These notes refer to the Deregulation Bill
as brought from the House of Commons on 24th June 2014 [HL Bill 33]

DEREGULATION BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Deregulation Bill as brought from the House of Commons on 24th June 2014. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it. They 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 Schedule, or part of a clause or Schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Deregulation Bill provides for the removal or reduction of burdens on businesses, civil society, individuals, public sector bodies and the taxpayer. These include measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The Bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition the Bill will repeal legislation that is no longer of any practical use.

4. The government published a draft Deregulation Bill on 1st July 2013. The draft Bill was subject to pre-legislative scrutiny by a Joint Committee. That Committee published its report on 19th December 2013. In response to the Joint Committee's report, the government introduced the Bill in a revised form. The government's response to the Joint Committee, which provides detailed responses to the Committee's recommendations, was published in January 2014.

5. The Bill forms part of the government's commitment to reduce the overall burden of regulation and to cut "red tape" during this Parliament. The implementation of that programme includes measures given effect by administrative changes and also via secondary legislation. The Deregulation Bill is one of a number of government bills that is taking forward reforms where their implementation requires primary legislation.

6. Many of the measures in the Bill arise as a result of the government's "Red Tape Challenge" programme which sought the views of businesses and the public on the removal and reform of areas of regulation.

TERRITORIAL EXTENT AND APPLICATION

7. Clause 89 sets out the territorial extent of the Bill. The Bill makes a large number of repeals, revocations and other amendments of legislation. Clause 89(1) provides that, except where specified, any repeal, revocation or other amendment made by the Bill has the same extent as the original legislation. The commentary on the Bill's clauses and Schedules explains their extent (that is the jurisdictions which the provisions form part of the law of) and also their application (if different from their extent).

8. Clause 89(2) provides that Schedule 20, paragraph 35 (repeal of Milk (Cessation of Production) Act 1985) forms part of the law of England and Wales and Northern Ireland.

9. Clause 89(3) provides that clause 16 (suppliers of fuels and fireplaces), Parts 4 and 5 of Schedule 12 (Air Quality and Noise Abatement Zones), and the following paragraphs of Schedule 20, which repeals legislation which is no longer of practical use, form part of the law of England and Wales only: paragraphs 31 and 32 (repeal of and consequential amendments to Breeding of Dogs Act 1973), paragraph 37 (Breeding and Sale of Dogs (Welfare) Act 1999), paragraph 38 (repeal of Coal and Other Mines (Horses) Order 1956) and paragraph 41 (repeal of various provisions of the Town Police Clauses Act 1847).

10. Clause 89(4) and (5) set out the extent of those provisions of the Bill which do not amend other legislation. Clause 89(4) provides that clauses 4 (English Apprenticeships: funding arrangements), 5 (English apprenticeships: disclosure of information), 27(7) to (10) (public rights of way: procedure provisions), 34 (Short-term use of London accommodation: power to relax restrictions) and 49(1) and (32) (Abolition of Office of Chief Executive of Skills Funding) form part of the law of England and Wales only. (With very limited exceptions, the Chief Executive's current functions are exercisable in relation only to England.)

11. Clause 89(5) provides that the following measures form part of the law of England and Wales, Scotland and Northern Ireland:

- clauses 59 and 60 (which relate to TV licensing);

- clause 67 (power of HMRC to disclose information for purposes of certain litigation);

- the new power, conferred by clause 79, to enable a Minister to amend commencement dates in legislation, so that reference is made to the date on which a provision actually came into force, or an event actually occurred;

- the new power, conferred by clause 80, to enable different forms of subordinate legislation to be combined;

- the provisions set out in clauses 83 to 86 (provisions concerning the promotion of economic growth);

- the provisions concerning consequential changes, financial provision, commencement and short title set out in clauses 87, 88, 90 and 91.

12. Some provisions in the Bill deal with matters which have been devolved.

Scotland

13. In relation to Scotland, the Bill contains provisions which are for devolved purposes or which alter the legislative competence of the Parliament or the executive competence of the Scottish Ministers.

14. On 29th April 2014 the Scottish Parliament agreed to a legislative consent motion relating to the following matters:

- the amendments to the Farriers Registration Act 1975 (Schedule 12, Part 2);

- the repeal of the Farm and Garden Chemicals Act 1967 (Schedule 20, paragraph 23);

- the repeal of the Agricultural Produce (Grading and Marking) Acts 1928 and 1931 (Schedule 20, paragraph 29).

15. The provisions in relation to Scotland which still need a legislative consent motion are the following:

- the removal of the restrictions on the investigation of tramway accidents in Scotland by the RAIB (clause 39);

- the amendments which are linked to the abolition of the office of Chief Executive of Skills Funding (clause 49 and Schedule 13);

- the repeal of the Mining Industry Act 1920 (Schedule 20, paragraph 4).

16. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. Discussions with Scotland about the provisions in paragraph 15 above which relate to devolved matters are ongoing but most devolution issues have been substantially resolved and agreement in principle received.

17. If there are amendments relating to such matters which further trigger the Convention, the consent of the Scottish Parliament will be sought for them.

Wales

18. On 13th May 2014, the National Assembly for Wales approved a legislative consent motion relating to the following matters:

- amendments to the Apprenticeships, Skills, Children and Learning Act 2009 (clauses 3 and 49 and Schedules 1 (Part 3) and 13);
- amendments to the Highways Act for constructing road humps (Schedule 9, Part 3);
- amendments to legislation on grey squirrels and destructive imported animals (Schedule 12, Part 1);
- the removal of the requirement on local authorities to prepare further assessment following decision to declare an Air Quality Management Area (Schedule 12, Part 4);
- the removal of the power of local authorities to designate area as noise abatement zone (Schedule 12, Part 5);
- reductions of burdens in higher education (Schedule 14, Part 1);
- the removal of the requirement in the Local Government Act 2003 to consult on the day on which BID arrangements should come into force following an appeal against a veto (Schedule 19, paragraph 18);
- the repeal of the Farm and Garden Chemicals Act 1967 (Schedule 20 paragraph 23);
- the repeal of the Statutory Water Companies Act 1991 (Schedule 20 paragraph 26);
- the repeal of the requirement in section 10 of the Sea Fish (Conservations) Act 1992 for the Minister to report to Parliament with a review of the Act (Schedule 20, paragraph 28);
- the repeal of the Agricultural Produce (Grading and Marking) Acts 1928 and 1931 (Schedule 20, paragraph 29);

- the repeal of Part 2A of the Animal Health Act 1981 (provision about transmissible spongiform encephalopathies in sheep) (Schedule 20, paragraph 33);

- the repeal of the Milk (Cessation of Production) Act 1985 (Schedule 20, paragraph 35);

- the revocation of the Coal and Other Mines (Horses) Order (Schedule 20, paragraph 38);

- the repeal of various provisions of the Town Police Clauses Act 1847 (Schedule 20, paragraph 41).

19. A supplementary memorandum was laid on 23rd April 2014 in relation to clause 14 and Schedule 4 (Agricultural Holdings Act 1986: resolution of disputes by third party determination) and paragraphs 31, 32 and 37 of Schedule 20 (provisions relating to the Breeding of Dogs Act 1973 and the Breeding and Sale of Dogs (Welfare) Act 1999).

20. A further supplementary memorandum was laid on 10th June 2014 in relation to Part 3 of Schedule 12 (relating to the Farriers Registration Act 1975) and paragraph 2 of Schedule 15 (repeal of sections 110 and 111 of the School Standards and Framework Act 1998, relating to home-school agreements).

21. Clause 31 (tenancy deposits) also deals with devolved matters. Discussions with Wales about this are ongoing but have been substantially resolved.

22. If amendments are made to the Bill that further trigger a requirement for a legislative consent motion, the consent of the National Assembly for Wales will be sought.

Northern Ireland

23. In relation to Northern Ireland, the Bill contains the following provisions relating to transferred matters:

- requirements to wear safety helmets: exemption for Sikhs: Northern Ireland (clause 7);

- auditors ceasing to hold office (clause 19 and Schedule 5);

- amendments to the Companies Act 2006 relating to proxies (Schedule 6, paragraphs 29 and 30);

- amendments which are linked to the abolition of the office of Chief Executive of Skills Funding (clause 49 and Schedule 13);

- amendments to the Newspaper Libel and Registration Act 1881 (Schedule 20, paragraphs 2 and 3);

- the repeal of the Mining Industry Act 1920 (Schedule 20, paragraph 4)

- the repeal of the Aircraft and Shipbuilding Industries Act 1977 (Schedule 20, paragraphs 8 and 9); and

- repeal of the Milk (Cessation of Production) Act 1985 (Schedule 20, paragraph 35).

24. Agreement in principle has been received for seeking a legislative consent motion for most of these clauses. Discussions with Northern Ireland about the remaining provisions in the Bill which relate to devolved matters are ongoing but have been substantially resolved.

25. If amendments are made to the Bill that further trigger a requirement for a legislative consent motion the consent of the Northern Ireland Assembly will be sought.

COMMENTARY ON CLAUSES

Clause 1: Health and safety at work: general duty of self-employed persons

26. This clause makes amendments to section 3 of the Health and Safety at Work etc. Act 1974 (general duty of employers and self-employed to persons other than their employees).

27. *Subsection (2)* amends section 3(2) of the Health and Safety at Work etc. Act 1974 (which imposes a general duty with respect to health and safety on all self-employed persons). The purpose of this amendment is to limit the scope of the general duty under section 3(2) so that only self-employed persons who conduct an "undertaking of a prescribed description" have an obligation to conduct their undertaking in such a way as to ensure that, so far as is reasonably practicable, they themselves and other persons who may be affected thereby are not exposed to risks to their health and safety. "Prescribed" has a specific meaning within Part 1 of the Health and Safety at Work etc. Act 1974. It is defined by section 53(1) to mean "prescribed by regulations made by the Secretary of State". Subsection (2) therefore enables the Secretary of State to make regulations for the purposes of bringing self-employed persons within the scope of section 3(2). This is a deregulatory provision because it will exempt from section 3(2) of the Health and Safety at Work etc. Act 1974 those self-employed persons who do not conduct a prescribed undertaking.

28. Section 11(4)(b)(i) of the Health and Safety at Work etc. Act 1974 (functions of the Executive) prevents the Health and Safety Executive from submitting proposals to the Secretary of State for the making of regulations for railway safety purposes. *Subsection (3)* of this clause removes the new regulation-making power in section 3(2) of the Health and Safety at Work etc. Act 1974 (as amended) from the scope of section 11(4)(b)(i). This will enable the

Health and Safety Executive to recommend proposals to the Secretary of State for the making of regulations that prescribe undertakings for railway safety purposes.

