

*These notes refer to the Infrastructure Bill [HL]  
as introduced in the House of Lords on 5th June 2014 [HL Bill 2]*

## **INFRASTRUCTURE BILL [HL]**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Infrastructure Bill [HL] as introduced in the House of Lords on 5th June 2014. They have been prepared by the Department for Transport, the Department for Communities and Local Government, the Department for Environment, Food and Rural Affairs, the Department for Business, Innovation and Skills and the Department of Energy and Climate Change in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes do not form part of the Bill and have not been endorsed by Parliament.

2. The 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.

#### **SUMMARY**

3. The Bill is in 5 Parts and contains 5 Schedules.

4. Part 1 and Schedules 1 to 3 make provision for the appointment of “strategic highway companies” to manage strategic roads in England in place of the Highways Agency.

5. Part 2 makes provision for the control of invasive non-native species through species control agreements and orders and related matters.

6. Part 3 makes provision about Nationally Significant Infrastructure Projects, deemed discharge of planning conditions and about the Homes and Communities Agency (HCA) and other bodies. That Part together with Schedule 4 also provides for Land Registry to assume responsibility for the registration of local land charges and to have wider powers to provide information and register services relating to land and other property.

7. Part 4 and Schedule 5 make provision about a community electricity right which, if exercised, will give individuals resident in a community, or groups connected with a

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community, the right to buy a stake in a renewable electricity development in or adjacent to the community.

8. Part 5 contains some general provisions that apply to the Bill as a whole.

**TERRITORIAL EXTENT AND APPLICATION**

9. The provisions in Part 1 extend to England and Wales only, save that clauses 11, 13 and 14 extend to the United Kingdom, and that amendments and repeals generally have the same extent as the provision being amended or repealed.

10. The provisions in Part 2 extend to England and Wales only.

11. The provisions in Part 3 relating to Nationally Significant Infrastructure Projects under the Planning Act 2008 extend to England and Wales and (in relation to certain oil and gas cross-border pipelines) Scotland. The 2008 Act deals with matters that are not devolved so far as Wales and Scotland are concerned. The amendments relating to deemed discharge for planning conditions, and the HCA and other bodies extend to England and Wales and apply to England only.

12. The provisions in Part 3 relating to Land Registry extend and apply to England and Wales only (except where they consequentially amend an Act with a wider extent). Land registration is devolved to Scotland and Northern Ireland. These are not devolved matters in relation to Wales with the exception of local land charges fees. However, because the system for local land charges is fundamentally changing, the power to prescribe variable fees across England and Wales has arguably become redundant.

13. Insofar as amendments to section 14 of the Local Land Charges Act 1975 relate to the power to make rules in relation to fees, they concern a devolved matter. This has been addressed by making provision for the Lord Chancellor to obtain the consent of the Welsh Ministers before setting standard fees applicable across England and Wales.

14. The community electricity right in Part 4 extends to England and Wales and Scotland, and applies there (including the internal waters) and to the Renewable Energy Zone (with the exception of the territorial sea adjacent to Northern Ireland).

15. Part 5 extends to the United Kingdom.

## **COMMENTARY ON CLAUSES**

### **PART 1 – STRATEGIC HIGHWAYS COMPANIES**

16. The strategic road network (SRN) is a network of motorways and trunk roads consisting of around 2% of England's roads and carrying a third of its traffic. The Highways Agency (HA) is the executive agency of the Department for Transport (DfT) responsible for the maintenance, operation and enhancement of the SRN on behalf of the Secretary of State.

17. In June 2013, *Investing in Britain's Future* [Command Paper 8669] announced the Government's spending plans for roads up to 2020-21. Details of how this would be delivered were firmed up in *Action for Roads* [Command Paper 8679], published by the DfT in July 2013, alongside proposals on how to reform the existing institutional set-up to ensure delivery of the investment package whilst maximising efficiency. On 29th October 2013, DfT published a consultation document *Transforming the Highways Agency into a Government owned company*.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254356/road-s-reform-consultation-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254356/road-s-reform-consultation-document.pdf)

18. The consultation put forward proposals for:

- The creation of an arms-length Government-owned company and the transfer of powers and duties to allow it to discharge functions currently discharged by the Highways Agency.
- New legislation to underpin the long term funding settlement and new Road Investment Strategy (RIS) processes.
- Power for the Secretary of State to make transfer schemes which would allow assets and liabilities (including land and contractual obligations) to be transferred to a strategic highways company.
- Arrangements for two bodies - a road user watchdog and efficiency monitor - providing independent scrutiny of the company's performance, advising government and being a focal point for road users.

19. The Government published its response on 30th April 2014 and confirmed its intention to bring forward its proposals. The strategic highways company will be incorporated under the Companies Act 2006 limited by shares where the sole shareholder is the Secretary of State. The Government confirmed its intention to establish a governance framework for the strategic highways company comprising legislation, a licence document,

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a Framework Agreement, a Road Investment Strategy and Articles of Association, supported by relevant guidance and standards. Those proposals requiring primary legislation are provided for in this Bill.

**Clause 1: Appointment of strategic highways companies**

20. Clause 1 provides for the Secretary of State to appoint one or more companies as a highway authority. Appointment is by order.

21. *Subsection (2)* provides that a company appointed may only be one that is limited by shares and wholly owned by the Secretary of State – therefore limiting ownership of the company (or companies). *Subsection (3)* provides further that where the company ceases to be wholly owned by the Secretary of State the appointment automatically terminates.

22. An appointment may also be terminated by the Secretary of State revoking the order under which the appointment is made pursuant to section 14 of the Interpretation Act 1978.

23. A company appointed under this clause is to be known as a “strategic highways company” (*subsection (4)*).

**Clause 2: Area and highways in an appointment**

24. *Subsection (1)(a) and (b)* of clause 2 provides that a strategic highways company must be appointed to an area (and that area must be within England) and that the highways within the area in respect of which the company is appointed must be specified (although *subsection (2)* provides that this may be by name or by description). *Subsection (3)* provides that the highways specified must be highways for which the Secretary of State (or another strategic highways company) is the highway authority.

25. It is therefore possible, for example, for one company to be appointed for the whole of England, or for two or more companies to be appointed for different areas. The initial policy intention is for the appointment of one strategic highways company for the whole of England.

26. Responsibility for a limited number of highways in Wales is retained by the Secretary of State. *Subsection (4)* allows for those highways to be included within the appointment.

27. *Subsections (5) and (6)* provide that in the event of a strategic highways company ceasing to be the highway authority for one or more highways (whether by virtue of a variation or termination of the strategic highways company’s appointment) the Secretary of State will automatically become the highway authority for those highways.

## **Schedule 1 Strategic highways companies: consequential and supplemental amendments**

### **Schedule 1 Part 1 – amendments to the Highways Act 1980**

28. Part 1 of Schedule 1 contains amendments to the Highways Act 1980 to allow one or more strategic highways companies to become highway authorities instead of, or alongside, the Secretary of State. (Currently, the Secretary of State is in law the highways authority for the strategic roads network even though his functions are in practice exercised by the Highways Agency.)

29. Where a strategic highways company is appointed, the amendments will have the effect that, for the most part, the powers and duties of the Secretary of State, in relation to the roads included in the appointment, will transfer to the strategic highways company. These include the duty to maintain public highways; powers to construct, maintain and improve highways for which it is responsible; powers to acquire land for the purposes of being a highway authority; and powers to enter into agreements with local highway authorities. A company will also be responsible, where it is the highway authority, for determining whether an environmental impact assessment is required for schemes pursued under powers in the Highways Act 1980. The Secretary of State retains order making powers on the classification of a highway including whether a road is trunked.

30. *Paragraph 43* inserts a new section 175B into the Highways Act 1980. It requires consent to be obtained from the strategic highways company for the construction, formation or laying out of any access to or from a trunk road in England. This new power allows the strategic highways company to ensure that access to its network does not interfere with the safety of road users or have a negative impact on the network (for example, by increasing congestion). Currently these aspects can be managed by the Secretary of State who may give directions restricting the grant of planning permission by local planning authorities for development affecting the strategic road network. These powers of direction will not be available for a strategic highways company to use directly; new section 175B provides a means by which it will be able to safeguard road safety and the integrity of the road network.

### **Schedule 1 Part 2 - Other Enactments**

31. *Paragraphs 68 to 98* amend the Road Traffic Regulation Act 1984 to make a strategic highways company a traffic authority for all highways for which it is responsible, and to enable the company to exercise all the functions of a traffic authority. So, for example, a strategic highways company will be able to make Traffic Regulation Orders in the same way as local traffic authorities; or to charge for the removal, storage or disposal of vehicles in the same way as other traffic authorities.

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32. *Paragraph 99* amends the Road Traffic Act 1988 to allow the Secretary of State to delegate the function authorising the use of special vehicles on the highway. Special vehicles are those vehicles that do not, or cannot, comply with the Road Vehicles (Construction and Use) Regulations 1986 and cannot therefore be lawfully used on the road. Section 44 of the Road Traffic Act 1988 enables the Secretary of State to authorise the use of special vehicles on the road and to make that authorisation subject to certain conditions. Due to the size and nature of abnormal and indivisible loads, they are not capable of being split into component parts and carried on separate vehicles and so special arrangements must apply. The Highways Agency currently authorises vehicles to carry such loads on behalf of the Secretary of State for motorways and trunk roads in England, Scotland and Wales and the ability of the Secretary of State to delegate this function will enable the new company to continue to carry out this function in the future.

