenancies must be for a minimum fixed term of 12 months.

398. Clause 130 provides that the main homelessness duty will recur, regardless of whether the applicant has a priority need for accommodation, if the applicant becomes unintentionally homeless again within 2 years of accepting a private sector offer. And re-applies for accommodation.

## **Chapter 2: Social Housing: Tenure Reform**

### ***Clauses 131, 132, 133 and 134 - Tenancy strategies***

399. Clause 131 places a new duty on every local housing authority to publish a tenancy strategy setting out, in high-level terms, the matters to which all registered providers of social housing should have regard in framing their own tenancy policies.

400. Clause 132 sets out the procedure an authority must follow when preparing its strategy or making a modification to it that involves a major change of policy, and in particular its obligation to consult private registered providers on a draft of the strategy.

401. Clause 133 provides that the Secretary of State may direct the social housing regulator to set a standard on tenure. Clause 134 requires that a local housing authority, when formulating its homelessness strategy, must have regard to its current allocations scheme, tenancy strategy and, where the authority is a London borough council, the London Housing strategy.

### ***Clauses 135 and 136 - Flexible tenancies***

402. Clause 135 gives local authorities the power to offer flexible tenancies to new social tenants. A flexible tenancy is a secure tenancy of a fixed term (not less than two years). The clause provides for the circumstances in which a new tenancy will be a flexible tenancy. It also provides for the process by which a landlord may offer and terminate a flexible tenancy as well as a tenant's right to terminate a tenancy or request a review of a landlord's decision with regard to the offer or termination process.

403. Clause 136 provides that the right to improve and to be compensated for improvements will not apply to a flexible tenancy. The clause also prescribes the circumstances in which an introductory tenancy will, on coming to an end, become a flexible tenancy. These provisions will apply where prior written notice has been served on the tenant advising them that the tenancy will become a flexible tenancy. The clause also prescribes that when a flexible tenancy is demoted, the tenancy will revert to being a flexible tenancy on successful completion of the period of demotion.

### ***Clauses 137, 138, 139, 140, 141, 142, 143 and 144 - Other provisions relating to tenancies of social housing***

404. Clauses 137 and 138 provide that, subject to certain conditions, existing secure and assured tenants will be able to retain a similar level of security on exchanging their property with a social tenant with a less secure tenancy.

*These notes refer to the Localism Bill  
as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

405. Clause 139 removes the statutory right of those other than spouses and partners to succeed to a secure tenancy. It also provides discretion for landlords to grant succession rights in addition to the statutory minimum of one succession to a spouse or partner. Clause 140 enables landlords to grant additional succession rights for assured tenancies. Tenancies commenced before these clauses come into force are not affected by these changes.

406. Clause 141 provides that if an assured shorthold tenancy becomes a Family Intervention Tenancy, and a new tenancy is granted after the Family Intervention Tenancy, then that tenancy will become an assured shorthold tenancy.

407. Clause 142 provides that a court cannot make an order for possession of a property let by a private registered provider of social housing with a fixed term of at least two years, unless the landlord has given the tenant at least six months' notice in writing stating that they do not intend to grant another tenancy and informing the tenant how they can obtain help and advice.

408. Clause 143 provides that tenants of private registered providers with assured shorthold tenancies will have the right to acquire their property subject to the same conditions applicable to assured tenants and further exclusions made by way of regulation.

409. Clause 144 extends repairing obligations on the landlord to include flexible tenancies and assured shorthold tenancies granted by registered providers with a fixed term of seven years or more.

### **Chapter 3: Housing Finance**

#### ***Clauses 145, 146, 147, 148, 149, 150, 151, 152 and 153 – Housing Finance***

410. Clauses 145-153 provide for a new system of council housing finance. The Housing Revenue Account Subsidy system will end and councils that operate a Housing Revenue Account will keep all of their rental income and use it to support their own housing stock.

411. Clause 146 sets out the framework for calculating the value of each local housing authority's housing service. To implement the new system some local housing authorities will be required to make a payment to Government and other local housing authorities will receive a payment from Government. The framework will be used in calculating the values of those payments, known as "the settlement payment", the details of which will be provided in a determination published by the Secretary of State.

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as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

412. Clause 147 allows the Secretary of State to issue a further determination if there has been a change in any matter that was taken into account when the settlement payment was calculated.

413. Clause 148 provides for the Secretary of State to require that payments to central government under clauses 146 and 147 are made in a certain way.

414. Clause 149 gives the Secretary of State the power to set a maximum amount of housing debt that can be held by each local housing authority.

415. Clause 150 requires local housing authorities to provide information necessary to exercise powers in this Chapter.

416. Clause 151 allows determinations issued according to powers in this Chapter to apply to all local housing authorities, groups of local housing authorities or individual local housing authorities and requires the Secretary of State to consult before making a determination.

417. Clause 152 amends the Local Government Act 2003 to enable the Secretary of State to continue to enter into agreements with local authorities to exempt certain council homes from the requirement, in regulations made under that Act, that a percentage of the net receipt be surrendered to central Government should those homes be sold.

#### **Chapter 4: Housing Mobility**

##### ***Clause 154 - Standards facilitating exchange of tenancies***

418. Clause 154 inserts section 193(2)(ga) and section 197(2)(d) into the Housing and Regeneration Act 2008.

419. The new section 193(2)(ga) of that Act will give the regulator of social housing the power to set a standard for registered providers in respect of assisting tenants with regard to mutual exchanges.

420. The new section 197(2)(d) of the Housing and Regeneration Act 2008 will give the Secretary of State power to direct the regulator to set a standard under section 193 of that Act, or about the content of standards under section 193, or to have regard to specified objectives when setting standards under section 193 or 194, where the direction relates in the Secretary of State's opinion to methods of assisting tenants to exchange tenancies.