29. Section 84(3) of the Health and Safety at Work etc. Act 1974 includes a power for Her Majesty by Order in Council to apply provisions of the Act outside Great Britain. In the event that such an Order in Council is in force when the clause comes into force, *subsection (4)* of this clause provides for the amendments made to sections 3 and 11 of the Health and Safety at Work etc. Act 1974 to apply outside Great Britain for such purposes as may be specified in the Order.

30. This clause forms part of the law of England and Wales and Scotland and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 2: Removal of employment tribunals' power to make wider recommendations

31. This clause amends section 124 of the Equality Act 2010 which sets out the remedies available to an employment tribunal where it finds that there has been a contravention of the key provisions of the Act relating to non-discrimination at work. The tribunal may make a declaration of the rights of the person making the complaint and the other party to the dispute (normally, the employer) and it may order compensation to be paid. In addition, it may make a recommendation that the other party take steps specified by the tribunal to obviate or reduce the adverse effect of any matter to which the proceedings relate. Currently, the recommendation could relate to an adverse effect on the complainant or on another person. A recommendation relating to another person is generally referred to as a "wider recommendation". Such a recommendation might, for example, relate to all members of a particular group in the employer's workforce.

32. The clause amends section 124 so as to remove the power to make a wider recommendation (set out in section 124(3)(b)). In consequence of this change, the clause also removes section 125 of the Equality Act 2010 which sets out exemptions to the power to make wider recommendations in national security cases.

33. The amendments form part of the law of England and Wales and Scotland. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 3: English apprenticeships: simplification

34. This clause introduces Schedule 1 which inserts a new Chapter A1 in Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009. Part 1 is part of the law of England and Wales. Chapter 1 of that Part currently provides a regime for both "English apprenticeships" and "Welsh apprenticeships". The new Chapter A1 relates only to "English apprenticeships" and introduces a new regime for them. Chapter 1 will continue to provide the regime for "Welsh apprenticeships". See commentary on Schedule 1 below.

Clause 4: English apprenticeships: funding arrangements

35. "Approved English apprenticeships" are to be funded by the Secretary of State under section 100 of the Apprenticeships, Skills, Children and Learning Act 2009 (as amended by paragraph 2 of Schedule 1 to the Bill and paragraph 13 of Schedule 13 to the Bill) or under another of the Secretary of State's powers to fund such apprenticeships. The Commissioners for Her Majesty's Revenue and Customs have agreed to administer apprenticeship payments on behalf of the Secretary of State. This clause allows for these arrangements. Where such arrangements are made, the Commissioners may make regulations as to the administration of the payments. Apprenticeship payments may be paid to persons, such as employers of apprentices, for any purpose connected to approved English apprenticeships. Such payments include payments to encourage opportunities for individuals to do approved English apprenticeships or to work afterwards.

36. The clause forms part of the law of England and Wales but it relates only to approved English apprenticeships. This clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 5: English apprenticeships: disclosure of information

37. This clause authorises the Commissioners for Her Majesty's Revenue and Customs and the Secretary of State to share information related to approved English apprenticeships with each other and with each other's service providers (if any). The Commissioners may disclose the information for the purpose of the relevant functions of the Secretary of State. The Secretary of State, or a person providing services to the Secretary of State, may disclose the information for the purpose of arrangements under clause 4 or for making a request for the Commissioners to disclose information. There is provision to safeguard revenue and customs information relating to a person. If such information is disclosed without the Commissioners' consent section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies to that disclosure.

Clause 6: Requirements to wear safety helmets: exemption for Sikhs

38. *Subsection (1)* provides that this clause makes amendments to section 11 of the Employment Act 1989 ("the 1989 Act") (exemption of Sikhs from requirements as to wearing of safety helmets on construction sites).

39. *Subsections (2) and (3)* amend section 11(1) and (2) of the 1989 Act by replacing the words "on a construction site" with "at a workplace". The purpose of this amendment is to extend the scope of the exemption in section 11 so that turban-wearing Sikhs will be exempt from legal requirements to wear a safety helmet in all workplaces (defined in subsection (6)), either as workers or visitors, subject to certain exclusions set out in subsection (5) of this clause. This amendment does not remove the requirement for an employer to assess the risk to his employees, nor to make available any protective equipment, including head protection, considered to be necessary following the risk assessment. The decision not to wear appropriate head protection in accordance with the exemption in section 11 of the 1989 Act is to be made by the turban-wearing Sikh individual.

40. Section 11(4) of the 1989 Act limits the liability of employers (and other persons) for any injury, loss or damage caused by failing to comply with a legal requirement relating to the wearing of a safety helmet by a turban-wearing Sikh. Section 11(5) limits the liability of such persons in respect of a Sikh who chooses to benefit from the exemption only to the extent that the injury, loss or damage would have been sustained by the Sikh even if he had been wearing a safety helmet in compliance with the requirement. *Subsection (4)* of this clause amends section 11(5) of the 1989 Act so that the limited liability provisions associated with the exemption are also extended to all workplaces.

41. *Subsection (5)* inserts new section 11(6A) and (6B) into the 1989 Act. These provisions exclude turban-wearing Sikhs from relying upon the exemption in section 11(1) in limited circumstances where the Sikh individual is:

- providing or is training to provide an urgent response to hazardous occupational situations, such as fire or riots, where the wearing of a safety helmet is considered necessary to protect the Sikh from a risk of injury (after all other means of protecting the Sikh have been considered and implemented or rejected as disproportionate, in accordance with existing legislation); or

- a member of, or a person providing support to, Her Majesty's Forces and is taking part or is training in how to take part in a military operation where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury (after all other means of protecting the Sikh have been considered and implemented or rejected as disproportionate in accordance with existing legislation).

42. *Subsection (6)* removes definitions no longer required in section 11(7) of the 1989 Act and inserts new definitions for "Her Majesty's forces" and "workplace".

43. *Subsection (7)* amends section 11(8) of the 1989 Act by replacing the words "on a construction site" with "at a workplace". This amendment ensures that a turban-wearing Sikh may rely upon the exemption in section 11(1) regardless of whether they are a worker or a visitor at the workplace.

44. *Subsection (8)* amends section 11(9) of the 1989 Act by replacing the words "relevant construction site" and "construction site" with "relevant workplace" and "workplace". *Subsection (9)* amends section 11(10) by removing the definition of "relevant construction site" and inserting a definition for "relevant workplace". This amendment enables section 11 of the 1989 Act to extend to turban-wearing Sikhs and employers in workplaces outside of Great Britain if the premises and the activities being undertaken there are premises and activities to which the Health and Safety at Work etc. Act 1974 ("HSWA") applies by virtue of the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013 ("the AOGBO"). The AOGBO extends certain parts of HSWA to specified offshore areas and work activities.

45. *Subsection (10)* amends the heading of section 11 of the 1989 Act to "exemption of Sikhs from requirements as to wearing of safety helmets at a workplace." This reflects the extension of the exemption made under this clause from a construction site to a workplace.

46. Section 12 of the 1989 Act concerns the protection of Sikhs from racial discrimination in connection with requirements as to the wearing of safety helmets. *Subsections (11) to (13)* of this clause amend section 12 so that any person who attempts to impose a requirement on a turban-wearing Sikh to wear a safety helmet at a workplace (rather than just on a construction site) would be discriminating against the Sikh individual under the Equality Act 2010. It would not be considered to be a proportionate means of achieving a legitimate aim such to avoid indirectly discriminating against the Sikh individual.

47. This clause forms part of the law of England and Wales and Scotland and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 7: Requirements to wear safety helmets: exemption for Sikhs: Northern Ireland

48. *Subsection (1)* provides that this clause makes amendments to Article 13 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 ("the 1990 0rder") (exemption of Sikhs from requirements as to wearing of safety helmets on construction sites).

49. *Subsections (2) and (3)* amend Article 13(1) and (2)(a) of the 1990 Order by replacing the words "on a construction site" with "at a workplace". The purpose of this amendment is to extend the scope of the exemption in Article 13 so that turban-wearing Sikhs will be exempt from legal requirements to wear a safety helmet in all workplaces (defined in subsection (6)), either as workers or visitors, subject to certain exclusions set out in subsection (5) of this clause. This amendment does not remove the requirement for an employer to assess the risk to his employees, nor to make available any protective equipment, including head protection, considered to be necessary following the risk assessment. The decision not to wear appropriate head protection in accordance with the exemption in Article 13 of the 1990 Order is to be made by the turban-wearing Sikh individual.

50. Article 13(4) of the 1990 Order limits the liability of employers (and other persons) for any injury, loss or damage caused by failing to comply with a legal requirement relating to the wearing of a safety helmet by a turban-wearing Sikh. Article 13(5) limits the liability of such persons in respect of a Sikh who chooses to benefit from the exemption only to the extent that the injury, loss or damage would have been sustained by the Sikh even if he had been wearing a safety helmet in compliance with the requirement. *Subsection (4)* of this clause amends Article 13(5) of the 1990 Order so that the limited liability provisions associated with the exemption are also extended to all workplaces.

51. *Subsection (5)* inserts new Article 13(6A) and (6B) into the 1990 Order. These provisions exclude turban-wearing Sikhs from relying upon the exemption in Article 13(1) in limited circumstances where the Sikh individual is:

- providing or is training to provide an urgent response to hazardous occupational situations, such as fire or riots, where the wearing of a safety helmet is considered necessary to protect the Sikh from a risk of injury (after all other means of protecting the Sikh have been considered and implemented or rejected as disproportionate, in accordance with existing legislation); or

- a member of, or a person providing support to, Her Majesty's Forces and is taking part or is training in how to take part in a military operation where the wearing of a safety helmet is necessary to protect the Sikh from a risk of injury (after all other means of protecting the Sikh have been considered and implemented or rejected as disproportionate in accordance with existing legislation).

52. *Subsection (6)* removes definitions no longer required in Article 13(7) of the 1990 Order and inserts new definitions for "Her Majesty's forces" and "workplace".

53. *Subsection (7)* amends Article 13(8) of the 1990 Order by replacing the words "on a construction site" with "at a workplace". This amendment ensures that a turban-wearing Sikh may rely upon the exemption in Article 13(1) regardless of whether they are a worker or a visitor at the workplace.

54. *Subsection (8)* amends the heading of Article 13 of the 1990 Order to "exemption of Sikhs from requirements as to wearing of safety helmets at a workplace." This reflects the extension of the exemption made under this clause from a construction site to a workplace.

55. Article 13A of the 1990 Order concerns the protection of Sikhs from racial discrimination in connection with requirements as to the wearing of safety helmets. *Subsections (9) to (11)* of this clause amend Article 13A so that any person who attempts to impose a requirement on a turban-wearing Sikh to wear a safety helmet at a workplace (rather than just on a construction site) contrary to Article 13 of the 1990 Order will be discriminating against the Sikh individual under the Race Relations (Northern Ireland) Order 1997. It would not be considered to be a proportionate means of achieving a legitimate aim such to avoid indirectly discriminating against the Sikh individual.