33. *Paragraphs 100 to 105* make a number of consequential amendments to highways-related provisions of the Town and Country Planning Act 1990 to ensure that, where appropriate, they apply to a strategic highways authority.

34. *Paragraph 106 to 108* amend the Environmental Protection Act 1990 placing the duty to keep land and highways clear of litter on a strategic highways company for special roads (motorways). Local authorities are responsible for this on trunk roads unless the trunk road has been specified as one where the duty has transferred to the Secretary of State. The policy intention is that the strategic highways company would be responsible for such specified trunk roads.

35. *Paragraphs 109 to 120* amend the New Roads and Street Works Act 1991 to ensure that existing provisions work properly where a strategic highways company becomes a street authority by virtue of its status as a highway authority. In particular, paragraphs 110 to 112 enable the company, where it has entered into a concession agreement in its capacity as highway authority under section 1, to apply a toll with the consent of the Secretary of State in the same way as a local highway authority would do currently.

36. *Paragraph 121 to 124* amend the Transport Act 2000 to allow the Secretary of State to apply a road use charge on trunk roads where he has appointed a strategic highways company to be the highway authority, in order to preserve the existing arrangements. They also enable a strategic highway company to carry out functions in relation to trunk road charging schemes, such as the installation and maintenance of equipment for the scheme.

37. *Paragraphs 125 to 149* amend the Traffic Management Act 2004 to enable the Secretary of State to delegate his responsibility for deciding the uniform for traffic officers to the company. Paragraphs 131 to 143 amend the existing network management duty which applies to local highway authorities so that it applies to a strategic highways company as well as local highway authorities.

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38. *Paragraph 150* amends the Civil Contingencies Act 2004 with the effect that a strategic highways company is responsible under that Act as a “category 2” responder required to co-operate and share information in emergency planning arrangements.

39. Section 22 of the Planning Act 2008 sets out the circumstances in which highway-related development is a nationally significant infrastructure project (NSIP) and so subject to the development consent regime under that Act. One of the conditions is that the Secretary of State is or will be the highway authority for the highway. *Paragraph 151* amends section 22 to provide that such development will also be an NSIP if a strategic highways company is or will be the highway authority.

### **Clause 3: Road Investment Strategy**

40. Clause 3 provides that each strategic highways company must have a Road Investment Strategy comprising a statement of the objectives to be achieved by the strategic highways company and the financial resources which will be provided by the Secretary of State to achieve those objectives. *Subsection (5)* requires the Secretary of State and the strategic highways company to comply with the Road Investment Strategy.

### **Schedule 2 Road Investment Strategy**

41. Schedule 2 describes the procedure for setting and varying a Road Investment Strategy. *Paragraph 1(2)* contains a transitional provision to the effect that the procedure does not apply for the first Road Investment Strategy, so long as the Secretary of State publishes it within a year of clause 3 coming into force.

42. Part 1 governs the procedure for setting a Road Investment Strategy. It describes the steps that the Secretary of State takes and those steps the company takes in response. The Secretary of State’s initial proposals must specify objectives to be achieved by the company, the financial resources to be provided by the Secretary of State and the time period which is to be covered by the proposed Road Investment Strategy.

43. Part 2 governs the procedure for varying a Road Investment Strategy which has been settled and published. The procedure is similar to that described in Part 1, but there is a further consultation requirement.

### **Clause 4: Directions and guidance**

44. Clause 4 allows the Secretary of State to direct or guide a strategic highways company in the way it carries out its functions. The company must comply with any directions and have regard to any guidance when exercising its functions. The Secretary of State must publish all directions and guidance in such form as he considers appropriate.

**Clause 5: Fines**

45. Clause 5 allows the Secretary of State to impose a fine where a strategic highways company fails to meet the requirements set out in a Road Investment Strategy or fails to comply with directions (or to have regard to guidance) issued by the Secretary of State under clause 4. The Secretary of State must issue a statement of policy as to how his functions under this clause will be exercised.

**Clause 6: Delegation of functions**

46. Clause 6 allows a strategic highways company to authorise another person to exercise its functions, so long as the functions are specified in regulations made by the Secretary of State. Functions delegated in this way may be exercised by both the authorised person and employees of that person (clause 7(1)) and may continue to be exercised by a strategic highways company notwithstanding the delegation (*subsection (3)(a)*). Powers or rights of entry and powers or duties to make subordinate legislation (e.g. certain orders under the Highways Act 1980) may not be delegated (*subsection (6)*).

**Clause 7: Exercise of delegated functions**

47. This clause sets out further details as to the basis on which functions which are delegated under clause 6 are exercised. *Subsection (2)* provides that where a delegated function under clause 6 is exercised by a company, anything done by it or its employees in connection with the actual or purported exercise of the function is to be treated as having been done by the company subject to the exceptions set out in *subsection (3)*. *Subsection (4)* provides that Schedule 15 of the Deregulation and Contracting Out Act 1994, which imposes restrictions on the disclosure of information in respect of functions which are delegated under that Act, applies in respect of functions which are delegated under clause 6.

**Clause 8: Watchdog**

48. Clause 8 provides for the Passengers' Council (which is generally known as Passenger Focus) to carry out activities to protect and promote the interests of road users in relation to those roads managed by a strategic highways company.

49. *Subsection (3)* permits the Secretary of State to make regulations (following consultation with the Passengers' Council) which narrow the scope of the functions conferred on the Passengers' Council by this section. This power is subject to the negative resolution procedure.

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50. *Subsection (6)* provides for the Passengers' Council to be able to carry out equivalent functions in respect of local highway authorities and their performance, subject to agreement with the relevant local highway authority.

**Clause 9: Monitor**

51. Clause 9 provides for the Office of Rail Regulation to monitor how a strategic highways company carries out its functions. Those activities may include investigating and publishing reports or giving advice on how the company has achieved its objectives under a Road Investment Strategy.

52. *Subsection (3)* provides powers for the Office of Rail Regulation to compel a strategic highways company to provide information to enable it to carry out its monitoring duties.

**Clause 10: Transfer schemes**

53. Clause 10 allows the Secretary of State to make schemes transferring property, rights and liabilities when a company is appointed, or ceases to be appointed, as a strategic highways company. *Subsection (1)* allows flexibility for the transfer of assets between the Secretary of State and a company (or in reverse), between companies if needed where there is more than one company or to a proposed strategic highways company having the effect that assets can be transferred at the time of appointment or very shortly before appointment to ensure that the company is operationally capable from the day of appointment.

**Schedule 3 Transfer schemes**

54. This Schedule contains further provisions governing transfer schemes made under clause 7.

55. *Paragraphs 1 and 2* set out how a transfer scheme may specify or identify property, rights and liabilities to be transferred. They also provide when the scheme may come into force and define what may be transferred under a scheme. *Paragraphs 3 and 4* allow a scheme to create new rights and liabilities as between transferors, transferees and third parties.

56. *Paragraph 5* provides that transfer schemes made under this Act shall have the effect of vesting property, rights and liabilities in the transferee without the need for any further formalities.

57. *Paragraph 6* provides for the transfer of any statutory powers or duties the transferor may have in relation to property, rights and liabilities transferring under a scheme.

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58. *Paragraph 8* allows the transferor and transferee to modify a transfer scheme by agreement after it has come into force. Where the agreement would relate to a contract of employment or adversely affect the interests of a third party, the agreement will only be valid if the relevant employee or third party is party to it.

59. *Paragraph 9* contains provision for continuity of employment rights for employees of the transferor who become, by virtue of a transfer scheme, employees of the transferee. It also provides safeguards in relation to the pension entitlement of employees transferred under a transfer scheme. *Sub-paragraph (2)* sets out what happens if an individual objects to the transfer of their employment contract under a transfer scheme before it takes effect. The contract of employment will be terminated immediately before the point at which the transfer would have taken place but the employee is not to be considered to have been dismissed for any purpose. *Sub-paragraph (3)* preserves an individual's right to terminate their contract of employment where there is a substantial detrimental change in the individual's working conditions, other than the change of employer.

60. *Paragraph 10* provides for circumstances in which compensation may be payable to third parties as a result of provisions in a transfer scheme.

61. *Paragraph 11* provides a power for the Secretary of State to require a company to provide him or her with information which he or she needs in order to be able to make a scheme. The company may be subject to a notice and ultimately a court order if it does not comply with a request for information.

#### **Clause 11: Tax consequences of transfers**

62. Clause 11 allows the Treasury to make provision about the tax consequences of a transfer of property, rights and liabilities either under a transfer scheme or occurring by virtue of section 263 of the Highways Act 1980 (which will have the effect that where a company becomes a highway authority the highways in respect of which it is appointed will vest in the company). The intention, broadly speaking, is to ensure that a transfer is "tax neutral" – that is, that no charge to tax arises merely because of a transfer.