***Clause 155 - Assisting Tenants of Social Landlords to become Home Owners***

421. Clause 155 enables tenants who are shareholders of their landlord organisation to benefit from payments which assist tenants to move out of their social rented property into owner occupation of another dwelling.

**Chapter 5: Regulation of social housing**

***Clauses 156 and 157 –Transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency; Regulation of Social Housing***

422. Clauses 156 and 157 introduce Schedules 16 and 17. The former Schedule abolishes the Tenant Services Authority (“the regulator”) and transfers the functions of the regulator to the Homes and Communities Agency through the creation of a regulation committee.

423. Schedule 17 makes amendments to the Housing and Regeneration Act 2008 in order to enact a change in the role of the regulator in relation to consumer matters. This includes provision to ensure the regulator may only use its monitoring and enforcement powers if it has reasonable grounds to believe that there has been a serious failure affecting tenants (or if there is a risk that there will be such a failure without the intervention of the regulator).

**Chapter 6: Other Housing Matters**

***Housing Ombudsman***

***Clause 158 - Housing Complaints***

424. Clause 158 makes changes to the way in which a tenant may make a complaint about their social landlord to a housing ombudsman. A complaint must be referred to the relevant ombudsman by way of a referral from a member of the House of Commons, a Councillor (a member of the local housing authority for the district in which the property concerned is located) or a designated tenant panel.

425. The clause also provides an order-making power to enable the Secretary of State to provide that the housing ombudsman may apply to a court or a tribunal in order that a determination it makes against a social landlord may be made enforceable.

***Clauses 159 and 160- Transfer of functions to the housing ombudsman***

426. Clauses 159 and 160 provide for the creation of a unified service for investigating complaints about the provision of social housing. Under existing

arrangements tenants of a local housing authority make their complaints to the Local Government Ombudsman (Local Commissioner) and tenants of private providers of social housing make their complaints to the Independent Housing Ombudsman. The clauses extend the Housing Ombudsman's remit to cover local authorities in their capacity as registered providers or managers of housing services while removing these matters from the jurisdiction of the Local Government Ombudsman.

### ***Home Information Packs***

#### ***Clause 161 – Abolition of Home Information Packs***

427. Clause 161 repeals Part 5 of the Housing Act 2004 which is concerned with the duty to provide a home information pack.

## **PART 7: LONDON**

### **Chapter 1: Housing and Regeneration Functions**

#### ***Clause 162 – Removal of limitation on Authority's general power***

428. Section 30 of the Greater London Authority Act 1999 empowers the Greater London Authority to do anything which supports its three principal purposes of promoting economic development and wealth creation, promoting social development and improving the environment in Greater London. In the exercise of this general power of competence, the Greater London Authority may carry on activities in the field of economic development and regeneration, which the London Development Agency and Homes and Communities Agency might otherwise have undertaken.

429. The Greater London Authority's general power of competence is limited by section 31 of the Greater London Authority Act, which prohibits expenditure on housing and education services. This clause removes the prohibition against housing expenditure and provides that the prohibition against expenditure on education services does not apply to expenditure on sponsoring or facilitating the sponsorship of academies.

#### ***Clause 163 – Greater London Authority's new housing and regeneration functions***

430. Clause 163 makes the following provisions by amending Part 7A of the Greater London Authority Act 1999 (housing):

- It empowers the Greater London Authority compulsorily to acquire land and new rights over land for housing and regeneration purposes, subject to authorisation by the Secretary of State.

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- It applies Part 1 of Schedule 2 to the Housing and Regeneration Act 2008 to compulsory acquisition by the Greater London Authority. Part 1, as applied to the Greater London Authority, applies the standard procedural model (contained in the Acquisition of Land Act 1981) to the compulsory acquisition of land by the Greater London Authority and makes provision for the extinguishment of private rights over land, with compensation to be paid.
- It applies Schedule 3 to the Housing and Regeneration Act 2008 to land of the Greater London Authority held for housing and regeneration purposes. Schedule 3, as applied to the Greater London Authority, makes provision that: enables the Greater London Authority to override easements; enables the Greater London Authority to apply to the Secretary of State for a public right of way to be extinguished and prescribes the statutory procedure that must be followed; and enables the Greater London Authority to use land that is, or forms part of, a burial ground, consecrated land and other land connected to religious worship, and includes power for the Secretary of State to make regulations prescribing requirements about the disposal of such land and about the removal and reinterment of human remains.
- It applies Schedule 4 to the Housing and Regeneration Act 2008 to land held by the Greater London Authority for housing and regeneration purposes. Schedule 4 makes provision for powers in relation to, and for, statutory undertakers including when notices can be served and representations made to the Secretary of State and appropriate Minister for an extension or modification to the functions and obligations of statutory undertakers.
- It makes provision to prohibit the Greater London Authority from disposing of land held for housing and regeneration purposes for less than the best consideration which can reasonably be obtained unless the Secretary of State consents (with the exception of certain disposals by way of a short tenancy). It provides that the Secretary of State may give consent, where required, generally or specifically.
- It provides that the Greater London Authority may authorise a person to enter and survey land in connection with a proposal by the Greater London Authority to acquire that land or other land for housing and regeneration purposes, or a claim for compensation in respect of the acquisition of such land.
- It places duties on the Greater London Authority in relation to social housing when it acquires, constructs or converts any housing or land for use as low cost rental accommodation and when it disposes of housing or land, or it provides infrastructure or gives financial assistance, on condition that low cost rental accommodation is provided. This is to ensure that when the accommodation is made available for rent the landlord is a “relevant provider of social housing” and thus

- It sets out the relationship between the Regulator of Social Housing and the Greater London Authority. The Regulator is given the power to direct the Greater London Authority not to give financial assistance in connection with social housing to a specified registered provider. The purpose of this power is to prevent financial assistance from being given to a registered provider where there are serious concerns about mismanagement or about the viability of the organisation.
- It empowers the Greater London Authority to deal with certain property, rights and liabilities, previously held by the Homes and Communities Agency or an urban development corporation or, prior to being held by the Homes and Communities Agency, by the Commission for the New Towns, and which are transferred to the Greater London Authority by virtue of a transfer scheme made under clause 166.
- It provides that the Secretary of State may, with the consent of Treasury, pay grants to the Greater London Authority for its housing and regeneration functions. A grant may be paid in such instalments and at such times as the Secretary of State may determine, and may be subject to such conditions as he may determine.