56. This clause forms part of the law of Northern Ireland and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 8: Driving instructors

57. This clause introduces Schedule 2 which amends Part 5 of the Road Traffic Act 1988 to remove the separate system for the registration of disabled driving instructors. See commentary on Schedule 2 below.

Clause 9: Motor insurers

58. Under section 147(1) and (2) of the Road Traffic Act 1988 motor insurance certificates or securities must be delivered in order for a policy or security to be legally effective for the purposes of the Act. *Subsections (2) and (3)* of the clause amend section 147 so that delivery of the certificate or security is no longer required for the policy or security to be legally effective.

59. For private policies many organisations, in particular the police, no longer rely on the insurance certificate and use information held on the Motor Insurance Database ("MID") as evidence that a vehicle has an insurance policy in force. Therefore the change would largely reflect what happens in practice as the police and insurers hardly ever recognise delivery of the insurance certificate as significant. The MID, maintained by the Motor Insurance Bureau, is the UK repository of details of all motor insurance policies and insurers are required by law to enter details of all motor insurance policies onto the MID.

60. It will however still be a requirement for insurers or givers of securities to issue certificates, as the insurance industry wants to retain the certificates, in particular because they are valuable for certain types of policies, such as for fleets where individual vehicles are not entered on the MID.

61. Section 147(4) of the Road Traffic Act 1988 requires holders of insurance policies or securities to return their certificate of insurance or security if a policy is cancelled mid-term. *Subsection (4)* of the clause removes this requirement as, when a policy is cancelled, the cancellation will be recorded on the MID. Consequentially, it will no longer be an offence not to return an insurance certificate when a policy is cancelled mid-term and so section 147(5) will be removed by subsection (4) of the clause.

62. These amendments form part of the law of England and Wales and Scotland. These provisions will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 10: Private hire vehicles: circumstances in which a driver's licence is required

63. This clause amends section 46 of the Local Government (Miscellaneous Provisions) Act 1976. Section 46 contains offences for breaches of the specified licensing requirements which apply to the lawful operation of private hire vehicles. One such offence is for a person who does not a hold a private hire vehicle driver's licence to drive a licensed private hire vehicle.

64. *Subsection (2)* alters the extent of this offence by saying that the prohibition on a person without a PHV driver licence driving a licensed PHV only applies when the vehicle is being used as a PHV. *Subsection (3)* sets out the circumstances in which a vehicle is treated as being 'used as a PHV', namely when it is in use in connection with a hiring for the purpose of carrying passengers, or when it is at the disposal of an operator to carry out a booking (i.e. awaiting dispatch).

65. *Subsection (4)* covers enforcement of the amended offence. It applies to one specific aspect of the offence. Where the prosecution is able to prove that the vehicle was a private hire vehicle, it was being used on a road and it was carrying one or more passengers, the subsection reverses the usual burden of proof so that the onus is on the defendant to prove that the vehicle was not being used in connection with a hiring for the purpose of carrying passengers.

66. This clause forms part of the law of England and Wales. It applies in England and Wales except in London or Plymouth where different legislation applies.

67. This clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 11: Taxis and private hire vehicles: duration of licences

68. This clause amends two sections of the Local Government (Miscellaneous Provisions) Act 1976 that deal with the granting of licences to drive taxis and private hire vehicles and licences to operate private hire vehicles.

69. *Subsection (2)* changes the law in such a way as to establish a standard duration of three years for taxi and private hire vehicle driver licences. The clause specifies that a licence may be granted for a period of less than three years but only in the circumstances of an individual case, not because of a blanket policy.

70. *Subsection (3)* changes the law in such a way as to establish a standard duration of five years for a private hire vehicle operator licence. The clause specifies that a licence may be granted for a period of less than five years but only in the circumstances of an individual case, not because of a blanket policy.

71. The clause forms part of the law of England and Wales. It applies in England and Wales except in London or Plymouth where different legislation applies.

72. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 12: Private hire vehicles: sub-contracting

73. This clause inserts two new sections (55A and 55B) into the Local Government (Miscellaneous Provisions) Act 1976 in relation to the sub-contracting of bookings from one private hire vehicle operator to another. It applies in England and Wales, but not in London or in Plymouth where different legislation applies.

74. In the new section 55A, subsection (1) allows an operator who accepts a booking for a private hire vehicle to sub-contract it to four types of operator - (a) an operator licensed and located in the same district as the initial operator; (b) an operator licensed and located in a

different district from the initial operator (a different district but one which is still governed by the same legislation – in practice this means a district in England or Wales but outside London or Plymouth); (c) an operator licensed and located in London; or (d) a person located in Scotland. Scenario (a) constitutes a re-statement of existing law – it is already lawful for a private hire vehicle operator to sub-contract a booking to another operator licensed in the same licensing district. Scenario (a) has been included because it is not currently expressly stated on the face of the Act and stating all four scenarios where an operator can sub-contract a booking in this amendment makes the law clearer and easier to follow.

75. Subsection (2) of new section 55A clarifies that the new provision affects the legal position in respect of PHV operation under the 1976 Act; it is immaterial if the agreement between the passenger making the booking and the initial operator permits sub-contracting.

76. The purpose of subsections (3), (4) and (5) of new section 55A is to cover the scenario of a private hire vehicle operator who is licensed under section 55 of the 1976 but also holds a private hire vehicle operator licence in a different district or operates in a different area. This could happen where, for example, a company operates in a number of different areas.

77. Subsection (3) covers the scenario where an operator holds licences under section 55 of the 1976 Act for more than one licensing district. Subsection (4) covers the scenario where an operator holds a licence under section 55 of the 1976 Act and also holds a private hire vehicle operator licence issued by Transport for London in respect of London. Subsection (5) covers the scenario where an operator holds a licence under section 55 of the 1976 Act and also operates private hire cars or taxis in Scotland. Together, these subsections clarify that operators may sub-contract bookings effectively to themselves in the other districts or areas in exactly the same way that an operator can sub-contract to different operators by virtue of subsection (1).

78. Subsection (6) provides that the terms “London PHV operator” and “operating centre” mean exactly the same as when they are used in the legislation which regulates private hire vehicles in London.

79. The new section 55B deals with operator liability in connection with sub-contracting. Subsection (1) simply draws a distinction between the operator who accepts the original booking and the operator who accepts the sub-contract (labelling them the first operator and the second operator respectively).

80. Subsection (2) of new section 55B establishes that an initial operator who sub-contracts a booking to an operator based in a different district or area in accordance with section 55A(1) does not breach the requirement in section 46(1)(e) of the 1976 Act (the requirement being that the driver and vehicle used to fulfil the booking must be licensed by the same licensing authority as granted the operator’s licence).

81. Subsection (3) applies to an operator licensed under section 55 of the 1976 Act who sub-contracts to an operator also licensed under section 55 of the 1976 Act (whether in the same or a different district). The subsection introduces criminal liability for the first operator if the second operator breaches the requirement in section 46(1)(e) in relation to the booking and the first operator knew the second operator would do so (i.e. knew the second operator would use a driver or vehicle that was not licensed in the same district as the second operator).

82. The clause forms part of the law of England and Wales. It applies in England and Wales except in London or Plymouth where different legislation applies (although it does permit the sub-contracting of bookings to London operators).

83. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 13: Space activity: limit on indemnity required

84. Clause 13 amends the Outer Space Act 1986. Subject to certain exceptions, the 1986 Act requires a licence for the carrying out of space activities by UK nationals and companies. Section 10 of that Act provides that those carrying on activities in outer space must indemnify the United Kingdom government against any liability the United Kingdom incurs under international law in relation to those activities. There is currently no limit on the indemnity.

85. The principal effect of the amendments (see *subsections (3) and (4)*) is that the indemnity applicable to licensed space activities by virtue of section 10 of the 1986 Act is limited to the sum specified in the licence which authorises the activity (instead of being unlimited).

86. The clause also enables the variation of existing licences to reduce the level of the indemnity applicable to the licensed activities (see *subsections (5) and (6)*).

87. In addition, the power to exempt activities from the requirement to have a licence contained in section 3(3) of the 1986 Act is modified so that provision can be made under that section to reduce or remove liability under the indemnity in respect of activities which do not require a licence.

88. Provision is made under *subsection (7)* for the power under section 15(6) of the 1986 Act to be exercisable to extend the provisions made by the clause to the territories specified in section 15(6) (the Channel Islands, the Isle of Man and British Overseas Territories).

89. The clause forms part of the law of England and Wales, Scotland and Northern Ireland. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 14: Agricultural Holdings Act 1986: resolution of disputes by third party determination

90. This clause introduces Schedule 4 which makes amendments to the Agricultural Holdings Act 1986. See commentary on Schedule 4 below.

Clause 15: Shippers etc of gas

91. Part 1, Chapter 2, of the Energy Act 2008 (the "2008 Act") establishes a licensing regime for the storage and unloading of combustible gas. The regime applies to activities within the offshore area comprising both the UK territorial sea and the area extending beyond the territorial sea that constitutes a Gas Importation and Storage Zone ("GISZ") under section 1(5) of that Act.

92. The clause makes an amendment to this Part of the 2008 Act. Third parties who wish to make use of an offshore gas unloading facility operated by another person who has a licence for that facility will no longer be required to have a licence themselves to unload at the facility. Such facilities are used for the importation of gas to the UK mainland. This provision will remove an unnecessary regulatory burden on international maritime transporters of gas wishing to utilise such importation facilities.

93. The clause forms part of the law of England and Wales, Scotland and Northern Ireland and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 15: Suppliers of fuel and fireplaces

94. This clause amends, for England, the procedure for declaring a fuel to be an authorised fuel for the purposes of Part 3 of the Clean Air Act 1993. Under section 20 of the Clean Air Act 1993 the occupier of a building in a smoke control area commits an offence if smoke is emitted from the building's chimney. If, however, the emission was caused by the use of an authorised fuel the occupier will have a defence. In addition it is an offence under section 23 of the Clean Air Act 1993 to acquire or sell a non-authorised fuel for use in a smoke control area. The Secretary of State currently has the power under section 20(6) of the Clean Air Act 1993 to authorise fuels by regulations. This clause would enable the Secretary of State to authorise fuels by publishing a list of authorised fuels and to update this list from time to time. This list will be published on the Defra website on gov.uk. Fuels which are currently authorised by regulations will be placed on this list.