#### **Clause 12: Financial assistance**

63. This clause provides the Secretary of State with authority to provide financial resources to any person for the purposes of transport services by land in England. This power will be used in particular to provide funding to a strategic highways company, and also (inter alia) to provide funding to the Office of Rail Regulation and the Passengers' Council in respect of their functions under the Bill as monitor and watchdog respectively in connection with the performance of a strategic highways company. Financial assistance may take the form of grants, loans or guarantees (*subsection (3)*). The power conferred by

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the clause supersedes an earlier power in the Ministry of Transport Act 1919, to which a consequential amendment is made in *subsection (5)*.

**Clause 13: Transfer of additional functions**

64. Clause 13 provides for the Secretary of State to amend by regulations other legislation so as to transfer additional functions concerning highways or planning from the Secretary of State to a strategic highways company. This power is subject to the affirmative procedure.

**PART 2 – INVASIVE NON-NATIVE SPECIES**

65. Invasive non-native species pose serious threats to biodiversity, the water environment, economic prosperity, human health and welfare. The economic impact in the UK has recently been estimated as a minimum of £1.8 billion per annum which includes £1 billion to the agriculture and horticulture sectors and over £200m to the construction, development and infrastructure sectors. Early eradication is critical to tackling invasive non-native species – for example, it is estimated that the early eradication of the invasive aquatic plant water primrose would cost £73,000 compared to £242 million if the plant became fully established as it has in France and Belgium.

66. At present, Defra's and the Welsh Government's network bodies have to rely on reaching voluntary agreements with landowners to undertake work or to gain access to their land to eradicate invasive non-native species found there. Whilst most landowners are willing to enter into voluntary agreements, experience has shown that a small minority (around 5%) are not. In contrast to powers available under animal and plant health legislation to combat disease and pests, the network bodies have no powers to compel landowners to act, or powers of entry for surveillance or to carry out work themselves in respect of invasive non-native species. This places England and Wales in a vulnerable position in terms of biosecurity.

67. It is therefore proposed that new powers are taken to compel landowners to take action on invasive non-native species or permit others to enter the land and carry out those operations. The intention is that these powers are used in exceptional circumstances where a voluntary approach cannot be agreed and there is a clear and significant threat from inaction. These provisions include the creation of new criminal offences and new powers of entry.

68. These provisions formed part of the Law Commission's consultation on its Wildlife Law Project in 2012. The Law Commission subsequently produced a report in January 2014 specifically on species control orders, which has formed the basis of the model set out in the Bill.

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<http://lawcommission.justice.gov.uk/publications/2612.htm>

## **Clause 16: Invasive non-native species**

69. Clause 16 inserts a new subsection 14(4A) in the Wildlife and Countryside Act 1981 providing for measures relating to species control agreements and species control orders to be contained in a new Schedule 9A. The provisions of Schedule 9A are described below.

### *Part 1 – Overview and interpretation*

70. Paragraph 1 explains that the purpose of this Schedule is to enable species control agreements and orders to be made between environmental authorities and owners of premises, and for species control orders to be made by environmental authorities, to effect eradication or control of invasive non-native species.

71. Paragraph 2 defines “invasive” and “non-native”. Although there is no list of “invasive non-native species”, non-native species include (but in the case of animals are not limited to) those specified in Schedule 9 to the Wildlife and Countryside Act 1981. The proposed code of practice (paragraphs 24 and 25) will set out circumstances where it may be appropriate to make an agreement or order. This will limit their use primarily to recently arrived species that are not widely established in England and Wales.

72. Paragraph 3 establishes that the Secretary of State; the Welsh Ministers, Natural England; Environment Agency; the Forestry Commission in England; and the Natural Resources Body for Wales will have powers to make species control agreements and orders.

73. Paragraph 4 defines the term “owner” as either a freeholder or leaseholder of the premises.

74. Paragraph 5 sets out the types of operations that may be agreed or ordered. Paragraph 5(2) clarifies that that a reference to “carrying out” operations in this Schedule also includes arranging for operations to be carried out by someone else. An owner or an environmental authority may wish to arrange for operations to be carried out by a contractor on their behalf.

### *Part 2 – Species control agreements*

75. Paragraphs 6 and 7 describe the making and content of a species control agreement. Paragraph 6(3)(a) establishes the principle that before entering into a species control agreement, an environmental authority must be satisfied that the provisions of the proposed agreement are proportionate. Paragraph 6(3)(b) places an obligation on the

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environmental authority to be satisfied that where there may be more than one owner of the premises, the owner with whom the agreement is made is the most appropriate one. If an agreement relates to a dwelling, paragraph 6(4) provides that the only environmental authorities that may enter into such an agreement are the Secretary of State or the Welsh Ministers. The purpose of this restriction is to provide an additional check to ensure that such powers are used sparingly in relation to dwellings, and only as last resort.

76. Paragraph 8 limits the liability of the environmental authority for any operations carried out in accordance with a species control agreement to the owner with whom the agreement is made, rather than anyone who may hold a legal interest in the premises.

*Part 3 - Species Control Orders*

77. Paragraph 9 describes the circumstances where a species control order may be made. Paragraph 9(2)(b)(i) is designed to allow the environmental authority to make a species control order if it receives a categorical response from an owner that they will not enter into a species control agreement before waiting for the 42 day period set out in paragraph 9(2)(b)(ii) to expire. Paragraph 9(2)(c) allows an environmental authority to make a species control order where there is urgent necessity, without having to go through the process of offering a species control agreement. The circumstances where this may be appropriate will be set out in the proposed ministerial code of practice and will indicate that these emergency species control orders should only be made in exceptional circumstances. However, there may be legitimate circumstances where the environmental authority needs to eradicate a species as a matter of urgency, particular if it was concerned that any delay could result in the species becoming more widely established. Paragraph 9(4) restricts a species control order from being made in relation to any dwelling unless it is made by either the Secretary of State or the Welsh Ministers. The purpose of this restriction is to provide an additional check to ensure that such powers are used sparingly in relation to dwellings, and only as last resort.

78. Paragraph 10 sets out what detail must be contained within a species control order in different specified circumstances. This includes provision requiring the owner to carry out species control operations, provision stating that the environmental authority proposes to carry out operations, or both.

79. Paragraph 11 sets out the other details that must be included in all species control orders, such as the operations to be carried out and the time by which they must, or are proposed to be, completed.

80. Paragraph 12 sets out other provisions that may be included in a species control order in addition to that required under paragraphs 10 and 11. Paragraph 13 provides that, after a species control order is made, notice must be given to the owner and to the Secretary of State and the Welsh Ministers.

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81. Paragraph 14 provides for a species control order to be revoked at any time by the environmental authority that made it. An environmental authority may wish to revoke a species control order if it was no longer required. For example, the species may no longer be present on the premises. An environmental authority may also wish to revoke a species control order if it was no longer fit for purpose. In these circumstances, an environmental authority may wish to offer a new species control agreement or make a new species control order, though the process would be required to start afresh.

82. Paragraph 15 provides for an owner of premises which become subject to a species control order to appeal to the First-tier Tribunal against either the making of the order or any provision contained within it. Paragraph 15(3) sets out what action the First-tier Tribunal may take in determining an appeal.

83. Paragraph 16 allows an environmental authority to carry out the operations itself should an owner fail to comply with the terms of the order, and recover any costs of those operations, reasonably incurred, from the owner.

84. Paragraph 17 sets out the offences relating to the new regime.

85. Paragraph 18(1) removes any liability of an owner to any person when that owner is doing anything in accordance with a species control order. Paragraph 18(2) removes the liability of an environmental authority to any person with an interest in the premises for any action it, or an owner, is required to carry out in accordance with a species control order.

*Part 4 – Powers of Entry*

86. Paragraph 19 provides for new powers of entry to support these proposals. Paragraph 20(1) sets out the circumstances in which powers of entry will require a warrant from a justice of the peace before they can be exercised. This includes, for example, where the premises are unoccupied or admission is refused by the owner. Paragraph 20(1)(e) says that a warrant is required where giving notice would defeat the purpose of the proposed entry. This is to deal with the situation where an environmental authority was concerned that giving notice to the owner may result in them inappropriately disposing of the species, perhaps by transporting them elsewhere. Where the Secretary of State or the Welsh Ministers have made an order that relates to premises consisting of a dwelling, paragraph 20(1)(a) ensures that a warrant must be obtained in order to exercise a power of entry in relation to those premises.

87. Paragraph 21 establishes that at least 48 hours' notice should be given to an owner before exercising the powers of entry.

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88. Paragraph 22 sets out how and when the powers of entry may be exercised. Paragraph 22(1) establishes that a right of entry is exercisable at any reasonable time. Whilst the environmental authorities would ordinarily seek to exercise rights of access during normal office hours, there may be other times when the operations may be best carried out. For example, the best time for shooting operations, including minimising disruption, may be at dawn or dusk. Surveillance operations for some species may be necessary in the evening.