***Clause 164 – London housing strategy***

431. Clause 164 concerns the London housing strategy and makes changes to sections 333A and 333D of the Greater London Authority Act 1999 to reflect that the Greater London Authority is responsible for exercising housing functions in Greater London rather than the Homes and Communities Agency.

***Clause 165 – Modification to Homes and Communities Agency functions***

432. Clause 165 introduces a definition of England in respect of the Homes and Communities Agency's objects which excludes Greater London. It also makes other amendments to Part 1 of the Housing and Regeneration Act 2008 to exclude Greater London from references to "England".

***Clause 166 – Transfer of property of the Homes and Communities Agency***

433. Clause 166 empowers the Secretary of State to make schemes to provide for the transfer of property, rights and liabilities from the Homes and Communities Agency or the Secretary of State to the Greater London Authority, a functional body, a



subsidiary company of the Authority, the Secretary of State, a London Borough or the Common Council of the City of London. The Secretary of State may also specify by order any other persons to whom the property, rights and liabilities may be transferred.

#### ***Clause 167 – Abolition of the London Development Agency***

434. Clause 167 abolishes the London Development Agency. The date of abolition will be the date on which the clause comes into force as specified by commencement order. Schedule 20 contains amendments to primary legislation required in consequence of the Agency's abolition. Part 30 of Schedule 25 contains repeals of primary legislation required in consequence of the Agency's abolition.

435. Clause 167 also makes provision for the Secretary of State to make schemes for the transfer of the property, rights and liabilities of the London Development Agency. A scheme may be made in favour of the Greater London Authority, a functional body, a subsidiary company of the Authority, the Secretary of State, a London borough council, the Common Council of the City of London or any body specified by order made by the Secretary of State. The Secretary of State is required to consult the Mayor about the contents of a transfer scheme.

#### ***Clause 168 – Economic development strategy for London***

436. Clause 168 amends the Greater London Authority Act 1999. It requires the Mayor to prepare and publish an Economic development strategy for London. Similar provision is made in section 7A of the Regional Development Agencies Act 1998, under which the London Development Agency must prepare and publish an equivalent strategy under the supervision of the Mayor.

437. The Economic development strategy must contain an assessment of the economic conditions of London and the Mayor's policies and proposals for the economic development and regeneration of London. In preparing the strategy, the Mayor is required to consult representatives of employers and employees in London. The functional bodies must have regard to the strategy in the exercise of their functions.

438. This clause empowers the Secretary of State to issue guidance about the matters to be covered by the strategy and issues to be taken into account in preparing or revising it. It also empowers the Secretary of State to direct the Mayor to revise the strategy if it is inconsistent with national policies or has a detrimental effect on any area outside London.

***Clause 169 – General provision about transfer schemes***

439. Clause 169 makes general provision about transfer schemes that the Secretary of State may make to transfer property, rights and liabilities of the Homes and Communities Agency and London Development Agency. General provision includes provision applying the Transfer of Undertakings (Protection of Employment) Regulations 2006 to contracts of employment transferred by a transfer scheme (whether or not they would otherwise be transferred under those Regulations). It also allows provision to be made in a transfer scheme to enable section 36(3)(c) of the London Olympic Games and Paralympic Games Act 2006 to continue to apply to any land transferred: this is to ensure no enactment regulating the use of commons, open spaces or allotments prevents or restricts the use, for Olympic purposes, of land transferred.

***Clause 170 and 171 – Consequential provision***

440. Clause 170 empowers the Secretary of State to make consequential, transitory or transitional provision or savings for the purposes of or in consequence of the other provisions in Chapter 1 of Part 7. An order may, in particular, provide for the continuation, of things started by or in relation to the Homes and Communities Agency or the London Development Agency, by the Greater London Authority or another recipient of property, rights and liabilities under a transfer scheme.

441. Clause 171 introduces Schedules 19 and 20, which make amendments to legislation that are consequential on the other provisions in Chapter 1 of Part 7.

**Chapter 2: Mayoral Development Corporations**

***Clauses 172, 173, 174 and 175 – Establishment and areas***

442. Clause 172 provides for the Mayor to designate any area of land in Greater London, including separate parcels of land, as a mayoral development area provided he has consulted, where necessary, the individuals and bodies specified in the Bill. The Mayor must submit a document detailing his proposal for designation to the London Assembly and allow them 21 days to consider. If a two-thirds majority of the London Assembly object to the proposal then they can veto it. If the Mayor designates a mayoral development area successfully, the Mayor must publicise the designation and notify the Secretary of State of both the designation and the name of the Mayoral Development Corporation for the area.

443. Clause 173 provides that if the Secretary of State is notified of the designation of a mayoral development area, the Secretary of State must, by order, establish a Mayoral Development Corporation for the area giving it the name notified by the

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Mayor. A Mayoral Development Corporation will be a body corporate. The clause introduces Schedule 21 which makes provision about the constitution and governance of a Mayoral Development Corporation.

444. Clause 174 provides that the Mayor may alter the boundaries of a mayoral development area to exclude any area of land. Prior to this, the Mayor must consult the London Assembly and any other person the Mayor considers appropriate.