95. This clause also amends, for England, the procedure in section 21 of the Clean Air Act 1993 for exempting classes of fireplace from the operation of section 20. The Secretary of State currently has the power to exempt any class of fireplace by order upon such conditions as may be specified in the order if he is satisfied that such fireplaces can be used for burning fuel other than authorised fuels without producing any smoke or a substantial quantity of smoke. This amendment would enable the Secretary of State to exempt such fireplaces by publishing a list of exempted fireplaces and any relevant conditions and to update this list

from time to time. This list will be published on the Defra smoke control webpages. Fireplaces which are currently exempted by order will be placed on this list.

96. The amendments made by this clause will enable the Secretary of State to authorise fuels and exempt fireplaces as and when they are manufactured and tested rather than waiting for common commencement dates as is currently the case. This will reduce the delay that businesses currently face in bringing new fuels and fireplaces to the market and benefit consumers by granting more rapid access to the latest technology. It will also remove the burden on central government of having to prepare regulations and orders each time it is proposed to approve new fuels and fireplaces.

97. Part 3 of the Clean Air Act 1993 forms part of the law of England and Wales and Scotland. The clause forms part of the law of England and Wales only and applies only in relation to England. Amendments to sections 20 and 21 of the 1993 Act are being made for Scotland by means of the Regulatory Reform (Scotland) Bill, which was passed by the Scottish Parliament on 16th January 2014. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 17: Sellers of knitting yarn

98. This clause revokes the Weights and Measures (Knitting Yarns) Order 1988, which requires pre-packed knitting yarn to be sold by net weight and non-prepacked knitting yarn to be sold in specified quantities. The Order is not needed anymore as there is no longer a specific EU requirement to sell knitting yarn in specified quantities (due to Directive 2007/45/EC, which abolished specified quantities for relevant pre-packaged goods). Furthermore, a separate requirement for quantity labelling applies to knitting yarn under the Weights and Measures (Packaged Goods) Regulations 2006 (S.I. 2006/659). The revocation of the Order will lead to greater business freedom and consumer choice.

99. The clause, like the 1988 Order it revokes, forms part of the law of England and Wales and Scotland. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 18: Authorisation of insolvency practitioners

100. This clause amends Part 13 of the Insolvency Act 1986 to introduce a new regime for the partial authorisation of insolvency practitioners. Currently, individuals who are authorised to act as an insolvency practitioner are authorised in relation to all categories of appointment. Under the new regime, a person may be authorised to act only in relation to companies or only in relation to individuals. The new regime is intended to increase accessibility to the insolvency practitioner profession and improve competition. It will also reduce the cost of training and ongoing regulation for applicants who wish to specialise.

101. The main amendments are made by *subsections (2) and (3)*. A new section 390A will be inserted to provide that an insolvency practitioner who is partially authorised will be authorised to act only in relation to companies, or only in relation to individuals. It will also

provide for a person to be fully authorised to act as an insolvency practitioner and practise in all categories of appointment. Individuals who are already authorised to act as an insolvency practitioner will be fully authorised.

102. As regards Scotland, the definition of "individual" is extended by section 388(3) of the Insolvency Act 1986. The effect is that an insolvency practitioner who acts as permanent or interim trustee in the sequestration of the estate of a Scottish partnership or another entity by virtue of section 6 of the Bankruptcy (Scotland) Act 1985 is acting as an insolvency practitioner in relation to an individual. This means that an insolvency practitioner who is partially authorised in relation to individuals will be able to take appointments in relation to the sequestration of a Scottish partnership, whereas an individual who is partially authorised in relation to companies will not. No partially authorised insolvency practitioner will be able to accept an appointment in relation to a partnership which is not a Scottish partnership. This type of insolvency will require an individual to be fully authorised as they may need to have knowledge of both company and individual insolvency law.

103. A new section 390B will be inserted to deal with the question of whether insolvency practitioners who are partially authorised may accept appointments to act in relation to a current or former member of a partnership where the member has outstanding liabilities in relation to the partnership. An insolvency practitioner who is partially authorised in relation to companies will not be able to accept an appointment if the company is such a member. Neither will an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership. If an insolvency practitioner who is partially authorised in relation to companies becomes aware that they have been appointed to act in relation to a company which is or was a member of a partnership and has outstanding liabilities in relation to the partnership, they will commit an offence if they continue to act in that insolvency without the court's permission. The same will apply to an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership. There is provision for the insolvency practitioner to be able to continue to act for a limited period without committing an offence whilst the court's permission is obtained. There is also provision for the insolvency practitioner to be able to continue to act for a limited period (without committing an offence) whilst applying for a court order appointing a fully authorised person to act in his or her place.

104. *Subsection (4)* amends the Insolvency Act 1986 to enable the Secretary of State to recognise a professional body for the purposes of granting either full or partial authorisations to its insolvency specialist members, or for the purposes of granting only partial authorisations, provided that the body regulates the practice of a profession and maintains and enforces certain rules. The Secretary of State may revoke a professional body's recognition where it appears that the body no longer meets the relevant requirements. The Secretary of State may also revoke a professional body's recognition to provide both full and partial authorisations and replace it with recognition to provide partial authorisations only. The Secretary of State will be able to make transitional provisions to treat the body's insolvency specialist members as fully or partially authorised, as the case may be, for a specified period

after recognition is revoked, or revoked and replaced. Bodies already recognised under existing provisions will be recognised as if capable of providing their insolvency specialist members with full and partial authorisation (see *subsection (6)*).

105. Under section 415A of the Insolvency Act 1986 the Secretary of State has the power to charge professional bodies a fee in connection with granting or maintaining recognition of the body. *Subsection (5)* amends section 415A to enable the Secretary of State to vary the fee depending on whether a body is recognised to provide full and partial authorisations or partial authorisations only and to ensure that the Secretary of State can refuse or revoke recognition of such a body where the fee is not paid.

106. Part 13 of the Insolvency Act 1986 forms part of the law of England and Wales and Scotland and the clause will too. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 19: Auditors ceasing to hold office

107. This clause implements changes to Chapter 4 of Part 16 of the Companies Act 2006 (the "2006 Act") and, like the Part of the 2006 Act it amends, forms part of the law of England and Wales, Scotland and Northern Ireland. The changes emerged following a consultation by the Department for Business, Innovation and Skills in November 2009. They will reduce the regulatory burden of the notification requirements which, pursuant to Chapter 4, currently apply when an auditor resigns or is removed from office, or in some cases when the auditor is not reappointed. Chapter 4 currently includes unnecessary duplication such that, in many cases, both the company and auditor must notify Companies House and the audit authorities about the auditor's departure and the reasons for leaving. There are also unnecessary notification requirements between regulatory authorities.

108. An auditor is a person or firm appointed to examine the accounts and reports of a company, and its accounting records, and to report on whether in the opinion of the auditor the accounts give a true and fair view of a company's financial situation. Provision in the 2006 Act for the auditor's appointment and term of office is set out in sections 485 and 487 respectively (in the case of a private company) and in sections 489 and 491 respectively (in the case of a public company).

109. *Subsection (2)* of the clause replaces subsections (1) to (3) of section 519 of the 2006 Act with new subsections (1) to (3B).

110. New section 519(1) has the effect that an auditor of a public interest company who is ceasing to hold office must always send to the company a statement of his or her (or its) reasons for leaving. "Public interest company" and "non-public interest company" are defined in new section 519A (see subsection (3) of the clause).

111. New section 519(2), (2A) and (2B) have the effect that an auditor of a non-public interest company who is ceasing to hold office must send to the company a statement of his or her (or its) reasons for leaving unless:

- the auditor's term of office has come to an end when he, she or it leaves; or

- the auditor's reasons for leaving (before the end of the term of office) are all "exempt reasons" as defined in the list at new section 519A(3), and there is no information that the auditor thinks should be brought to the attention of the company's shareholders or creditors.

112. New section 519(3) specifies the company and auditor details that must be included in the statement sent pursuant to new section 519(1) or (2).

113. New section 519(3A) provides that, if an auditor thinks that there is any related information (not being the auditor's actual reasons for leaving office) that should be brought to the attention of the shareholders or creditors of the company, the auditor must include that information in the statement. This might be the case even if the auditor is acting for a non-public interest company and his or her reasons for leaving are exempt.

114. New section 519(3B) provides that if an auditor of a non-public interest company considers that there is no such information that should be brought to the attention of the shareholders or creditors and that none of the reasons need be brought to their attention, then the auditor's statement under new section 519(2) must include a statement to that effect.

115. *Subsection (3)* of the clause inserts a new section 519A into the 2006 Act. Subsections (1) and (2) of new section 519A define the terms "public interest company" and "non-public interest company". A public interest company is defined as a company whose "transferable securities" (these include shares and bonds) are listed on a regulated market such as the London Stock Exchange, or whose shares are listed on a comparable EEA market. Subsection (3) of new section 519A lists the "exempt reasons". These "exempt reasons" are:

- that the auditor is ceasing to practise as an auditor (this could be because an individual auditor is retiring or changing career or because an audit firm is ceasing to be in business);

- that the company the auditor is ceasing to act for qualifies for one of the exemptions from audit under Chapter 1 of Part 16 (applicable to certain small companies, dormant companies and subsidiaries) and intends to rely on one of these exemptions;

- that (broadly speaking) the auditor is ceasing to act for a "subsidiary" company (i.e. a company completely or partly owned or controlled by another, "parent", company or

other entity) because the accounts of the subsidiary are to be audited as part of the audit of the group accounts by the parent's auditor; and

- that the company the auditor is ceasing to act for is being liquidated through an insolvency procedure.

Subsection (5) of new section 519A gives the Secretary of State a power to amend, by order, the definition of "public interest company" and subsection (6) specifies the relevant parliamentary procedure (negative resolution procedure) for any such order.

116. *Subsection (4)* replaces subsections (1) to (3) of section 523 of the 2006 Act. These provisions concern the giving by a company of notice to the relevant "audit authority" that an auditor is ceasing to act for the company. The relevant audit authority is defined at section 525 of the 2006 Act – in practice that authority will be the Financial Reporting Council or the accountancy body with which the auditor has his or her (or the audit firm has its) registration.

117. The new subsections provide for exceptions to this notification requirement. These exceptions apply whether or not the company is a public interest company. Taken together, new subsections (1), (1A) and (2) have the effect that a company must notify the appropriate audit authority whenever an auditor ceases to act for the company before his or her (or its) term of office ends unless the company reasonably believes that the auditor's reasons for leaving (before the end of the term of office) are all "exempt reasons".

118. New section 523(2A) provides that the company's notice to the relevant audit authority must be a statement by the company of what it believes (whether reasonably or unreasonably) to be the reasons for the auditor's departure.