*Part 5 - Supplementary*

89. Paragraph 23(1) provides that the Secretary of State and the Welsh Ministers may make arrangements to compensate an owner in respect of financial loss resulting from a species control agreement or order, or the exercising of the powers of entry.

90. Paragraph 24 requires the Secretary of State to issue a code of practice for species control agreements and orders in relation to England and sets out what must be contained in it. Paragraph 24(4) ensures the Secretary of State consults other environmental authorities before issuing, revising or replacing the code of practice. Paragraph 24(5)(a) requires of the Secretary of State to ensure that the code of practice is publicised appropriately so that those people with a likely interest are made aware of it. Paragraph 24(5)(b) requires the Secretary of State to lay a copy of the code before Parliament.

91. Paragraph 25 imposes similar requirements on the Welsh Ministers as those on the Secretary of State in relation to a code of practice.

92. Paragraph 26(1) removes liability on a person for civil or criminal proceedings if they have failed to comply with a provision of the code. Paragraph 26(2) enables the code to be admissible in evidence in any civil proceedings. Where it appears relevant to the court, it must be taken into account in any such proceedings.

93. *Subsections (4) to (6)* of the clause are consequential amendments disapplying certain sections in the Wildlife and Countryside Act 1981 to these provisions.

## **PART 3 – PLANNING AND LAND**

### **NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS**

94. The Planning Act 2008 (“the 2008 Act”) established the regime governing applications in respect of nationally significant infrastructure projects. In 2013, the Government launched a review of the regime, which concluded that it is operating well and that major change is both unnecessary and undesirable. The review did, however, identify a number of minor improvements which would strengthen the regime further. Some of these can only be implemented by amendment of the 2008 Act.

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as introduced in the House of Lords on 5th June 2014 [HL Bill 2]*

<https://www.gov.uk/government/consultations/reviewing-the-nationally-significant-infrastructure-planning-regime-a-discussion-document>

95. Clauses 17 and 18 make changes to the procedures under which a major infrastructure project under the 2008 Act is examined. Currently, the 2008 Act provides for an “Examining authority” to carry out examination of a project. The Examining authority may be a single person, or a panel of three, four or five people. Clause 17 provides for the Examining authority to be appointed earlier in the process than at present. Clause 18 provides that examinations of projects may, additionally, be conducted by panels of two people.

96. The Secretary of State currently has powers to make changes to, or to revoke, a development consent order which grants permission in respect of a major infrastructure project. Clause 19 makes amendments to the powers under which the Secretary of State may make regulations governing the way in which applications to make such a change are considered.

#### **DEEMED DISCHARGE OF PLANNING CONDITIONS**

97. It is proposed to introduce a ‘deemed discharge’ provision for certain types of planning conditions which require the approval, agreement or consent of the local planning authority where a decision has not been made within a specified period. The effect of a deemed discharge will be that the applicant is treated as having received that approval. It is the Government’s intention to set out the exclusions that may be required in secondary legislation.

#### **THE HOMES AND COMMUNITIES AGENCY AND OTHER BODIES**

98. From 2015 the HCA will be taking on a new role as the land disposal agency for Government.

99. Currently, land held by an arm’s length body of a government department cannot transfer directly to the HCA. Instead it must first transfer to the sponsor Department, before being transferred to the HCA. This method requires two independent legal processes. Clause 21 will allow the direct transfer of land held by arm’s length bodies to the HCA.

100. The HCA, the Greater London Authority (GLA) and a mayoral development corporation (MDC) currently have powers to override the operation of third-party rights, interests and restrictions on their land (such as easements and restrictive covenants). However, once land is sold, these powers are not available to any purchaser and these interests can no longer be overridden.

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101. Clause 22 will ensure future purchasers of land owned by the HCA, the GLA or an MDC will be able to develop and use that land without being affected by easements and other rights and restrictions. This will allow purchasers of land from these bodies to achieve parity with buyers of land belonging to local authorities and other public bodies involved in regeneration and development (such as housing action trusts and urban development corporations).

## **HER MAJESTY'S LAND REGISTRY**

102. The Land Registry's principal function is to keep a register of title to freehold and leasehold land and charges throughout England and Wales and to record dealings in land once it is registered. On behalf of the Crown, it guarantees title to registered estates and interests in land.

103. It is a non-Ministerial Government department consisting of a Chief Land Registrar (CLR), appointed by the Secretary of State, and staff appointed by the CLR.

104. Clause 23 and Schedule 4 make provision about the transfer of responsibility for local land charges from individual local authorities in England and Wales to the CLR.

105. The Land Registry has developed a Business Strategy for 2013 to 2018. The strategy was based on meeting the needs of its customers and stakeholders, facilitating digitisation of land registration services and improving the management and re-use of land and property data.

106. Clause 24 provides for an extension of the Chief Land Registrar's powers to enable Land Registry to provide information and register services relating to land and other property. Clause 25 provides for the transfer of responsibility for appointing the consumer affairs member of the Rule Committee appointed under the Land Registration Act 2002 from the Lord Chancellor to the Secretary of State.

## **Nationally significant infrastructure projects**

### **Clause 17: Timing of appointment of examining authority**

107. Clause 17 amends section 61 of the 2008 Act to enable the earlier appointment of examining authorities on applications for development consent for nationally significant infrastructure projects. The amendment enables the Secretary of State to appoint an examining authority immediately after an application for consent has been accepted under section 55 of the 2008 Act.

### **Clause 18: Two-person Panels**

108. Clause 18 amends the 2008 Act to enable the Secretary of State to appoint a two-person panel as the examining authority for an application for development consent for a nationally significant infrastructure project. Currently the 2008 Act provides for the appointment of a single person, or a panel of three, four or five people. *Subsection (1)* amends section 65 of the 2008 Act and *subsections (2) to (4)* make three consequential amendments to that Act: section 68 is amended so that the appointment of additional panel members is only required if a panel is reduced to a single member (rather than reduced to two members); section 73 is amended to remove a current reference to a panel consisting of two members; and section 75 is amended to clarify the procedure for decision-making for two-person panels.

### **Clause 19: Changes to, and revocation of, development consent orders**

109. Clause 19 amends the provisions set out in Schedule 6 to the 2008 Act relating to changes to, and revocation of, orders granting consent in respect of nationally significant infrastructure projects (“development consent orders”) by the Secretary of State.

110. The existing paragraph 2 of Schedule 6 provides for an application to be made seeking a “non-material” change to a development consent order. Paragraph 2(8) of Schedule 6 provides, in respect of an application for such a change, that the Secretary of State must comply with prescribed consultation and publicity requirements.

111. *Subsection (2)(a)* amends paragraph 2(8) to provide that the duty to comply with consultation and publicity requirements may be placed upon the person who has made the application for a non-material change to a development consent order.

112. *Subsection (2)(b)* clarifies that the power to make regulations under paragraph 2(8) of Schedule 6 includes power to allow the Secretary of State, or the person making the application, to exercise a discretion. The intention is to clarify that the power allows regulations to include, for instance, provision allowing the Secretary of State to dis-apply prescribed consultation requirements where this is considered appropriate.

113. Paragraph 3 of Schedule 6 makes provision in respect of “material” changes to development consent orders, including in circumstances where an application for such a change is made. *Subsection (3)* confirms that the Secretary of State may refuse to exercise the power to make a material change in response to an application if it is considered that the development that would be authorised as a result of the change should properly be subject to an application under section 37 (applications for orders granting development consent) of the 2008 Act. This provision is to ensure that the Secretary of State can refuse to change an existing order where it is considered that an application for a change should be treated as a new application for development consent.

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114. Paragraph 4(4) of Schedule 6 provides power for the Secretary of State to make regulations about the procedure to be followed where an application for a material change to a development consent order is made. *Subsection (4)* clarifies that this power includes power to allow a person to exercise a discretion. The rationale for this change is the same as that in respect of the amendment to paragraph 2(8) of Schedule 6.

## **Deemed discharge of planning conditions**

### **Clause 20: Deemed discharge of planning conditions**

115. Clause 20 inserts a new section 74A into the Town and Country Planning Act 1990 (the 1990 Act). Section 74A will allow the Secretary of State to provide by order for the deemed discharge of certain conditions attached to planning permission. That is, those which require the consent, agreement or approval of the local planning authority and which are imposed on planning permission for development in England.

116. *Subsection (1)* introduces the power of the Secretary of State to make provision by development order for the deemed discharge of a condition covered by section 74A. A “development order” is an order, subject to the negative resolution procedure, which can set out the procedure for applying for planning permission (see section 59 of the 1990 Act).

117. *Subsection (2)* limits the provision to conditions placed on planning permission in relation to development in England only. It further limits the provision to the types of conditions which require the consent, agreement or approval of a local planning authority. For example a condition might require the applicant to submit a scheme for the management of construction works on site for the approval of the local authority before development can take place.

118. *Subsection (3)* sets out that where a condition is deemed to be discharged this means that the approval, consent or agreement of the local planning authority to any matter required by the condition is deemed to have been given. So a deemed discharge would have the effect of ‘discharging’ the applicant from the requirement of gaining the consent, approval or agreement from the local planning authority. This means the authority cannot take enforcement action against the development on the basis that there has been a failure to obtain such consent, approval or agreement. So in the example above, the local planning authority would not be able to take enforcement action and stop development on site on the basis that the scheme did not have its actual written approval.