445. Clause 175 provides that the Secretary of State may, at any time, make a scheme transferring property, rights and liabilities of the persons specified in the Bill, once the Secretary of State has consulted with the persons concerned and the Mayor. The Mayor may make a scheme transferring property, rights and liabilities of the Greater London Authority or a functional body, other than the Mayoral Development Corporation, to a Mayoral Development Corporation.

***Clause 176 – Object and main power***

446. Clause 176 provides that a Mayoral Development Corporation's object is to secure the regeneration of its area. It may do anything it considers appropriate for that purpose or incidental purposes. A Mayoral Development Corporation can also have specific powers, which must be exercised for that purpose or incidental purposes.

***Clauses 173,174,175 and 176 – Planning and infrastructure functions***

447. Clause 173 makes provision for a Mayoral Development Corporation to become the local planning authority for the purposes, separately or collectively, of plan-making, development control and neighbourhood planning.

448. Clause 174 provides that a Mayoral Development Corporation may make arrangements for the discharge of its development control functions, in whole or part, by the relevant council(s). The Mayoral Development Corporation may also seek the relevant council's or councils' assistance in the discharge of its plan-making functions.

449. Clause 175 provides that if an order establishing a Mayoral Development Corporation has been made, the Mayor may decide to remove the Mayoral Development Corporation's planning functions or apply restrictions to their use.

450. Clause 176 provides that a Mayoral Development Corporation may provide or facilitate the provision of infrastructure. It may do so by way of acquisition, construction, conversion, improvement or repair.

***Clauses 182, 183, 184, 185 and 186 – Land functions***

451. Clause 182 provides that a Mayoral Development Corporation may carry out or facilitate a range of specified activities including the regeneration or development of land and bringing about the effective use of land.

452. Clause 183 provides that a Mayoral Development Corporation can acquire land within its area or elsewhere by agreement. With the authorisation of the Secretary of State, and the prior consent of the Mayor, a Mayoral Development Corporation can acquire compulsorily land or new rights over land within its area or elsewhere within Greater London.

453. Clause 184 provides for Schedules 3 and 4 to the Housing and Regeneration Act 2008 to apply in relation to a Mayoral Development Corporation and its land. The powers include powers to override easements and extinguish public rights of way, powers in relation to burial grounds and consecrated land, and powers in relation to, and for, statutory undertakers. Where a Mayoral Development Corporation wishes to extinguish rights of way, it requires the Mayor's agreement.

454. Clause 185 provides that a Mayoral Development Corporation is not permitted to dispose of land for less than best consideration, unless the Mayor consents, but this does not apply to granting or assigning a short tenancy of seven years or less.

455. Clause 186 provides that a Mayoral Development Corporation can: authorise a person to enter land in connection with a proposal by the Mayoral Development Corporation to acquire that land or other land, or a claim for compensation in respect to the acquisition of land; and exercise this power for the purposes of surveying land or estimating its value.

***Clauses 187,188,189 and 190 – Other functions***

456. Clause 187 provides that if street works in a Mayoral Development Corporation's area are needed and involve a private street, the Mayoral Development Corporation can serve an adoption notice on the street works authority – making the street (or part of it) a highway maintainable at public expense. The authority may appeal against a notice and ask the Secretary of State to decide how to proceed.

457. Clause 188 provides that a Mayoral Development Corporation may carry on any business and, if the Mayor agrees, set up or take a stake in bodies corporate. Mayoral Development Corporation subsidiaries cannot take part in activities which Mayoral Development Corporations themselves cannot. A subsidiary of a Mayoral Development Corporation cannot borrow from, or raise money by issuing shares or

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stock to, a person other than the Mayoral Development Corporation without the Mayor's approval.

458. Clause 189 provides that with the Mayor's consent, a Mayoral Development Corporation can give financial assistance to any person and in any form.

459. Clause 190 provides that the Mayor may decide, subject to prior consultation, that the power to grant discretionary relief from business rates should be transferred from the relevant local authorities to the Mayoral Development Corporation.

***Clauses 191, 192 and 193 - Dissolution***

460. Clause 191 provides that the Mayor is obliged to review, from time to time, the continuing existence of a Mayoral Development Corporation.

461. Clause 192 provides for the Mayor to transfer any Mayoral Development Corporation property, rights or liabilities to: the Greater London Authority; a subsidiary company of the Authority; a functional body of the Greater London Authority other than the Mayoral Development Corporation; or a London borough council; the Common Council of the City of London or any other body - with their agreement.

462. Clause 193 provides that the Mayor can ask the Secretary of State to revoke the order that established a Mayoral Development Corporation, provided the Mayoral Development Corporation has no property, rights or liabilities. The Secretary of State must make an order giving effect to any such request from the Mayor.

***Clauses 194, 195, 196, 197 and 198 - General***

463. Clause 194 sets out general provisions for the transfer of property, rights or liabilities (including in relation to a contract of employment) under a transfer scheme.

464. Clause 195 provides that the Mayor can, following consultation, issue guidance or revoke or vary previous guidance to Mayoral Development Corporations. A Mayoral Development Corporation must have regard to any guidance issued to it by the Mayor.

465. Clause 196 provides that the Mayor may give directions or revoke or vary previous general or specific directions to a Mayoral Development Corporation.

466. Clause 197 provides that the Mayor can give his consent under this Chapter unconditionally or subject to conditions; and generally or specifically. He may vary or revoke such consents, subject to various conditions and limitations.

### **Chapter 3 – Greater London Authority Governance**

#### ***Clauses 199, 200, 201, 202, 203, 204, 205 and 206 – Greater London Authority Governance***

467. Clauses 199 to 205 reform miscellaneous aspects of the Greater London Authority's governance framework under the Greater London Authority Act 1999.