119. New section 523(2B) and (2C) provide that, as an alternative, a company may provide an "endorsed" copy of the auditor's statement under new section 519(1) if the company receives that statement from the auditor within certain time limits and the company agrees with its contents. (The endorsement is an endorsement to the effect that the company so agrees.)

120. New subsection (3) of section 523 stipulates when the company's notice (whether a wholly new notice or an endorsed copy of the auditor's) must be given.

121. *Subsection (5)* of the clause gives effect to Schedule 5 which makes further amendments to the provisions on departing auditors. See commentary on Schedule 5 below.

122. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 20: Insolvency and company law: miscellaneous

123. This clause introduces Schedule 6 which deals with matters relating to companies and insolvency. See commentary on Schedule 6 below.

Clauses 21 to 27 (and Schedule 7): background and territorial extent, application and commencement

124. By way of background to these measures, Part 3 of the Wildlife and Countryside Act 1981 ("the 1981 Act") requires local authorities in England and Wales to maintain and keep under review maps and statements showing public rights of way in their area. The local authorities concerned are referred to in that Act as "surveying authorities" and the maps and statements are referred to as "definitive maps and statements". Part 3 also sets out the procedures which apply where an authority wishes to make a change to the definitive map and statement for its area or where someone applies for such a change to be made.

125. A definitive map and statement is conclusive evidence of certain matters. For example, if a map shows a footpath, this is generally conclusive evidence that the public had a right of way on foot over the land on a particular date.

126. Some rights of way are not recorded on a definitive map and statement. The Countryside and Rights of Way Act 2000 (section 53) provides for unrecorded rights of way created before 1949 to be extinguished immediately after 1st January 2026 (known as the "cut-off date"), subject to certain exceptions.

127. The Highways Act 1980 also deals with public rights of way. For example, it allows applications to be made, in certain circumstances, to extinguish or divert a public right of way.

128. Clauses 21 to 27 (and Schedule 7) form part of the law of England and Wales. However, the amendments made by them make changes which affect public rights of way in England only. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 21: Recorded rights of way: additional protection

129. The background to this, as explained in the introduction to clauses 21 to 27, is that section 53 of the Countryside and Rights of Way Act 2000 ("the 2000 Act") provides for the extinguishment, immediately after 1st January 2026 (the "cut-off date"), of unrecorded rights of way created before 1949, subject to certain exceptions.

130. Rights of way created before 1949 but recorded on a definitive map and statement on the cut-off date will not be extinguished. Under the current law, it would, however, be possible for someone to apply to a surveying authority to have the definitive map and statement modified so as not to show the right of way. For example, an application might be made on the basis that there was no public right of way on foot over land shown on the map

as a footpath. If the application succeeded and the map was modified so as not to show the footpath, this could affect the ability of members of the public to use the path (because they would no longer be able to rely on the map as evidence of the existence of a right of way on foot). In practice, applications to modify a map and statement so as not to show a right of way are usually made on the basis that there was no right of way over the land in question. The investigation of applications based on evidence about the position before 1949 can be very difficult for authorities.

131. The clause changes the position by inserting a new section 55A in the 2000 Act. It provides that an authority may not, after the cut-off date, make a modification to a definitive map and statement if the modification might affect the exercise of a protected right of way and the only basis for the authority considering that the modification is appropriate is evidence that the right did not exist before 1st January 1949.

132. Subsection (2) of the new section 55A defines protected right of way. For example, a right of way on foot and a right of way on horseback or leading a horse over land shown on the definitive map and statement as a bridleway are protected rights of way.

133. This measure will protect the status of certain public rights of way by preventing modifications of the definitive map and statement after the cut-off date, even where evidence emerges that the right of way had been wrongly recorded. It will therefore reduce the burden on local authorities that arises from having to consider in detail applications for modifications which require an investigation of historical evidence.

Clause 22: Unrecorded rights of way: protection from extinguishment

134. The background to this clause, as with clause 21, is that section 53 of the Countryside and Rights of Way Act 2000 ("the 2000 Act") provides for the extinguishment, immediately after 1st January 2026 (the "cut-off date"), of unrecorded rights of way created before 1949, subject to certain exceptions.

135. It is thought that, in the period immediately before the cut-off date, there will be a large volume of applications to surveying authorities for modifications to be made to the definitive map and statement to show rights of way that are currently unrecorded. This is because individuals and groups in the voluntary sector are likely to carry out research so that they can make applications to have unrecorded rights of way shown on a definitive map and statement (with the result that they will not be automatically extinguished after that date). There is concern that surveying authorities will also carry out research into unrecorded rights of way during this period in order to comply with the requirement that they keep under review definitive maps and statements. This could lead to surveying authorities unnecessarily duplicating the work of individuals and the voluntary sector.

136. The clause therefore inserts a new section 56A in the 2000 Act. It enables the Secretary of State to make regulations enabling a surveying authority to designate, during a period of one year after the cut-off date, public rights of way extinguished immediately after

that date under section 53 of that Act. The new section 56A also sets out what else may be included in the regulations. It is envisaged that the power to make regulations will be used to provide for designated rights to cease to be regarded as extinguished as from the time of designation. Where a right is designated, surveying authorities will be required to decide whether to modify the definitive map and statement to show the right of way. If a right of way is then shown on the map, it will remain unextinguished. If the authority decides not to show the right of way, it will normally be extinguished again.

137. The purpose of the new provision is to enable surveying authorities to wait until after the cut-off date to assess what research has been carried out by individuals and voluntary organisations. There will be a one-year period after that date within which they can act under the regulations to prevent rights of way being permanently extinguished. They will therefore be able to avoid duplicating any work done by individuals and voluntary organisations and focus, during the one-year period following the cut-off date, on areas where research has not been carried out by individuals and voluntary organisations.

Clause 23: Conversion of public rights of way to private rights of way

138. The background to this clause, as with clauses 21 and 22, is that section 53 of the Countryside and Rights of Way Act 2000 ("the 2000 Act") provides for the extinguishment, immediately after 1st January 2026 (the "cut-off date"), of unrecorded rights of way created before 1949, subject to certain exceptions.

139. There are situations where public rights of way are used by individuals to gain access to their own land. In such a case, the extinguishment of a right of way could cause real difficulties for the individuals concerned who may be prevented from obtaining access to their land.

140. The clause therefore inserts a new section 56B in the 2000 Act. It applies where a public right of way would be extinguished under section 53 of the 2000 Act immediately after the cut-off date. If the exercise of such a right of way is reasonably necessary to enable a person with an interest in land to obtain access to the land (or would have been reasonably necessary to enable that person to obtain access to a part of that land if the person had an interest in that part only), it becomes a private right of way (so that the person may continue to access the land). It does not matter whether the person is using the existing public right of way on the cut-off date, or is able to use it.

141. In the situation in which it applies, the new section 56B therefore protects the person with the interest in the land from the burden of the loss of access to it.

Clause 24: Applications by owners etc for public path orders

142. The background to this clause is that, under section 118ZA of the Highways Act 1980, owners, lessees and occupiers of land used for agriculture, forestry or the breeding or keeping of horses may apply to a local authority for an order ("a public path extinguishment order") which extinguishes a public right of way over a footpath or bridleway crossing the land.

Section 119ZA of that Act confers a comparable right to apply for an order to divert such a right of way ("a public path diversion order").

143. Under the current law, applications for a public path extinguishment order or a public path diversion order cannot be made in relation to other land, even where there would be good reasons for making such an order. *Subsections (2) and (3)* of the clause therefore amend, respectively, sections 118ZA(1) and 119ZA(1) of that Act to allow the Secretary of State to prescribe in regulations other kinds of land in England in respect of which such applications may be made.

144. A further difficulty with the current law relates to the procedure that the Secretary of State must follow in determining appeals against a refusal by an authority to make an order on an application under section 118ZA or 119ZA. It is considered that the procedure is insufficiently flexible and disproportionately burdensome in relation to certain cases. For example, regardless of the merits of the appeal, the Secretary of State is required to prepare a draft of an order giving effect to the application (section 121E(1)). *Subsections (4) and (5)* therefore amend section 121E (which sets out the current procedure). The new subsection (1A)(a) gives the Secretary of State the power to determine not to make such an order without following the procedure currently set out in section 121E(1). The new subsection (1B) requires the Secretary of State to inform the applicant of a determination under the new subsection (1A)(a) and the reasons for it.

Clause 25: Extension of powers to authorise erection of gates at owner's request

145. The background to this clause is that section 147 of the Highways Act 1980 authorises the erection of stiles, gates or other works on footpaths or bridleways crossing agricultural land for the purpose of preventing animals coming on to the land or escaping from it (referred to in the legislation as "the ingress or egress of animals"). However, there is no comparable provision for restricted byways or byways open to all traffic ("byways"). The main effect of this is that it is not possible for authorities to authorise the erection of gates on byways under section 147. One practical consequence of this is that owners may oppose applications to modify definitive maps and statements to show a restricted byway or a byway open to all traffic, even though they would be willing to agree to the modification if, for example, a gate were erected. Dealing with contested applications is burdensome for all those involved, including the Secretary of State who will generally have to deal with them.

146. The clause therefore amends section 147 (by inserting a new subsection (1A)) to enable a competent authority in England to authorise the erection of gates for preventing the ingress or egress of animals on a byway. The authority must be satisfied that it is expedient that gates should be erected on the byway before authorising them. "Competent authority" is defined in the new subsection (1A)(a) and (b). This will generally be the highway authority.

147. This measure will make it easier for owners to obtain permission to erect gates on byways. It is thought that it will also have the effect of reducing the number of occasions on

which applications for an order modifying a definitive map and statement to show a byway are opposed by landowners.

Clause 26: Applications for certain orders under Highways Act 1980: cost recovery

148. The background to this clause is that sections 118ZA and 119ZA of the Highways Act 1980 ("the 1980 Act") allow owners, lessees or occupiers of certain land to apply to local authorities for public path extinguishment orders or public path diversion orders. Certain amendments to those sections are made by clause 24 (so as to extend the kinds of land to which such applications may relate). The amendments made by this clause deal with the recovery of costs in respect of such applications.

149. Currently, the sections contain powers which allow the Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales, to prescribe charges payable on the making of such applications (and further charges where an order is made on the application). Under such regulations, the authority dealing with the application would be able to recover its costs but only up to the prescribed amount which would be set centrally and may not be at a level which would allow the authority to recover all of its costs.

150. The clause therefore amends sections 118ZA and 119ZA of the 1980 Act so as to limit the application of the charging provisions to Wales. The purpose of this is to allow the Secretary of State (in relation to England) to use the power under section 150 of the Local Government and Housing Act 1989 to authorise charges to be imposed in respect of applications under sections 118ZA and 119ZA. Under this power, it would be possible for the Secretary of State to authorise a charge the amount of which would be at the authority's discretion, provided it does not exceed the actual cost incurred. This provides the means for removing the burden on authorities which can arise under the current law if the centrally prescribed limit does not enable it to recover all of its costs.