119. *Subsection (4)* sets out what a development order must specify in relation to the process for deemed discharge. It must provide that the deemed discharge can only apply where an applicant has applied for the approval, agreement or consent of the local planning authority as required under the condition in question, and that the determination period has lapsed without a decision from the local planning authority having been made and notified

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to the applicant. Further the applicant must have taken any procedural steps laid down by the Secretary of State in the development order before a condition can be deemed to be discharged.

120. *Subsection (5)* provides that the Secretary of State can provide for the procedure to be followed in the development order. For example, the order might provide under the powers in paragraphs (a), (b) and (e) of subsection (5) that the applicant must serve a notice in a prescribed form on the Secretary of State, stating his intention to rely on the deemed discharge provisions, after a certain number of weeks have elapsed from the date of the original application for the authority's approval to a condition. Under subsection (5)(d), the Secretary of State may provide for the prescribed time periods within the deemed discharge procedure to be varied by agreement. This power could be exercised, for example, to allow the applicant and the local planning authority to extend such periods by agreement, which might be useful in a complex development.

121. *Subsection (6)* sets out that the Secretary of State may provide in a development order that the deemed discharge provisions will not apply in particular circumstances. For instance, the order may prescribe that certain types of conditions are exempted from the clause.

122. *Subsection (6)(b)* gives the Secretary of State the power to exempt certain types of conditions by reference to the type of planning permission to which they relate. This is needed because planning permission may be granted in different ways for example following a planning application submitted to the local planning authority, by the Secretary of State on cases following an appeal or call-in or by development order, and it may not be appropriate for conditions attached to planning permission granted by particular routes to be subject to the deemed discharge provisions.

123. *Subsection (6)(c)* gives the Secretary of State the power to exempt certain types of conditions by reference to description of the development, for example based on thresholds, character or any other category.

124. *Subsection (6)(d)* gives the Secretary of State the power to provide that the deemed discharge provisions will not apply in any other circumstances. For example, the power could be used to provide that the deemed discharge provisions will not be available where the underlying application for planning permission is subject to appeal. In addition the applicant and the local planning authority may agree the deemed discharge provisions should not apply to a condition (*subsection (7)*).

125. *Subsection (8)* gives the Secretary of State the power, by development order, to disapply section 78(2) of the 1990 Act or to apply it with modifications in relation to the deemed discharge provisions. The Secretary of State will be able to provide in the development order that where an applicant intends to rely on the deemed discharge

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provisions, he or she will not also be able to appeal the authority's non-determination of his or her application for approval under section 78(2).

126. *Subsection (9)* explains that the deemed discharge provisions may only apply to conditions attached to planning permissions where the planning application for the permission was submitted after the order comes into force. This is to ensure that the provision will not apply retrospectively.

### **The Homes and Communities Agency and other bodies**

#### **Clause 21: Property etc transfers to the HCA**

127. This clause inserts new sections 53A (other property etc transfers to the HCA) and 53B (tax consequences of transfers under section 53A) after section 53 of the Housing and Regeneration Act 2008 (the HRA 2008). Section 51 of the HRA 2008 allows the Secretary of State to make schemes for the transfer to the HCA of the property, rights and liabilities of the Urban Regeneration Agency and the Commission for New Towns. New section 53A of the 2008 Act empowers the Secretary of State to make schemes for the transfer to the HCA of the property, rights and liabilities of a public body or a description of public bodies which is specified by the Secretary of State in regulations. For these purposes, 'a public body' is defined as a person or body with functions of a public nature. The bodies which may be specified are arm's length bodies of government departments such as executive agencies and non-departmental public bodies.

128. New section 53B enables the Secretary of State to make regulations which provide for the tax consequences of transfers under new section 53A.

#### **Clause 22: Easements etc affecting land**

129. This clause amends section 11 of, and paragraph 1 of Schedule 3 to, the HRA 2008 which provide powers in relation to land of the HCA. The amendment ensures that a purchaser of land of the HCA who undertakes works on or makes subsequent use of that land is empowered to override any relevant rights and interests and restrictions as to user. Consequential amendments are also made to section 333ZB of the Greater London Authority Act 1999 and section 208 of the Localism Act 2011 so that a purchaser of land of the GLA or an MDC will be similarly empowered.

### **Her Majesty's Land Registry**

#### **Clause 23 and Schedule 4: Transfer of responsibility for local land charges to Land Registry**

130. Local land charges are generally in the nature of restrictions or prohibitions on a particular parcel or parcels of land, binding on successive owners and occupiers of the

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land, which either secure the payment of money or limit the use to which the land may be put. Local land charges would not normally be disclosed by inspection of the land or an investigation of the register of title to the land (or the title deeds where the land is unregistered). For the protection of purchasers, there is a duty to register them. The registers involved are open to public access.

131. Under the current legislation – the Local Land Charges Act 1975 (LLCA 1975) – local land charges are entered in local land charges registers, open to public inspection and administered by each local authority in England and Wales in relation to the local land charges that affect the land within their respective administrative areas. The way in which the local registers are administered, in particular as to whether and to what extent the registers have been computerised, varies widely across England and Wales, as do the fees charged for searches of the register in England (where individual local authorities have power to set the fees for their own areas, subject to general guidance from the Lord Chancellor). Following investigation of the position by Land Registry, and a consultation exercise which ended on 9th March 2014, the Government has decided that responsibility for its administration should be transferred from the local authorities in England and Wales to Land Registry. Land Registry should then provide a composite fully computerised local land charges system accessible to users by electronic communications.

132. *Schedule 4 Parts 1 - 4* sets out the amendments required to the relevant legislation and provides for the necessary transitional arrangements to enable Land Registry to assume responsibility for the registration of local land charges from the existing local authorities in England and Wales. Part 1 sets out amendments to the LLCA 1975; Part 2 sets out amendments to the Land Registration Act 2002 (LRA 2002); Part 3 sets out amendments to other legislation; and Part 4 sets out the necessary transitional provisions.

**Schedule 4 Part 1: Amendments to the Local Land Charges Act 1975**

133. Section 3 of the LLCA 1975 provides for the existing local authorities in England and Wales to be the registering authorities for local land charges that affect land in their respective administrative areas and for them to maintain individual local land charges registers. *Paragraph 3* replaces this with a new section 3 that provides for the Chief Land Registrar (CLR) to keep a single local land charges register and the intention is that the new register will be fully electronic. Such register is to comprise the local land charges registered in a local authority's local land charges register immediately before the CLR becomes the registering authority for that authority's administrative area and each local land charge that is subsequently registered in respect of land wholly or partly in that area.

134. Section 4 of the LLCA 1975 defines "appropriate local land charges register." *Paragraph 4* omits this section as it is unnecessary when the separate local authority local land charges registers administered by individual local authorities in England and Wales are replaced by a composite local land charges register for which the CLR will be responsible.

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135. Section 5 of the LLCA 1975 deals with the registration of local land charges and defines “originating authorities” as those authorities by whom a local land charge is brought into existence or by whom, on its coming into existence, the charge is enforceable. Originating authorities currently include the local authorities that are also the registering authorities for local land charges affecting land in their respective administrative areas. Such authorities therefore effectively have a dual role where they are responsible for the origination of a local land charge. Section 5 of the LLCA 1975 currently requires a local authority that is both the originating authority and the registering authority to register the local land charge in the local land charges register for which it is responsible. In other cases, section 5 requires the originating authority for a local land charge to apply for its registration to the local authority that is the registering authority for the land affected by the charge. *Paragraph 5* amends section 5 to require all originating authorities to apply to the CLR for registration of the local land charge where he or she has become the registering authority for the area in which the land affected by the charge is situated.

136. *Paragraph 6* amends section 6 of the LLCA 1975 in relation to its application to general charges. General charges are charges that arise under certain conditions in favour of local authorities in advance of their being able to register a specific local land charge. Section 6 currently provides for the registration of general charges by the local authority that is the registering authority for the area in which the land affected by the general charge is situated. The provision is amended to require the CLR to register such charges on the application of the originating authority for the charge, where he or she has become the registering authority for the area in which the land affected by the general charge is situated.

137. Sections 8 and 9 of the LLCA 1975 provide for persons to be able to make personal searches of the existing local land charge registers for which local authorities in England and Wales are responsible as registering authorities and to requisition official searches of the register from the registering authorities. *Paragraphs 7 and 8* amend sections 8 and 9 respectively so as to place the responsibility for providing personal search facilities and official searches results on the CLR where he or she has assumed responsibility for the registration of local land charges from any local authority.

138. Section 10 of the LLCA 1975 provides for a compensation scheme under which registering authorities are made responsible for compensating a purchaser of land that is subject to a local land charge for loss suffered by that person where that person has relied upon a personal or official search but the search has failed to disclose the existence of a local land charge that it should have disclosed. *Paragraph 9* amends section 10 to place the responsibility for paying compensation to such a purchaser on the CLR in place of the relevant local authority where he or she has taken over responsibility from the local authority. Section 10 is also amended to include provision that entitles the CLR to recover from an originating authority any compensation he or she is required to pay to a purchaser as a consequence of an error by the originating authority. The CLR is also given power to

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insure against the risk of liability to pay compensation under section 10 by insertion of a new subsection (6A).