468. Clause 199 gives Government Ministers the power to delegate certain functions to the Mayor of London. The functions which can be delegated are those which do not consist of a power to make regulations or other instruments of a legislative character, or a power to set fees or charges and which the Secretary of State considers can appropriately be exercised by the Mayor. Section 409 of the Greater London Authority Act 1999 enables a Minister to transfer associated property, rights or liabilities and this clause amends that section to enable these to be transferred back if a delegation is revoked.

469. Clause 200 requires the Greater London Authority, if it carries on specified activities for a commercial purpose, to do so through a taxable body, to ensure tax parity with the private sector. This could be through a subsidiary company of the Authority or the delegation of the activity to a taxable body using the Mayor's powers of delegation under section 38 of the Greater London Authority Act 1999.

470. Specified activities will be defined in regulations made by the Secretary of State with the consent of the Treasury and may include activities such as development of land. If any specified activity is not carried out through a taxable body, the Authority (or body acting under a delegation) will not be treated as exempt from income tax, corporation tax and capital gains tax in respect of that activity.

471. Clause 201 consolidates the six current statutory environmental strategies which the Mayor must publish into a strategy known as "the London Environment Strategy". The Secretary of State may give guidance to the Mayor on the content and preparation that strategy, and subject to conditions, may give the Mayor a direction as to its content. Schedule 23 makes amendments to the Greater London Authority Act 1999 to reflect this consolidation.

472. Clause 202 repeals the duty on the Mayor to publish four-yearly reports on the state of environment in Greater London.

473. Clause 203 amends the general provisions in relation to the Mayor's strategies. The Mayor when preparing a strategy must have regard to the need to ensure consistency with the UK's EU obligations and other international obligations as well as national policies. The Mayor must also have regard to the strategies listed in section 41(1) of the Greater London Authority Act 1999.

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474. Clause 204 removes the duty on the Mayor to carry out a two-stage consultation process in relation to each of his statutory strategies, by removing the obligation to consult the Assembly and functional bodies first, before conducting a wider public consultation.

475. Clause 205 provides the London Assembly with a power to reject any of the Mayor's statutory strategies if a two-thirds majority of Assembly members vote against its publication. No power of veto applies, however, if a change to a strategy is made to comply with a direction from the Secretary of State.

476. Clause 206 extends the provisions of Part 5A of the Local Government Act 1972, which provide for access to meetings and documents of most local authorities, to Transport for London, bringing that body into line with the position of the Greater London Authority. The application of Part 5A to Transport for London is modified in two respects: the requirement to disclose the addresses of members is removed; and the requirement to list the titles of officers to whom functions are delegated is limited to those officers who have a function delegated to them directly by Transport for London or a committee of Transport for London (and does not include any further sub-delegations).

## **PART 8: GENERAL**

477. Part 8 of the Bill makes general provisions about pre-commencement consultation and about orders and regulations in the Bill and for the Parliamentary or Assembly procedures that apply in relation to such instruments. Schedule 25 makes various repeals and revocations consequential to the provisions of the Bill, and the Secretary of State and, in relation to Wales, Welsh Ministers are given powers to make further consequential amendments as appropriate. This Part also provides for the extent, commencement and short title of the Bill.

### ***Clause 207 - Tax***

478. Clause 207 introduces Schedule 24 - Transfers and transfer schemes: tax provisions.

479. Schedule 24 makes tax provision in relation to the transfer of property, rights and liabilities from the Office for Tenants and Social Landlords (the Office), the Homes and Communities Agency and the London Development Agency and enables the Treasury to make tax regulations in relation to transfers to or from a Mayoral Development Corporation.

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480. Paragraph 1 of Schedule 24 ensures that the transfer from the Office to the Homes and Communities Agency is tax neutral for income tax and corporation tax purposes.

481. Paragraph 2 defines terms used in Part 2 of the Schedule. In particular it defines a public body and includes a power enabling the Treasury to prescribe a person as a public body for the purposes of Part 2.

482. Paragraph 3 provides continuity of treatment for corporation tax purposes for the computation of profits and losses of a trade on the transfer under a transfer scheme of a trade, or part trade, from the Homes and Communities Agency or the London Development Agency to a public body within the charge to corporation tax.

483. Paragraph 4 applies where trading stock of the Homes and Communities Agency or the London Development Agency is transferred to a public body within the charge to corporation tax under a transfer scheme where the transferee does not succeed to the transferor's trade, or part of it. For corporation tax purposes the stock is treated as being disposed of for an amount that would result in no profit or loss being brought into account for the transferor.

484. Paragraph 5(1) provides continuity, for corporation tax purposes, for the transfer under a transfer scheme of a trade loan relationship from the Homes and Communities Agency or the London Development Agency to a public body within the charge to corporation tax. Paragraph 5(2) provides continuity, for corporation tax purposes, for the transfer under a transfer scheme of a non-trade loan relationship from the Homes and Communities Agency or the London Development Agency to a public body.

485. Paragraph 6 ensures that a transfer to a public body under a transfer scheme, that constitutes a capital gains disposal for the Homes and Communities Agency or the London Development Agency, is treated as a disposal giving rise to no gain or loss, and adds the provision to the "no gain/no loss" provisions in section 288(3A) of the Taxation of Chargeable Gains Act 1992.

486. Paragraph 7 prevents stamp duty arising on a transfer scheme under clause 162 where the transferee is a public body.

487. Paragraph 8 provides for situations where a transfer scheme is modified subsequent to the delivery of a company return causing the company's return to be incorrect. It enables the company to amend its return to correct the error, notwithstanding the normal time limits for doing so, within 12 months of the end of the accounting period in which the modification occurred. Where the company does not do so HM Revenue and Customs may make a discovery assessment or



determination within 24 months of the end of the accounting period in which the modification occurred.