151. The clause also amends paragraph 2B of Part 1 of Schedule 6 to the 1980 Act. Currently, it is unclear whether the Secretary of State, who has a role in dealing with contested applications for public path orders, can recover the costs of determining such an application by appointing a person to consider and deal with written representations instead of holding an inquiry or an oral hearing. The amendment clarifies that the Secretary of State may recover the costs (under the same principles governing the recovery of the costs of holding an inquiry or conducting an oral hearing).

Clause 27: Public rights of way: procedure

152. This clause introduces Schedule 7, which makes changes to the procedure for ascertaining public rights of way in England. See the commentary on Schedule 7 below. In relation to the procedures set out in paragraph 5 of Part 1 and Parts 2 and 3 of Schedule 7, this clause also provides for the Secretary of State to make regulations prescribing the transitional arrangements that are to apply to applications for a definitive map modification order made before the new procedures come into force.

Clause 28: Erection of public statues (London): removal of consent requirement

153. This clause repeals section 5 of the Public Statues (Metropolis) Act 1854 (the "1854 Act").

154. Section 5 of the 1854 Act requires the consent of the commissioners of works to be obtained before a public statue can be erected in a public place in the Metropolitan Police District of London. The functions of the commissioners of works are now vested in the Secretary of State for Culture, Media and Sport. By virtue of the London Government Act 1963, as amended by the Greater London Authority Act 1999, the Metropolitan Police District of London is now the area of Greater London, excluding the City of London, and the Inner and Middle Temples. The purpose of section 5 of the 1854 Act was to stop the proliferation of statues in public places in London.

155. The 1854 Act was introduced before the introduction of modern day planning laws, which now provide controls over the erection of statues in public places in London. Section 57 of the Town and Country Planning Act 1990 now requires planning permission for the carrying out of any development of land (which includes, by virtue of sections 55 and 336 of that Act, any structure or erection). In practice, the Secretary of State only considers an application for consent under section 5 of the 1854 Act after planning permission has been granted by the local planning authority.

156. The effect of the clause would be to repeal section 5 of the 1854 Act, which would remove the requirement for the consent of the Secretary of State in these circumstances.

157. Section 5 is only of practical application to London. The clause will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 29: Reduction of qualifying period for right to buy

158. This clause amends Part 5 of the Housing Act 1985 which enables tenants of a local authority to exercise the right to buy their home provided they meet the eligibility criteria set out in the 1985 Act. To qualify for the right to buy tenants must currently have spent at least 5 years as public sector tenants. The clause amends section 119 of the 1985 Act to reduce the qualifying period from 5 years to 3 years.

159. Tenants of housing associations (other than those who have a preserved right to buy) have the right to buy their home from their landlord, providing the housing was acquired using public funding. This is known as the right to acquire. Under section 180(1) of the Housing and Regeneration Act 2008, a tenant of a dwelling in England has the right to acquire where the tenant meets the criteria set out, including that the tenant must satisfy any qualifying conditions in Part 5 of the Housing Act 1985 (the right to buy provisions). Therefore, the amendment to the qualifying period for the right to buy will also apply to tenants with the right to acquire.

160. The clause does not change the discounts available to tenants under the right to buy. Tenants will continue to receive a starting discount of 35% for houses and 50% for flats. The increase in the starting discount for each complete year of the qualification period will continue to apply only when the qualifying period exceeds 5 years.

161. The clause, like Part 5 of the Housing Act 1985, forms part of the law of England and Wales but the change made by the clause applies to England only.

162. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 30: Removal of power to require preparation of housing strategies

163. Section 87(1) of the Local Government Act 2003 (the "LGA 2003") affords a discretionary power to the appropriate person (defined in section 124 as the Secretary of State, in relation to authorities in England, and the National Assembly for Wales, in relation to authorities in Wales) to require a local housing authority to have a strategy in relation to certain specified matters relating to housing.

164. Section 88 of the LGA 2003 provides that the appropriate person may require a local housing authority to designate any material relating to property in its Housing Revenue Account, which it includes in a statement prepared for the purposes of section 87, as being, or forming part of, the authority's Housing Revenue Account business plan.

165. The clause amends sections 87 and 88 of the LGA 2003 so as to limit their application to Wales only. Sections 87 and 88 are no longer to apply to England as the power of the Secretary of State in section 87(1) has never been exercised, and there is no intention for it to be exercised in the future.

166. The clause forms part of the law of England and Wales but the changes will have an effect only in England. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 31: Tenancy Deposits

Background

167. This clause inserts four new sections into Chapter 4 of Part 6 of the Housing Act 2004 ("the 2004 Act") which makes provision about the protection of tenancy deposits in the private rented sector.

168. By way of background, the tenancy deposit protection provisions in the 2004 Act require that where a deposit is paid in connection with an assured shorthold tenancy (the most common form of tenancy in the private rented sector) it must be protected by the landlord or agent in a Government authorised scheme and certain information ("the prescribed

information") must be sent to the tenant within 30 days of the deposit being received. Landlords who fail to comply are liable for a financial penalty of between 1 and 3 times the amount of the deposit, payable to the tenant, on the tenant bringing court proceedings under section 214 of the 2004 Act. Landlords who fail to protect deposits also lose the ability to rely on the no-fault ground for possession in section 21 of the Housing Act 1988 unless they return the deposit to the tenant in full (or with deductions agreed by the tenant) or until court proceedings under section 214 have been resolved. Chapter 4 of Part 6 of the 2004 Act came into force on 6th April 2007 and certain amendments were subsequently made by section 184 of the Localism Act 2011.

169. The purpose of the new provisions is to deal with certain issues arising out of the Court of Appeal's decision in the case of *Superstrike v Rodrigues* [2013] EWCA Civ 669. That case concerned a deposit which was received in connection with a fixed term tenancy prior to commencement on 6th April 2007. When the fixed term tenancy expired sometime after that date, the tenant continued to occupy the property under a statutory periodic tenancy in accordance with section 5 of the Housing Act 1988 and the landlord continued to hold the same deposit in connection with the periodic tenancy. The landlord in the case argued that the tenancy deposit protection legislation only applied if the deposit was physically received on or after 6th April 2007. However, the Court did not agree and found that the deposit must be treated as having been paid by the tenant and received by the landlord afresh at the start of the statutory periodic tenancy. As such, the tenancy deposit protection legislation applied and the landlord was required, at the point the tenancy became periodic, to make arrangements for the deposit to be held in accordance with an authorised scheme and to send the prescribed information to the tenant. This is contrary to the original guidance for landlords issued by the government that in this specific situation the legislation would not apply to the deposit. New section 215A is intended to deal with this issue.

170. The Court of Appeal's decision also has implications for deposits which have been protected. This is because it has been interpreted by some as meaning that every time a tenancy becomes a statutory periodic tenancy or is renewed the duty on the landlord to comply with the tenancy deposit protection requirements arises afresh at the start of the new tenancy, even though the deposit remains protected in accordance with the same authorised scheme from one tenancy to the next. New sections 215B and 215C are intended to deal with this issue.

171. The new clause forms part of the law of England and Wales. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

New section 215A Statutory periodic tenancies: deposit received before 6 April 2007

172. New section 215A applies to cases where a tenancy deposit was received in connection with a fixed term tenancy prior to 6th April 2007 and, on or after that date, a statutory periodic tenancy arose on the expiry of the fixed term tenancy.

173. Subsection (2) provides that in cases where the periodic tenancy is still in existence as at the date of commencement of this clause and some or all of the deposit paid in connection with the fixed term tenancy continues to be held by the landlord in connection with the periodic tenancy, the tenancy deposit protection requirements do apply. However, the landlord has an extended period within which to comply with those requirements (see commentary on subsection (3) below). Subsection (2) further provides that the requirements apply to any of the original deposit which continues to be held in connection with the periodic tenancy and to any additional deposit which the landlord may have received in connection with the tenancy.

174. Subsection (3) provides that instead of the landlord being required to comply with the tenancy deposit requirements at the start of the statutory periodic tenancy, a date which will have long passed in such cases, there is an extended period within which to comply. This is any time prior to the date which is 90 days after commencement of the new provisions or, if earlier, at any time prior to the date on which a court determines an application for penalties under section 214 of the 2004 Act or determines whether to make a possession order under section 21 of the Housing Act 1988 (or decides an appeal against either type of determination).

175. Subsection (4) provides that in cases where, at the time this clause is commenced, the landlord no longer holds any deposit in connection with the periodic tenancy or the tenancy has ended, the landlord will be treated as having complied with the requirements in section 213 of the 2004 Act.

176. By virtue of new section 215D(1), this section is treated as having had effect since 6th April 2007 subject to the exception provided for in section 215D(2) (see commentary on new section 215D).

New section 215B Statutory periodic tenancies: deposit received on or after 6 April 2007

177. New section 215B concerns cases where a deposit is received on or after 6th April 2007 in connection with a fixed term tenancy and, at the expiry of the fixed term, the tenant continues to occupy the property under a statutory periodic tenancy arising under section 5 of the Housing Act 1988. The effect of this section is that where the tenancy deposit requirements are complied with in relation to the deposit held in connection with the fixed term tenancy, then as long as the deposit continues to be held in the same authorised tenancy deposit scheme when the statutory periodic tenancy arises, the landlord will be treated as having complied with the tenancy deposit protection requirements afresh at the start of the statutory periodic tenancy.

178. By virtue of new section 215D(1), this section is treated as having had effect since 6th April 2007 subject to the exception provided for in section 215D(2) (see commentary on new section 215D).

215C Renewed fixed term or contractual periodic tenancies: deposit received on or after 6 April 2007

179. New section 215C is similar to new section 215B but concerns cases where a deposit is received on or after 6th April 2007 in connection with an assured shorthold tenancy and, at the end of that tenancy, the same landlord grants the same tenant a new fixed term tenancy or a new contractual periodic tenancy in respect of the same premises, i.e. the landlord expressly renews the tenancy.

180. The effect of this section is that where the tenancy deposit requirements are complied with in relation to the deposit held in connection with the earlier tenancy, then as long as that deposit continues to be held in accordance with the same authorised tenancy deposit scheme from one tenancy to the next, the landlord does not have to re-issue the same prescribed information to the tenant at the start of each new, renewed tenancy.

181. Subsection (3) makes it clear that this section also applies to cases where, although the deposit was first received by the landlord prior to 6th April 2007 in connection with an assured shorthold tenancy, the landlord renewed the tenancy on or after that date and complied with the tenancy deposit protection requirements in relation to the deposit at that stage.