139. Section 14 of the LLCA 1975 provides for the Lord Chancellor, with the concurrence of the Treasury as to fees, to make rules for carrying the LLCA 1975 into effect. Revised rules will be required to give effect to the amended Act as it applies to the CLR when he or she assumes responsibility as the registering authority. *Paragraph 13* provides for the inclusion of such additional enabling powers in section 14 as are required to allow rules to be made for this purpose. In particular, the additional powers include the making of rules—

- as to the variation of the registration of a local land charge without an order of the court on the application or with the consent of the person by whom it is enforceable, or of the Chief Land Registrar's own motion,
- as to cancellation without an order of the court of the registration of a local land charge on its cesser or on the application or with the consent of the person by whom it is or was enforceable or of the Chief Land Registrar's own motion.

140. It is the intention that the local land charges registration system administered by the CLR should be electronic and operate on the basis that applications to the CLR are received by electronic communications, in order to maximise the efficiency and speed with which the system operates. Paragraph 13 therefore substitutes new paragraphs (b), (ba) and (bb) in subsection (2) of section 14 in place of the existing paragraph (b). The purpose of the changes is to make it clear that the power to make rules under section 14(1) includes power to make rules as to the use of particular means of communication (such as electronic communication) that may or must be used for the purposes of the LLCA 1975 (such as making applications for the registration of local land charges and the making of personal or official searches of the register), the circumstances in which the particular means of communication is to be used and the form and contents of anything sent by that particular means of communication. It will also include power to make rules requiring or enabling anything provided to or by the CLR for the purposes of the LLCA 1975, or any other statutory provisions under which any matter is registrable in the local land charges register, to be provided in electronic form. The changes further provide that the details concerning the use of particular means of communication and anything which is provided to or by the CLR may be specified in the rules or determined by the CLR, or by a person who is providing services to the CLR, such as a third party provider of the computerised registration and communications systems that are envisaged (who will in practice operate in accordance with specifications determined by the CLR).

141. Paragraph 13 also adds a further subsection (subsection (4)) to section 14 to provide that the Lord Chancellor must obtain the consent of Welsh Ministers before making rules under the power to set a maximum fee.

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#### **Schedule 4 Part 2: Amendments to the Land Registration Act 2002**

##### *Paragraphs 17 to 20*

142. The amendment to section 100 of the LRA 2002 (Conduct of business) makes it clear that the functions of the CLR, which any member of Land Registry may carry out when authorised by him or her, include all functions of the CLR under any legislation.

143. The amendment to section 106 (incidental powers of the registrar in relation to companies) means the CLR's power to form, or participate in the formation of, a company or to purchase or invest in a company is extended to include the CLR's functions under the LLCA 1975.

144. The LRA 2002 contains an indemnity for the CLR and staff appointed by him or her, so that they will not be liable in the performance of their duties in the absence of bad faith, and any claims for indemnity under the LRA 2002 are dealt with under the statutory indemnity scheme. The amendments also provide that this exclusion of liability is extended to functions performed under the LLCA 1975. Claims for compensation will be dealt with in the LLCA 1975, as amended.

#### **Schedule 4 Part 3: Amendments to Other Acts**

##### *Paragraphs 21 to 39*

145. This Part of the Schedule contains amendments to a number of Acts of Parliament which refer to the LLCA 1975 in areas such as land compensation, where local land charges issues are applicable. The amendments alter the wording of the legislation to reflect the fact that there will be a composite register in all cases where in the future the CLR has become the registering authority, rather than separate registers currently held by each local authority. As this part of the Schedule only applies once the CLR has formally taken responsibility for the register in a particular area, the amendments to the Acts of Parliament do not take effect in respect of areas where the local authority is still the registering authority.

#### **Schedule 4 Part 4: Transitional Provision**

##### *Paragraphs 40 to 44*

146. The CLR will take over responsibility for the LLCA 1975 functions in stages from the existing local authorities in England and Wales. The CLR will take over responsibility for each area only after the necessary preparation for the transfer of data at each local authority has been carried out.

147. *Paragraph 40* therefore provides for the CLR to give and publish a notice, once the preparatory work has been completed at the relevant local authority. On expiry the notice has the effect of bringing the new regime into force for the relevant area. This will allow the CLR to determine the point at which he or she takes over as the registering authority.

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148. *Paragraph 41* requires local authorities to provide information and assistance to the Chief Land Registrar to enable him to take on the role of registering authority.

149. The provisions of *paragraph 42* ensure continuity in the administration of the local land charges system. Anything the local authority was doing at the time of the change will automatically become the responsibility of the CLR. If for example there was a pending application which had not been completed, this would automatically become the responsibility of the CLR when the functions were taken over, and the same applies to any legal proceedings in which the local authority may have been involved. Any liability which the CLR may acquire in this way, which arises by reason of a mistake made by the local authority, is dealt with under the following paragraph.

*Paragraph 43*

150. This clarifies the position with regard to payment of compensation under the statutory scheme contained in the LLCA 1975. In particular the CLR can recover compensation paid by him or her where his or her liability to pay was in consequence of a local authority's failure to-

- (a) register a local land charge before the CLR replaced it as registering authority,
- (b) provide appropriate electronic facilities for personal searches or
- (c) provide a correct official search.

151. Compensation cannot however be recovered from a local authority which has failed to register, or register correctly, a local land charge in the register it formerly maintained, or to provide information about such a charge to the CLR, where that local authority is not the originating authority and the error was due to the equivalent failure of the actual originating authority. In that case the CLR can seek recovery of compensation paid from the originating authority instead.

**Clause 24: Conferral of additional powers on Land Registry**

152. At present, under the LRA 2002, the CLR's powers are limited to functions and services relating to land registration. These powers are to be extended to enable Land Registry, in addition, to provide information and register services relating to land and other property.

153. Section 105 of the LRA 2002 enables the CLR to provide, or arrange for the provision of, consultancy or advisory services about the registration of land in England and Wales or elsewhere and to set the terms on which they are provided. Clause 24 amends section 105 to broaden the CLR's powers to enable Land Registry also to provide (a) consultancy and advisory services about land and other property in England and Wales or elsewhere and (b) information services and services relating to documents or registers,

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relating to land or other property in England and Wales (subsection (1) as amended by the clause). As at present, it will be for the CLR to set the terms on which services are provided, including the charges for them. The CLR's power under section 106 of the LRA 2002 to form, or participate in the formation of a company or to purchase or invest in a company could be used in connection with these services.

#### **Clause 25: Transfer of power to nominate member of Rule Committee**

154. Under section 127(1) of the LRA 2002, the power of the Lord Chancellor to make land registration rules is exercisable with the advice and assistance of a Rule Committee, whose membership is governed by section 127(2) of that Act. One of the members is required to be a person with experience in, and knowledge of, consumer affairs. That member is currently nominated by the Lord Chancellor (section 127(2)(h)). The purpose of clause 25 is to transfer the power to nominate this member to the Secretary of State as and when there is a future vacancy.

### **PART 4 – ENERGY**

#### **COMMUNITY ELECTRICITY RIGHT**

155. In January 2014, the Government published its Community Energy Strategy, which identified community shared ownership in renewable energy as a means to ensure that individuals living close to renewable energy installations are able to have a greater share in the financial benefits. A Shared Ownership Taskforce has been set up to 'facilitate a substantial increase in the shared ownership of new, commercial onshore renewables developments' such that 'by 2015 it should be the norm for communities to be offered the opportunity of some level of ownership by commercial developers'. The community electricity right is an alternative to the voluntary approach to increasing shared ownership, if this approach fails to deliver.

156. The community electricity right confers a power on the Secretary of State to make regulations giving individuals and/or community groups the right to purchase a stake in a renewable electricity generation facility in their local area (including onshore and offshore facilities). In connection with this power the Secretary of State can make regulations about the ownership of qualifying facilities, the supply of information and the enforcement regime.

157. The power allows the Secretary of State to provide for various matters in the regulations, including the kinds of facilities to which the right will apply, the members of the community who will be eligible to exercise the right to buy and the kinds of stake that may be bought through the right to buy.

**Clause 26: The community electricity right**

158. *Subsection (1)* gives the Secretary of State a power to make regulations for a community electricity right. This gives a right to individuals resident in a community or groups connected with a community (or both) to buy a stake in a local renewable electricity generation facility that is located onshore or offshore. A renewable electricity generation facility is one which uses a renewable source of energy, being a source of energy other than fossil fuel or nuclear, but including waste of which not more than a specified proportion is waste, or is derived from, fossil fuel.

159. *Subsection (2)* gives the Secretary of State a power to make further regulations about the kinds of body which may operate a renewable electricity facility, and the ownership of facility operators, in connection with the community electricity right.