488. Paragraph 9 enables the Treasury to make tax regulations in relation to transfer schemes effecting transfers to or from a Mayoral Development Corporation.

## **COMMENCEMENT**

489. Clause 214 provides for commencement. The provisions listed in subsection (5) come into force on the day on which the Bill is passed. Clause 99 comes into force on the day after that day. The provisions listed in subsection (1) come into force 2 months after that passing date.

490. The other provisions in the Bill will come into force on a day appointed by the Secretary of State, or where appropriate, the Welsh Ministers, by order.

## **FINANCIAL EFFECTS**

491. The Bill places several new duties, or extended duties, on local authorities and/or partner authorities and other public bodies. The Bill will create an estimated charge of £21m per year on local authorities. Funding for this new burdens cost will be provided by the Secretary of State through Spending Review 2010 in line with new burdens assessments for each policy proposal.

## **PUBLIC SECTOR MANPOWER IMPLICATIONS**

492. This Bill will not represent a significant change to public service manpower.

## **SUMMARY OF IMPACT ASSESSMENT**

493. The Bill is accompanied by an overarching Impact Assessment. This is available through the Vote Office and in the House Libraries.

494. Individual Impact Assessments for provisions, signed by Ministers, have been published.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

495. The Government considers that the Localism Bill is compatible with the European Convention on Human Rights. Accordingly, Baroness Hanham has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

496. Further explanation of key human rights issues is provided. References to articles are to articles of the European Convention on Human Rights.

### *Part 1 - Local Government*

497. Chapter 4 of Part 1 (Predetermination) clarifies the position as to when councillors and co-opted members may and may not participate in decision making processes in their authorities. It is possible that some of these decisions will amount to the determination of a person's civil rights, and therefore that Article 6 may be engaged. However, the clause goes no further than decisions of the English and Welsh courts on matters of bias (see *R (on the application of Lewis) v Persimmon Homes Teeside Ltd* [2008] EWCA Civ 746.) In addition there are in existence adequate routes of challenge to decisions of local authorities.

498. Chapter 5 of Part 1 (Standards) provides for the abolition of the Standards Board for England. It is conceivable that this could affect the property rights of individuals who have entered into contracts with the Board, thus engaging Article 1 Protocol 1. However, in exercising powers granted by the Bill to abolish the Board, the Secretary of State is obliged by section 6 of the Human Rights Act 1998 to act in compliance with Convention rights. In the case of deprivation of property, this will almost certainly require the payment of compensation, and a power is provided for the Secretary of State to do so.

499. It is also possible that Chapter 5 will engage Article 8 as the Standards Board for England holds information relating to complaints made against members and co-opted members of local authorities and the Chapter makes provision for this data to be transferred or destroyed by direction of the Secretary of State. The provisions that prohibit unauthorised disclosure of this information, and the duty of the Secretary of State to act in compliance with Convention rights, ensures there is no breach of Article 8.

### *Part 2 – EU Fines*

500. The power in Part 2 (EU Fines) for a Minister of the Crown to require a local or public authority to pay all or part of a financial sanction imposed on the UK by the Court of Justice of the European Union, has the potential to engage Article 6, because

a private person or body exercising public functions could be designated as a public authority under clause 33(1).

501. However there is no breach of Article 6. In determining whether to impose such a requirement, the Minister must follow the procedure set out in clauses 31 and 32 and act in compliance with Convention rights. Compliance with this procedure, and the decision to require payment are reviewable by the courts.

#### *Part 4 – Community Empowerment*

502. Chapter 4 of Part 4 (Assets of Community value) engages Article 1, Protocol 1 as both the listing of land and the imposition of a moratorium have the potential to be interferences with property rights within the meaning of that article, and engages Article 6 in the determination of those rights.

503. The Bill provides the framework for the new community right, with much of the detail to be provided in secondary legislation. In considering the European Convention on Human Rights implications of this policy, it is therefore relevant that in exercising powers to make secondary legislation, the Secretary of State and Welsh Ministers are bound by section 6 of the Human Rights Act 1998 to act in compliance with the Convention.

504. The Bill requires that a landowner be notified of listing (clause 78), and the landowner will have the right to challenge this decision by seeking an internal review (clause 79). Though not independent, this will give landowners the opportunity to make representations to the authority. There is a power to make provision by regulation as to the procedure to be followed in such reviews. The finding of an internal review will itself be reviewable in the normal way by the courts, but, should this be considered insufficient to ensure Article 6 compliance there is also a power to provide for appeals in the regulations.

505. There is a small risk that listing of land could adversely affect its value, amounting to an interference in property rights, and the moratorium period by preventing a sale will be such an interference. However any interference can be justified as necessary in the general interest and proportionate. The scheme is for the benefit of the community, and without it sales of sites which are of community interest may be completed without local groups being aware that they were for sale. Although there is no right of first refusal, the moratorium period will allow groups to organise and prepare competitive bids for assets. The interference in the owners' rights are likely to be minimal when considered in the context of the time generally taken to arrange property transactions. By providing for a two stage moratorium, the Bill further minimises the interference with the rights of landowners.

506. Clearly the length of the moratorium periods will be relevant in ensuring the right balance is struck between the rights of the community and the landowner. These will be set by the Secretary of State or Welsh Ministers, and the Government intends to consult before doing so. Finally, it is acknowledged that payment of compensation may be necessary in some cases, and a power to provide for this by regulations has been included.

### *Part 5 – Planning*

507. The development plan for an area is made up of local and regional plans and strategies, which are unlikely of themselves to be determinative of a person's civil rights or obligations within the meaning of Article 6. To the extent that they are, the statutory procedure in place in relation to their drafting, including the right to challenge a local plan in the High Court under section 287 of the Town and Country Planning Act 1990 is Article 6 compliant (see *Bovis Homes v New Forest District Council* [2002] EWCH 483).