182. By virtue of new section 215D(1), this section is treated as having had effect since 6th April 2007 subject to the exception provided for in section 215D(2) (see commentary on new section 215D).

215D Sections 215A to 215C: transitional provisions

183. New section 215D provides that new sections 215A to 215C are to be treated as having had effect since 6th April 2007, the date on which tenancy deposit provisions in the 2004 Act came into force. However, subsection (2) provides that they do not have effect in relation to legal proceedings under section 214 of the 2004 Act or section 21 of the Housing Act 1988 which have either been finally determined by a court (see subsection (6)) or settled between the parties prior to the date on which this clause comes into force.

184. If legal proceedings have been instituted but have not been finally determined or settled before the date on which this clause comes into force, subsections (3) to (5) apply so as to protect the tenant from liability for the landlord's legal costs where, as a consequence of new sections 215A, 215B or 215C, the court decides against the tenant's claim under section 214 of the 2004 Act and/or decides to grant the landlord a possession order under section 21 of the Housing Act 1988. In those circumstances a court must not order the tenant to pay any part of the landlord's costs in the proceedings which it reasonably considers are attributable to the tenant's claim under section 214 of the 2004 Act and/or the possession proceedings under section 21 of the Housing Act 1988. This provision recognises that the court proceedings involving the landlord and tenant may also comprise claims and/or counter-claims (for instance in respect of rent arrears) which are not directly affected by new sections 215A to 215C.

Clause 32: Optional building requirements

185. The Building Act 1984 empowers the Secretary of State to make building regulations establishing the standards to be met by building work. Local planning authorities meanwhile have been including in their development plans requirements for dwellings to comply with further standards drawn from sources other than building regulations. There are over a hundred such standards. This multiplicity creates burdens of cost, bureaucracy and delay in the house building process. After a review and consultation, the government has decided that so far as is practicable all necessary technical housing standards should be included in the main building regulations.

186. Where there is a need for provision to deal with local circumstances, the government's policy is that building regulations should provide for optional requirements. In some cases these may be different, more demanding, requirements than those that apply generally for a matter dealt with in building regulations. In other cases it may be that a matter is not subject to any requirements unless the optional requirement is invoked. Local planning authorities will be able, where circumstances justify it, to make it a condition of planning permission for developments that they comply with one or more such optional requirements, which will then apply to the development as building regulations requirements, and be inspected and enforced as such. The Secretary of State will have the same power in the exercise of functions of granting planning permission, which arise principally on appeal to the Secretary of State or when the Secretary of State calls in applications for planning permission made to local planning authorities.

187. The clause establishes the necessary powers for the Secretary of State to make building regulations provisions in the form of optional requirements that become binding requirements when included as a condition of planning permission. It makes no provision in relation to planning policy. That aspect of the housing standards policy will be dealt with in due course in a written ministerial statement. The policy on housing standards has been developed for England, and the power will be available to the Secretary of State only when making building regulations for England.

188. The clause forms part of the law of England and Wales but applies to England only. It comes into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 33: Amendment of Planning and Energy Act 2008

189. This clause is related to clause 32. It is a corollary of the restriction of technical housing standards to those found in building regulations that an amendment is made to the Planning and Energy Act 2008. Section 1(1)(c) of that Act provides that local planning authorities may include in their plans requirements that development in their area meets higher standards of energy efficiency than are required by building regulations. This is inconsistent with the consolidation of technical standards for housing in building regulations, and the amendment will disapply the provision in England in relation to development that consists of the construction or alteration of buildings to provide dwellings, or the carrying out

of any work on dwellings. Government policy meanwhile is that new dwellings meet a zero net carbon emissions standard from 2016.

190. The provision to be amended forms part of the law of England and Wales, but the amendment will affect its application in England only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 34: Short-term use of London accommodation: power to relax restrictions

191. The purpose of section 25 of the Greater London Council (General Powers) Act 1973 is to restrict the use of residential premises in the 32 London boroughs and the City as temporary sleeping accommodation. This is achieved by making the use as temporary sleeping accommodation of the premises a material change of use for which planning permission is required. This applies even if only part of the premises is used as temporary sleeping accommodation.

192. Temporary sleeping accommodation is defined as sleeping accommodation which is occupied by the same person for less than ninety consecutive nights and which is provided (with or without services) for a consideration arising either by way of trade for money or money's worth, or by reason of the employment of the occupant, whether or not the relationship of landlord and tenant is thereby created.

193. The purpose behind the provision was to protect London's existing housing supply, for the benefit of permanent residents, by giving London boroughs greater and easier means of planning control to prevent the conversion of family homes into short term lets.

194. Section 25 works within the context of the current planning system. Under the Town and Country Planning Act 1990 (the "1990 Act") planning permission is required for the carrying out of any development of land (subject to certain provisions). The meaning of development is set out in section 55(1) of the 1990 Act and includes a material change of use. Section 25 (of the 1973 Act) deems the change of use from residential premises to temporary sleeping accommodation as a material change of use. This brings the change from residential premises to temporary sleeping accommodation within the definition of development and means that it therefore requires planning permission.

195. The development of the internet (and in particular holiday home-swap sites) and changes in that way that people want to use their home have led to calls for the provisions of section 25 to be relaxed so that people in London can let out their property as temporary sleeping accommodation for short periods.

196. The clause therefore inserts into the Greater London Council (General Powers) Act 1973 a new section which provides the Secretary of State with a power to make regulations, subject to the affirmative procedure, so that section 25 can be amended:

- to set out circumstance in which the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use by virtue of section 25(1) (so that planning permission is not required); and

- to allow the Secretary of State or the local authority to exclude particular residential premises and residential premises in particular areas from any relaxation of section 25.

197. The new clause forms part of the law of England and Wales but, as explained above, applies only to London. It will come into force on the day on which the Bill becomes an Act.

Clause 35: Removal of restrictions on provision of passenger rail services
198. This clause adjusts section 10(1) of the Transport Act 1968 to enable the existing legal powers of a Passenger Transport Executive ("PTE") in England to carry passengers by rail to be used beyond and outside its current geographic limit (that current limit being 25 miles beyond the boundary of its jurisdiction). It does so by inserting a new paragraph (ia) into section 10(1). Sub-paragraph (a) expressly empowers a PTE in England to carry passengers by railway within its area and also outside its area anywhere in Great Britain. Sub-paragraph (b) maintains the current 25 mile limit for any PTE in Wales or Scotland (although there is currently no PTE in Wales or in Scotland). Consequential on this the clause adjusts section 10(1)(ii) of the Transport Act 1968 to remove rail from its scope and to reiterate that this paragraph does not confer power to carry passengers by road.

199. This clause forms part of the law of England and Wales, Scotland and Northern Ireland. However it will only affect PTEs which are in England, albeit it will enable those PTEs to carry passengers by railway anywhere in Great Britain. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

200. These changes follow the government's response of November 2012 to the consultation on rail decentralisation ("*Rail Decentralisation – Devolving decision making on passenger rail services in England*" - March 2012).

201. This clause also introduces Schedule 8, which makes related amendments. See commentary on Schedule 8 below.

Clause 36: Reduction of burdens relating to the use of roads and railways
202. This clause introduces Schedule 9, which makes changes to the regulation of the use of roads and railways. See commentary on Schedule 9 below.

Clause 37: Reduction of burdens relating to enforcement of transport legislation
203. This clause introduces Schedule 10, which makes changes to the enforcement of certain aspects of transport legislation. See commentary on Schedule 10 below.

Clause 38: Civil penalties for parking contraventions: enforcement

204. This clause inserts two provisions into Part 6 of the Traffic Management Act 2004 ("the 2004 Act"), both of which apply in relation to parking contraventions on roads in England. Clause 38(2), inserting section 78A, adds to the existing power under section 78 of the 2004 Act and requires regulations under that section to provide for notification of a penalty charge to be given by way of a civil enforcement officer affixing a penalty charge notice to the vehicle in question. This is subject to a power to provide for exceptions, to cater for particular contraventions or circumstances in which a contravention may take place. Unless an exception applies, local authorities will no longer be able to issue penalty charge notices through the post.

205. Clause 38(3), inserting section 87A into the 2004 Act, provides the Secretary of State with an enabling power that allows for the prohibition of CCTV or other devices in connection with parking enforcement. The prohibition may be general or limited to particular uses. The power could be exercised by setting out the prohibition in free-standing regulations or in amendments to Part 6 itself. Clause 38(3) also allows for exceptions in the same way as clause 38(2).

206. The clause forms part of the law of England and Wales but applies only to parking contraventions in England. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 39: Removal of restriction on investigation of tramway accidents in Scotland by RAIB

207. Section 14(2) of the Railways and Transport Safety Act 2003 prevents the Rail Accident Investigation Branch (RAIB) from investigating tramway accidents in Scotland.

208. This clause will have the effect of removing that prohibition. It will allow RAIB inspectors to conduct investigations of tramway accidents and incidents in Scotland in accordance with its statutory powers. RAIB investigators already investigate accidents and incidents on all main line services (including in Scotland) and undertake investigations into tramway accidents and incidents in England and Wales.

209. This clause forms part of the law of England and Wales, Scotland and Northern Ireland but will apply in relation to Scotland only.

210. This clause comes into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Clause 40: Removal of duty to order re-hearing of marine accident investigations

211. This clause repeals that part of section 269(1) of the Merchant Shipping Act 1995 which requires the Secretary of State to order the rehearing of a formal investigation into a marine accident if new and important evidence which could not be produced at the

investigation has been discovered. The Secretary of State would retain the discretionary power in that subsection to reopen any formal investigation and would continue to be subject to the subsection's requirement to reopen such an investigation where there are grounds for suspecting a miscarriage of justice.

212. Consequently, in the event of new and important evidence relating to a marine accident being discovered, the Secretary of State would be able to evaluate the likely benefits of reopening an inquiry in the light of the particular circumstances. For example, where a considerable period of time has elapsed since the accident, there may be little of practical value that could be learned from the evidence that would enhance current maritime safety.

213. This clause, like section 269 of the Merchant Shipping Act 1995, forms part of the law of England and Wales, Scotland and Northern Ireland. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 41: Repeal of power to make provision for blocking injunctions

214. This provision repeals sections 17 and 18 of the Digital Economy Act 2010. Those sections contain powers to make regulations that would grant courts the power to order internet service providers to block access to websites. The court would need to be satisfied that such websites are used, or are likely to be used, to infringe copyright. In August 2011 the government announced in its paper "*Next steps for the implementation of the Digital Economy Act*" that it would not make such regulations. This was on the basis of a study carried out by Ofcom which concluded that the specific blocking injunctions in the Act were unlikely to be effective in practice.