160. *Subsection (3)* gives the Secretary of State a power to make further provision about the supply of information in connection with the community electricity right regulations. The activities to which this may apply are listed in this subsection. Further detail is provided in Part 3 of Schedule 5.

161. *Subsection (4)* gives the Secretary of State a power to make further provision about the enforcement regime associated with the community electricity right regulations. This may include (but is not limited to) enforcement through the existing electricity licensing regime and financial penalties for non-compliance.

162. *Subsection (5)* enables the Secretary of State to modify electricity licence conditions and electricity licence exemptions in connection with the community electricity right regulations.

163. *Subsection (6)* gives effect to Schedule 5. This sets out the matters to be specified in further detail under the community electricity right regulations. The duties contained within this Schedule only come into effect when the community electricity right regulations are made.

164. *Subsection (7)* contains definitions of the terms used in section 29.

**Clause 27: Supplementary provision**

165. *Subsection (1)* enables community electricity right regulations to confer functions in relation to the community electricity right. This can include functions of the Secretary of State and any other person apart from Scottish and Welsh Ministers.

166. *Subsection (2)* provides further detail on the functions that may be conferred. For example this may include a duty (this may be in relation to enforcing the community electricity right), a requirement to consult (this may apply to renewable electricity

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generators in relation to a requirement to consult with the local community on the type of stake to be offered). It may also include exercising discretion (this may include renewable electricity generators choosing the kind of stake offered to communities) and a requirement to take into account any guidance (this may include guidance produced by the Secretary of State in relation to the implementation of the community electricity right).

167. *Subsection (3)* provides that the scope of the powers within this Part of the Bill is not limited to the examples provided.

168. *Subsection (4)* provides that the requirements included within Schedule 6 only come into effect when the community electricity regulations are made.

169. *Subsection (5)* provides that the commencement of the regulations (as defined in the regulations) can ensure that the regulations do not apply retroactively and would only apply to existing facilities that have not, at that date, reached a specified point of development.

170. *Subsection (6)* makes provision that the stake in the renewable electricity generating facility can be in the form of a loan or debt instrument.

171. *Subsection (7)* requires the Secretary of State to carry out a review of the provisions in connection with the community electricity right once the provisions have been in force for 5 years.

## **Schedule 5: Community electricity right regulations**

### **Part 1: The Right to Buy**

172. *Paragraph 1* defines ‘right to buy regulations’ as those regulations made under subsection (1) of clause 26.

173. *Paragraph 2* sets out the parameters for the kinds of renewable electricity facilities that will come under the community electricity right regulations. *Paragraph 2(2)* provides that these regulations will not apply to any renewable electricity generation facility under 5MW of total installed capacity.

174. *Paragraph 2(3)* allows the Secretary of State to specify that the community electricity right regulations may apply to a particular type of renewable electricity facility; such facilities may be defined in terms of the renewable source of energy used, the technology used, the electricity generation capacity, and whether the facility is land-based or offshore.

175. *Paragraph 3* requires the Secretary of State to set out the criteria for identifying qualifying renewable electricity facilities under the community electricity right regulations. *Paragraphs 3(2) and (3)* make further provision about sites that have been expanded or

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where there is more than one renewable electricity facility. In relation to existing sites that have been expanded these regulations may apply to any facility where the total installed capacity of that site is expected to be 5MW or more.

176. *Paragraphs 3(4) to (6)* allow the Secretary of State to make further provision about the kinds of renewable electricity facilities that may be excluded from the community electricity right regulations; this is defined as an excepted facility. Excepted facilities may include community owned facilities, facilities where the community owns a stake, and those facilities that are not participating in statutory energy schemes (for example those not participating in the Feed-In Tariff, Contracts for Difference or Renewables Obligation schemes).

177. *Paragraph 4* defines the promoter of a qualifying facility as the person responsible for developing the qualifying facility, and makes provision to identify the promoter in cases where that person is not also the facility operator.

178. *Paragraph 5* requires the Secretary of State to make further provision in secondary legislation about the community who could exercise the right to buy. This may be in reference to the community's geographical location relative to the facility, its distance from the facility, the number of residents or any administrative boundaries.

179. *Paragraph 6* requires the Secretary of State to make further provision about which individuals and groups may exercise the right to buy. Further detail on how this may be defined in relation to individuals and groups is set out in this paragraph. *Paragraph 6(3), (4) and (7)* allow the Secretary of State to make further provision about the individuals and groups who may not exercise the right to buy. Sub-paragraphs (8) and (9) provide further provision about people who may be connected for the purpose of the regulations.

180. *Paragraph 7* makes further provision about the kinds of stake that may be offered through the community electricity right regulations. This may include shares, any other interest in a body other than a company, a royalty instrument or a loan.

181. *Paragraph 8* provides that the regulations must give the designated promoter or facility operator a choice of at least two different kinds of stake that may be offered. It is then for the promoter or facility operator to make a decision on the kind(s) of stake offered to the community. The promoter or facility operator must consult (e.g. with the community) and take the results of this consultation into account before choosing the kind(s) of stake that they will offer.

182. *Paragraph 9* requires the Secretary of State to make further provision about setting the price of the stakes in a qualifying facility. It includes reference to 'a measure of fair value' when setting the price of the stake offered to communities; this means that the price of the stake should not be offered at a discounted price to the community.

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183. *Paragraph 10* makes further provision about the total value of the offer to communities. *Paragraphs 10(2) and (3)* specify that the minimum size of stake that must be offered by developers is to be set in secondary legislation, but that this must not be greater than 5% of total capital costs of the development of the facility. Paragraph 10(5) allows the Secretary of State to make further provision about the calculation of the total capital costs. The minimum size of stake prescribed in secondary legislation may vary depending on the technology or size of the development up to this 5% cap. It is intended that very large developments will not be required to offer a stake which it would be unrealistic to offer the community.

184. *Paragraph 11* makes further provision about the procedure for buying a stake, which is defined as the purchase procedure in paragraph 11(1). It establishes an initial application procedure in paragraph 11(4) where the stakes in the renewable electricity facility are offered. The offering of stakes cannot begin until after the renewable electricity generation facility has secured planning consent. The meaning of planning consent is defined further in paragraph 11(6).

185. *Paragraph 12* makes further provision for when there is either excessive or insufficient take up of the stakes offered for a renewable electricity facility. For example, paragraph 12 (2) establishes a secondary period following the application period. In this secondary period it may be possible to offer stakes to a wider community.

186. *Paragraph 13* allows further provision in regulations on the subsequent disposal of a stake after it has been bought. This may include imposing restrictions or prohibitions on the disposal of a stake on individuals or communities, with exceptions.

## **Part 2: Operators, Ownership & Related Matters**

187. *Paragraphs 14 – 19* make further provision about operators and the ownership of renewable electricity facilities under the community electricity regulations. For example, this may include the kinds of body that may be a facility operator, the constitution of facility operators, the conduct of owners of facility operators and the treatment of revenues earned by a qualifying facility.

## **Part 3: Information**

188. *Paragraphs 20 – 25* provide further provision about the supply of information under the community electricity regulations. This may apply to the possible buyers of stakes who would like to exercise the right to buy, prospective buyers of stakes who are entitled to exercise the right to buy, those applying to buy a stake, and the owners of stakes.

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#### **Part 4: Supplementary**

189. *Paragraph 26* provides further definition of the terms used within the Schedule.

#### **Clause 28: Consequential provision**

190. Section 34 gives a power to make consequential provision in connection with any provision under Part 4 of the Bill.

#### **FINANCIAL EFFECTS**

191. The main financial implications of the Bill lie in Parts 1 and 3 of the Bill. These are explained below. Further details of the costs and benefits of individual provisions are set out in more detail in the published impact assessments.

192. The provisions of Part 1 of the Bill include oversight of the strategic highways company through a monitor and road user watchdog. The provisions extend the current statutory powers for Passenger Focus and the Office of Rail Regulation. Costs of equipping Passenger Focus to act as a road user watchdog and building a monitoring function within the Office of Rail Regulation are estimated at around £3.25 million in total. Ongoing costs are estimated to be £2.75 million a year for the Office of Rail Regulation and £1.5 million for Passenger Focus. The central estimate of cost (the mid-point between high and low ranges estimated) of the strategic highways company complying with any requirements placed on it from the monitor or road user watchdog for example the provision of information is £4.25 million a year.

193. In relation to Part 3 of the Bill, the assumption by the Chief Land Registrar of the registering authority role for local land charges is expected to be self-funding out of the fees charged for official searches, and the Land Registry local land charges provisions are only enabling in nature. There will be a temporary need for the provision of funds to cover the start-up costs associated with procuring the necessary registration systems for the administration of local land charges and assembling data from the first local authorities to transfer responsibility for the registration of local land charges to the Chief Land Registrar. However, this funding will be repaid out of the official search fees that will become payable to the Chief Land Registrar once he or she has assumed responsibility for the registration of local land charges in respect of one or more local authority areas.