508. However such plans may indirectly engage Article 8 and Article 1 Protocol 1. By virtue of section 38(6) of the Planning and Compulsory Purchase Act 2004 they are material in determining individual applications for planning permission, and the grant (or refusal) of permission will engage those rights. Such determinations are themselves subject to procedural safeguards and ultimately challengeable under section 288 of the Town and Country Planning Act 1990. This procedure has been found to be European Convention on Human Rights compliant (see *R(on the application of Alconbury Developments Ltd and others) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23).

509. The revocation of existing regional strategies by Chapter 1 of Part 5 (Plans and strategies) may, therefore, engage Article 8 and Article 1 Protocol 1. However any interference is proportionate and necessary to achieve the Government's policy of returning planning decision-making to a local level. Development plans will still include local plans which have been drawn up in consultation with the community and subjected to independent scrutiny, and neighbourhood development plans, discussed below. Individual planning applications will still be decided according to a procedure compliant with convention rights.

510. Chapter 1 of Part 5 also makes changes to the procedure for drafting development plan documents, but it is considered that these are not significant to the overall compliance of the procedure with Article 6, if indeed this is required (see above).

511. Chapter 3 of Part 5 (Neighbourhood Planning) makes provision for neighbourhood development plans and neighbourhood development orders. As with other development plans, neighbourhood development plans are unlikely to be

determinative of civil rights and obligations under Article 6, but to the extent they are, the procedures put in place ensure compliance. For example, regulations are capable of providing for representations to be made about the draft plan, and there will be an independent examination of each plan. In addition decisions can be challenged by way of judicial review.

512. Neighbourhood development orders are likely to involve a determination of an individual's civil rights and obligations, since the grant of a neighbourhood development order amounts to a grant of planning permission. Again the Government considers that the process put in place by the Bill, which includes independent examination and the ability to challenge decisions by application for judicial review, ensures that there is no breach of Article 6.

513. It is possible that neighbourhood development plans may, in certain circumstances, engage Article 1 Protocol 1 rights, and neighbourhood development orders will engage rights protected by that article and by Article 8 (the grant of planning permission for one property has the potential to affect the use and enjoyment of another person's property and its grant creates rights to use property in accordance with it).

514. However the neighbourhood planning provisions serve the legitimate aim of providing greater freedom for local communities to shape the places they live in. There will be procedural safeguards in place (provided in regulations) giving an opportunity for those who have objections to have them taken into account, and for these to be considered by an independent examiner. Further, in deciding whether or not to approve a plan or order, a local planning authority will carry out a balancing exercise, deciding whether to approve a plan or order. In doing so it is required to act in compliance with Convention rights, and need not approve a plan or order that is not compliant (see Schedule 9, new sections 61E(8) and 38A(6)).

515. The provisions in Chapter 5 of Part 5 (Enforcement) make various changes to the enforcement of planning breaches. Whilst enforcement engages Article 6, the changes will not render the procedures non-compliant. There will remain access to an independent and impartial tribunal, either via judicial review, or via an enforcement appeal. In the case of concealed breaches of planning control (clause 109), the courts have a discretion as to whether or not to make a planning enforcement order, and in the case of prosecutions, to stay proceedings where there is an abuse of process. The courts are, like other public bodies, bound to act in accordance with Convention rights by section 6 of the Human Rights Act 1998. In commencing these provisions, the Government will ensure there is no unfairness caused by retrospective effect.

516. There may also be, as with other planning provisions, an engagement of Article 8 and Article 1 Protocol 1 rights. However any interference is justified as the proper enforcement of planning law pursues the legitimate aim of protecting the rights

of others by protecting the environment (see *Chapman v United Kingdom* [2001] 33 EHRR 18), and is proportionate when considered against the public interest of infringements of planning control being dealt with expeditiously.

517. The provisions in Chapter 6 of Part 5 (Nationally significant infrastructure projects) transfer the responsibility for granting certain planning consents to the Secretary of State. Article 6 rights are engaged, but there is no breach. Although initial decisions will not be made by an independent body, an aggrieved party is able to seek judicial review of these decisions. This is a return to the pre 2008 position, and has been held to be sufficient for Article 6 purposes (see *R(on the application of Alconbury) v Secretary of State for the Environment Transport and the Regions* [2001]UKHL 23).

518. This Chapter also enables the Secretary of State to authorise entry onto land for the purpose of undertaking survey work and to take samples to facilitate compliance with legislation implementing the Environmental Impact Assessment Directive and the Habitats Directive (clause 120). Whilst this may engage both Article 8 and Article 1, Protocol 1 rights, any interference pursues the legitimate aim of ensuring compliance with the Directives and ascertaining the suitability of the land for a proposed major infrastructure project. The circumstances in which entry may be authorised are narrowly drawn, and the Government considers that it strikes a fair balance between an individual's rights and the wider public interest.

519. Paragraph 42 of Schedule 13 provides a power for the Secretary of State to direct that examination of applications for development consent may, in certain cases, be held via closed hearings. These provisions are based on provisions in the Town and Country Planning Act 1990, inserted by the Planning and Compulsory Purchase Act 2004. It is the Government's view that these provisions are proportionate to the legitimate aim of safeguarding national security.

### *Part 6 – Housing*

520. Chapter 1 of Part 6 (Allocation and homelessness) makes changes to the allocation of social housing in England. These changes do not, in the Government's view give rise to interference in Article 6 rights, as applicants for social housing are not being provided with a personal right to the allocation of a home, so there is no determination of a civil right. As the persons affected by these provisions are merely prospective tenants, it is the Government's view that there is no engagement of Article 8 (which does not afford a right to be provided with a home) or Article 1, Protocol 1.