#### **PUBLIC SECTOR MANPOWER**

194. Overall, the Bill will not have any significant impacts on public sector manpower.

195. The provisions in Part 1 on strategic highways companies do not have a significant impact on public sector manpower. The Highways Agency will be replaced with an arm's-

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length body which will have to perform its own corporate functions currently resourced by the Department for Transport. The best estimate is that 20 new posts will be created within the first strategic highways company appointed to cover these new corporate functions at appropriate salary and overhead costs of £1.3 million (see impact assessment for full details). There are no implications on wider public sector manpower.

196. For Part 2 on invasive non-native species, it is anticipated that only one species control order will be made each year, which will have a negligible impact to public sector manpower. The purpose of these provisions is to prevent invasive non-native species becoming more widespread. The costs associated with the on-going control and management of these species once widely established significantly outweigh the cost of taking early preventative action.

197. For Part 3, the Land Registry does not anticipate an increase in staffing once the Bill is in force. It is intended that a fully digital Local Land Charges service will be provided by Land Registry so there will be no requirement for further manpower.

198. During the transition, the Land Registry will use existing resources for project purposes.

199. It is anticipated there may be a potential reduction in staffing levels within local authorities due to the service transferring to Land Registry. At this stage, this cannot be fully defined due to individual discussions needing to take place with Chief Executives of local authorities. It is possible that some staff are due to retire within the next 3 years; some will be re-deployed elsewhere in the authority while some may be impacted in terms of redundancy. The Land Registry has taken this into account within its proposals.

## **SUMMARY OF IMPACT ASSESSMENT**

200. Full details of the financial implications of the Bill are set out in the summary Impact Assessment that has been published. The cumulative net present value of the policies contained in the Bill is approximately £2.6 billion.

## **COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS**

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

“In my view the provisions of the Infrastructure Bill [HL] are compatible with the Convention rights”.

## **Part 1: Strategic Highways Companies**

202. Paragraph 43 of Schedule 1 inserts a new section 175B into the Highways Act 1980 which prohibits the construction, formation or laying out of access to a trunk road without the consent of the highway authority for that road. Section 175B potentially restricts a landowner's right of access from his property to a trunk road and therefore could be considered a control on the use of that property, thus engaging Article 1 of the First Protocol to the ECHR ("A1P1"). It also potentially interferes with the right to respect for a person's home under Article 8(1).

203. The Government considers that this measure is proportionate and in the public interest having regard to the safety risks and increased congestion which might result from new trunk road connections being freely permitted, and as such is compatible with Convention rights.

204. Clause 10 and Schedule 3 enable the Secretary of State to make schemes transferring property, rights and liabilities in connection with the appointment of a strategic highways company. The Schedule provides that transfers may take effect irrespective of any interference with an interest or right which would otherwise apply (paragraph 2(2)) and may include provisions modifying the interests or rights of third parties (paragraph 3(4)). A scheme which included such provisions could potentially engage A1P1 rights of an affected third party.

205. The Government considers that, as the Secretary of State is a public authority subject to a duty under section 6 of the Human Rights Act 1998 to act compatibly with Convention rights, any such provision would be included in a scheme only where compatible with Convention rights, in circumstances where a fair balance has been struck as between the public interest (here, in permitting a public sector reorganisation) and any individual's fundamental rights.

206. The Government considers that the other transfer scheme provision in the Bill (clause 21 in respect of the Homes and Communities Agency) is likewise compatible with Convention rights in view of the Secretary of State's duties under section 6 of the Human Rights Act 1998.

## **Part 2: Invasive Non-Native Species**

207. Part 2 of the Schedule inserted by clause 16 enables an environmental authority to make a Species Control Order in relation to any premises where it considers an invasive non-native species (INNS) to be present. The making of such an order may engage rights under A1P1 insofar as it interferes with the peaceful enjoyment of those premises. It may engage rights under article 6, to the extent that a person's civil rights and obligations are being determined by the authority making the order.

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208. The Government considers that Species Control Orders are proportionate and in the public interest, having regard to the serious threats presented by INNS to biodiversity, the water environment, economic prosperity, and human health and welfare. The Government notes that these orders are only to be used where a voluntary approach (using Species Control Agreements under Part 2 of the Schedule inserted by clause 16) has failed, or in cases where urgent action is required. As regards article 6, Part 3 of the Schedule provides for a right to appeal to the First-tier Tribunal. Accordingly, the Government considers that these provisions are compatible with Convention rights.

209. Part 4 of the Schedule inserted by clause 16 creates new powers of entry for specified purposes in connection with the operation and enforcement of Species Control Orders and Species Control Agreements. The exercise of these powers may engage rights under A1P1 and article 8 insofar as they interfere with the peaceful enjoyment of premises and the right to a private life.

210. The Government considers that these powers are proportionate and in the public interest having regard to the threats posed by INNS (as mentioned above). The powers are compliant with Home Office guidelines on powers of entry. In order to ensure that the powers are only exercised where it is necessary and proportionate to do so, Part 4 of the Schedule provides that (in some situations) they can be exercised only on the authority of a warrant issued by a justice of the peace. Schedule 4 also offers protections in the form of statutory notice periods which must be observed, restrictions on the exercise of the power to reasonable times of day, and a duty to leave unoccupied premises as effectively secured as they were on entry. The Government considers that these measures represent a fair balance between the general public interest and the interests of individuals concerned, and that they are compatible with Convention rights.

### **Part 3: Planning and Land**

211. Clause 22 makes amendments to existing legislation which allows the Homes and Communities Agency (HCA), the Greater London Authority (GLA) or a Mayoral Development Corporation (MDC) to override the operation of third party easements or other rights or restrictions in their land (e.g. right to pass over a path, park a car, right of light or restriction on particular trade or business). The amendments provide for those interests to be overridden even after land has been sold by those bodies. The continued overriding of third party interests may engage article 8 and A1P1 in respect of the peaceful enjoyment of property rights and the right to a private life. Article 6 may also be engaged as regards the determination of such property rights.

212. The Government considers that these measures are proportionate and justified having regard to the public interest in the HCA, the GLA and MDCs achieving their objectives as regards housing, regeneration and the development of land and infrastructure, and the wider economic interests of the country which those objectives serve. Interference with third party interests gives rise to an existing requirement for compensation to be paid

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where such interests are overridden. Any dispute as to the amount of compensation payable may be referred to the Upper Tribunal (Lands Chamber) for determination. The Government considers that these measures represent a fair balance between the general public interest and the interests of individuals concerned, and that they are compatible with Convention rights.

**Part 4: Energy**

213. Clause 26 provides the Secretary of State with power to make regulations which give individuals resident in a community or groups connected with a community (or both) the right to buy a stake in a renewable electricity generation facility that is located in or adjacent to the community. Such a right may engage the A1P1 rights of the existing owners of such a facility by requiring them to offer for sale a stake in the facility. It may also engage article 6 rights as regards the modification of electricity generating licences held under the Electricity Act 1989 in connection with the enforcement of these proposals.

214. The Government considers that the measures are proportionate and justified, and that they strike a fair balance in respect of the general interest of community engagement with renewable energy and any individual's A1P1 rights. These provisions will, when implemented through secondary legislation, involve a legislative mechanism for the sale of a stake, including a mechanism for the pricing of such a stake. Therefore any interference with A1P1 rights will be 'in accordance with the law' and will be transparent and not arbitrary. The measures will be precise and foreseeable, and will not be retrospective.

215. As regards licence modifications which are made for the purposes of enforcing the community electricity right, the Secretary of State will make secondary legislation for this purpose, and in doing so will be under a duty under section 6 of the Human Rights Act 1998 to act in a manner which is compatible with Convention rights. Further, any determination of an electricity generator's obligations under such legislation will be susceptible to challenge, either by way of judicial review or through a specific appeal mechanism (under section 27 of the Electricity Act 1989 in respect of licence conditions or a new appeal mechanism which may be established through the new secondary legislation). The Government accordingly considers these provisions to be compatible with Convention rights.

**COMMENCEMENT DATES**

216. Part 1 of the Bill will come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument, except that powers in that Part to make regulations will come into force on the day on which the Bill is passed.

217. Part 2 of the Bill will come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument, so far as it relates to England, and on

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such day as the Welsh Ministers may appoint by regulations made by statutory instrument, so far as it relates to Wales.

218. As regards Part 3 of the Bill, certain provisions (clause 19 so far as it confers power to make regulations and clause 20) will come into force on the day on which the Bill is passed, certain provisions (clauses 17 and 18 and clause 19 for other purposes) will come into force on such day as the Secretary of State may appoint by regulations made by statutory instrument, and certain provisions (clauses 21 to 25 and Schedule 4) will come into force at the end of the period of two months beginning on the day on which the Bill is passed (subject to Part 4 of Schedule 4 as regards clause 23 and Schedule 4).

219. Part 4 of the Bill will come into force at the end of the period of two months beginning on the day on which the Bill is passed.

220. Part 5 of the Bill will come into force on the day on which the Bill is passed.

221. Regulations which are made to appoint a day on which provisions in the Bill are to come into force may appoint different days for different purposes.

# INFRASTRUCTURE BILL [HL]

## EXPLANATORY NOTES

*These notes refer to the Infrastructure Bill [HL]  
as introduced in the House of Lords on 5th June 2014  
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