521. This Chapter also provides that a local housing authority in England and Wales may fully discharge their duty to secure accommodation for unintentionally homeless persons by arranging an offer of suitable accommodation in the private rented sector. Again, it has been held that application for homelessness assistance does not engage

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Article 6 – but in any case applicants have a right to internal review of the suitability of the offer of accommodation, and a right to appeal to the County Court on points of law.

522. It is also the Government's view that there is also no incompatibility with Article 8. The duty on local housing authorities to secure accommodation for the unintentionally homeless remains.

523. The tenure reform provisions in Chapter 2 of this Part do not give rise to any human rights issues, as they will only apply to prospective and not to existing tenants.

*Part 7 - London*

524. The provisions of Chapter 1 of Part 7 (Housing and regeneration functions) give the Greater London Authority power to compulsorily acquire land and rights over land and to override and extinguish existing rights. These are powers that were granted to the Homes and Communities Agency by the Housing and Regeneration Act 2008 ("the 2008 Act"). Chapter 2 (Mayoral Development Corporations) provides that a Mayoral Development Corporation may be given similar rights.

525. The power to acquire land may engage Article 8 and Article 1 Protocol 1. The power may only be exercised for housing and regeneration purposes in the case of the Greater London Authority or, in the case of a Mayoral Development Corporation, in furtherance of its objects. In both cases these purposes will be for the public interest, and thus justifiable under these articles. The Greater London Authority and a Mayoral Development Corporation, as public bodies for the purposes of the Human Rights Act 1998, will be required to act proportionately in considering whether to exercise these powers.

526. The Bill applies Schedule 2 to the 2008 Act to such acquisitions and thus the acquisition must be authorised by the Secretary of State in accordance with the procedure laid down by the Acquisition of Land Act 1981. This provides for a public enquiry in cases of dispute. Schedule 2 also provides for compensation to be paid in cases of compulsory purchase, ensuring that any interference in Article 1 Protocol 1 rights can be proportionate.

527. The Bill also applies Schedule 3 to the 2008 Act in relation to acquisitions by the Greater London Authority and Mayoral Development Corporations. This gives the Greater London Authority and Mayoral Development Corporations power to override easements, breach restrictions as to user of land arising by virtue of contracts, and deal with burial grounds and consecrated land. This engages Article 6, Article 8 and Article 1 Protocol 1.

528. Any interference must be in accordance with planning permission and the relevant procedures set down in Schedule 3 to the 2008 Act, and compensation is payable for loss or damage arising from the interference with private rights. Again, the Greater London Authority or a Mayoral Development Corporation can only exercise these powers for limited purposes, that are by definition in the public interest, and must act in a way that is European Convention on Human Rights compliant. In the case of burial grounds, the Secretary of State has power by regulation to prescribe requirements about the removal and re-interment of human remains.

529. Schedule 3 to the 2008 Act also authorises the Secretary of State to extinguish public rights of way. It is unlikely such a right could be a possession for the purposes of Article 1 Protocol 1, but it is possible to conceive of circumstances where extinguishment of a public right of way may impact on someone's home or family life so as to engage Article 8. The procedure that the Secretary of State must follow is set out in the Schedule. The Secretary of State must, in exercising this power, act in a way that is compatible with the European Convention on Human Rights.

530. Schedule 4 to the 2008 Act is also incorporated. This includes a power for the Secretary of State and appropriate Minister to make an order extending or modifying a statutory undertaker's functions if certain conditions apply. Orders that may be made include orders giving power to statutory undertakers to acquire land compulsorily – and thus this power may engage Article 6, Article 8 and Article 1 Protocol 1. However, in exercising this power, the Secretary of State and appropriate Minister are required to exercise their discretion in a manner compatible with Convention rights. Further, any such order is subject to a special parliamentary procedure – ensuring a high degree of scrutiny.

531. Chapter 1 and Chapter 2 of Part 7 also give the Greater London Authority (clause 163, new section 333ZD) and Mayoral Development Corporations (clause 181) power to authorise a person to enter land at a reasonable time for the purpose of surveying it or estimating its value. The power may only be exercised in connection with a proposal to acquire land or a claim for compensation in respect of any acquisition of land. These provisions may engage Article 8 and Article 1, Protocol 1. However any interference will be limited - 28 days' notice of entry is required, and compensation is payable for any damage done - and proportionate to the wider public interest.

## **ANNEX A: TERRITORIAL APPLICATION TABLE**

532. Where a clause, or a Schedule introduced by a clause, amends or repeals (or revokes) existing legislation, the amendment or repeal has the same extent as the legislation amended or repealed (see clause 213(5)) but this will not necessarily be reflected in entry in the table for the clause. For example, clause 174 (which is about



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London) introduces Schedule 21. Paragraph 12 of Schedule 21 makes an amendment in UK-wide legislation, but the entry for clause 174 indicates that the clause only applies in relation to England.

<b>Clause Number</b>	<b>Title</b>	<b>Application of Clause</b>
<b>PART 1: LOCAL GOVERNMENT</b>		
<b>CHAPTER 1: GENERAL POWERS OF AUTHORITIES</b>		
1	Local authority's general power of competence	England only
2	Boundaries of the general power	England only
3	Limits on charging in exercise of general power	England only
4	Limits on doing things for commercial purpose in exercise of general power	England only
5	Powers to make supplemental provision	England only
6	Limits on power under section 5 (1)	England only
7	Procedure for orders under section 5	England only
8	Interpretation of Chapter	England only
<b>CHAPTER 2: FIRE AND RESCUE AUTHORITIES</b>		
9	General powers of certain fire and rescue authorities	England and Wales
10	Fire and rescue authorities: charging	England and Wales
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*These notes refer to the Localism Bill  
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as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

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as brought from the House of Commons on 19th May 2011 [HL Bill 71]*

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# LOCALISM BILL

## EXPLANATORY NOTES

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