215. This provision forms part of the law of England and Wales, Scotland and Northern Ireland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 42: Reduction of duties relating to energy and climate change

216. This clause repeals certain sections of the Climate Change and Sustainable Energy Act 2006 (the "2006 Act") which require the Secretary of State to publish reports and targets and to take certain other steps relating to energy matters. It also makes consequential amendments to the Climate Change Act 2008, the Energy Act 2008, the Income Tax (Trading and Other Income) Act 2005, the Sustainable Energy Act 2003 and the Taxation of Chargeable Gains Act 1992. The remainder of this note on the clause describes the repeals in more detail.

217. Section 3 of the 2006 Act requires local authorities to have regard to any energy measures reports published by the Secretary of State under that section when exercising their functions. The government considers that this section is no longer required as the only report thus far was published in 2007 and is now out of date. The government does not intend to produce another report under section 3 as it considers that section 19(1A) of the Planning and Compulsory Purchase Act 2004 and informal arrangements between government and local authorities enable the relevant objectives towards improving building efficiency, increasing

microgeneration, reducing emissions and combatting fuel poverty to be pursued in other ways. The repeal of section 3 has the same extent as the original provision and so forms part of the law of England and Wales only.

218. Section 81(3) of the Climate Change Act 2008 amends section 3 of the 2006 Act so that it applies in England only. This provision has not been commenced but the government considers that, in light of the repeal of section 3, it is no longer required. Section 3A of the 2006 Act, inserted by section 81(2) of the Climate Change Act 2008, which makes provision equivalent to section 3 in relation to Wales, is unaffected by this repeal. The repeal of section 81(3) has the same extent as the original provision and so forms part of the law of England and Wales only.

219. Section 4 of the 2006 Act requires the Secretary of State to publish targets in respect of the number of microgeneration systems to be installed in England and Wales and in Scotland. A microgeneration system generates electricity or heat using an energy source or technology listed in section 82(7) of the Energy Act 2004 and has a capacity of less than 50 kilowatts (in relation to electricity) or 45 kilowatts thermal (in relation to heat). An overall target for renewable energy generation, as opposed to a specific microgeneration target, is now considered by the government to be a more effective way of diversifying and expanding the UK's low-carbon energy mix. The UK has signed up to a legally binding target through the Renewable Energy Directive to achieve 15% of the UK's energy needs from renewable sources by 2020. The government has in place schemes to promote microgeneration, such as the Feed-in Tariffs, for electricity generating technologies, and the Domestic Renewable Heat Incentive for heat, as well as non-legislative frameworks such as the Microgeneration Certification Scheme. The repeal of section 4 has the same extent as the original provision and so forms part of the law of England and Wales and Scotland only.

220. As section 263AZA of the Taxation of Chargeable Gains Act 1992 incorporates by reference the definition of "microgeneration system" in section 4(9) of the 2006 Act (which is being repealed), section 263AZA is amended to set out that definition in full. Section 782A of the Income Tax (Trading and Other Income) Act 2005 similarly referred to the definition in section 4(9) of the 2006 Act so is amended to instead refer to the definition inserted into section 263AZA. These amendments have the same extent as the original provision and so form part of the law of England and Wales, Scotland and Northern Ireland.

221. Section 5 of the 2006 Act modifies section 1 of the Sustainable Energy Act 2003, to require the Secretary of State to include information about any microgeneration target in sustainable energy reports published under that Act. As a consequence of the repeal of section 4 of the 2006 Act, this modification is no longer required. As a consequence section 87(2) of the Energy Act 2008, which amended section 5 of the 2006 Act, is also no longer required. These repeals have the same extent as section 5 and so form part of the law of England and Wales and Scotland only.

222. Sections 7 and 8 of the 2006 Act conferred a power on the Secretary of State to modify the conditions of electricity distribution and supply licences granted under the Electricity Act 1989, and a consequential duty on the Gas and Electricity Markets Authority to replicate any modifications for the purposes of their incorporation in licences granted after that time. The Secretary of State's power expired on 21st August 2009 and so the government considers that the sections are no longer required. This repeal has the same extent as the original provision and so forms part of the law of England and Wales and Scotland only. *Subsection (4)* of the clause provides that this repeal does not affect the operation of section 33(1)(c) of the Utilities Act 2000, which ensures that licence conditions modified under section 7 of the 2006 Act do not cease to be standard conditions for the purposes of the Utilities Act 2000 and the Electricity Act 1989.

223. Section 10 of the 2006 Act requires the Secretary of State to review development orders made by the Secretary of State under section 59(2)(a) of the Town and Country Planning Act 1990 in order to consider the potential for further microgeneration provision in England. This has since been overtaken by the duty on the Secretary of State under sections 3 and 4 of the Green Energy (Definition and Promotion) Act 2009, which requires the Secretary of State to amend the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) to provide for microgeneration in dwellings in England and to consider such amendment in relation to non-domestic land in England. This repeal has the same extent as the original provision and so forms part of the law of England and Wales only.

224. Section 12 of the 2006 Act inserted subsection (1)(e) of section 1 of the Sustainable Energy Act 2003, in relation to energy efficiency of residential accommodation. Section 12 is no longer required as section 1(1)(e) was repealed by section 118(3)(a) of the Energy Act 2011. This repeal has the same extent as the original provision and so forms part of the law of England and Wales only.

225. Section 14 of the 2006 Act required the Secretary of State to lay a report before Parliament by February 2007 regarding steps to secure compliance with building regulations requirements regarding conservation or use of fuel and power or reduction of greenhouse gas emissions. The required report was published and the government considers that this section is no longer required due to the obligation on the Secretary of State under section 6 of the Sustainable and Secure Buildings Act 2004 to report to Parliament on building stock. This clause repeals section 14 in relation to England only. The Secretary of State's functions under section 14 were transferred to the Welsh Ministers, in relation to Wales, by article 2(b)(ii) of the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009 (S.I. 2009/3019). Reports by Welsh Ministers must be laid before the Welsh Assembly by virtue of paragraph 10 of Schedule 3 to the government of Wales Act 2006. The functions of Welsh Ministers are unaffected by this clause. This repeal has the same extent as the original provision and so forms part of the law of England and Wales only.

226. Section 21 of the 2006 Act requires the Secretary of State to take steps to promote the use of heat produced from renewable sources. The government considers that this section is

no longer required in light of the duties on the Secretary of State under the Climate Change Act 2008 and the powers to create financial incentives under the Energy Act 2008. Furthermore, the Renewable Energy Directive requires Member States to meet the renewable energy targets set out in the Directive This repeal has the same extent as the original provision and so forms part of the law of England and Wales only.

227. Section 1(1A)(bb) of the Sustainable Energy Act 2003 requires the Secretary of State to include information about the steps taken under section 21 of the 2006 Act in any sustainable energy report. As a consequence of the repeal of section 21 of the 2006 Act, this provision is no longer required. This repeal has the same extent as the original provision and so forms part of the law of England and Wales, Scotland and Northern Ireland.

228. This clause will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 43: Household waste: de-criminalisation

229. Under section 46 of the Environmental Protection Act 1990 (the "EPA") a waste collection authority may by notice require occupiers of premises to present their household waste for collection in a specified way. Failure, without reasonable excuse, to comply with such a requirement is an offence under section 46(6) of the EPA. Under section 47ZA of that Act, a fixed penalty may be offered as an alternative to prosecution. This clause amends the EPA.

230. *Subsection (2)* amends section 46(6) of the EPA to remove the offence in relation to England. It will remain in relation to Wales and Scotland. *Subsection (3)* inserts new sections 46A to 46D into the EPA to provide for waste collection authorities in England to issue a fixed monetary penalty for any such failure to comply. By replacing a criminal offence with a civil penalty, this clause reduces a burden on householders in England.

231. For a fixed penalty to be imposed under new section 46A, a written warning must first be given. A written warning may be given where an authorised officer of a waste collection authority in England is satisfied that a person has failed without reasonable excuse to comply with a requirement about the presentation for collection of household waste and that the failure to comply has caused (or is or was likely to cause) a nuisance or has been (or is or was likely to be) detrimental to any amenities of the locality (section 46A(1) and (2)). Section 46A(3) prescribes the content of the warning. Where such a warning has been given, section 46A(4), (5) and (7) allow the authorised officer to require the person to pay a fixed penalty.

232. A fixed penalty can be imposed where:

a) in the case of a failure to comply that was continuing at the time the written warning was given, the person has, having been given the warning, failed to comply with the requirement within the period specified in the warning (section 46A(4)), or

b) the person has, within one year of the warning having been given (whether or not given in respect of a failure to comply that was continuing), again failed without reasonable excuse to comply with the requirement or failed without reasonable excuse to comply with a similar requirement, and (in either case) the failure to comply has caused (or is or was likely to cause) a nuisance or has been (or is or was likely to be) detrimental to any amenities of the locality (section 46A(7)).

233. Section 46A(5) provides that, where a person has been required to pay a fixed penalty under section 46A(4) (that is, in respect of a failure to comply that is continuing) and that requirement has not been withdrawn on appeal, an authorised officer may require a further fixed penalty to be paid if satisfied that the failure to comply is still continuing at the end of a particular period falling within one year of the written warning having been given. That period begins when a final notice is served and ends (a) if there has been an appeal, the day on which the final appeal is dismissed or withdrawn or (b) if no appeal is made, the day on which the period for appealing expires (section 46A(6)). Section 46A(8) provides that an authorised officer may require a person to pay a fixed penalty under subsection (5) or (7) each time that the officer is satisfied of the matters mentioned in the subsection. Section 46A(9) requires an authorised officer imposing a requirement to pay a fixed penalty to act in accordance with section 46C.

234. Section 46B makes provision for the amount of any such fixed penalty, which will be the amount specified by the waste collection authority in relation to its area or, if no amount is so specified, £60 (section 46B(1)). The authority may also make provision for treating a fixed penalty as having been paid if a lesser amount is paid before the end of a specified period (section 46B(2)). The Secretary of State is given powers under section 46B(3) and (4) to make regulations in connection with the powers conferred on waste collection authorities under this section, including the power to require any amount specified by an authority to fall within a range set out in the regulations. Section 46B(5) gives the Secretary of State power by order to amend the figure of £60. Section 46B(6) provides that a fixed penalty is recoverable summarily as a civil debt and is recoverable as if it were payable under an order of the High Court or the county court, if the court in question so orders.

235. Section 46C makes provision regarding notices of intent and final notices. Section 46C(1) requires the service of a notice of intent before any fixed penalty can be imposed. Section 46C(2) prescribes the content of a notice of intent. Section 46C(3) provides that the person on whom a notice of intent is served may make representations as to why payment of a fixed penalty should not be required; this must be done within 28 days (section 46C(4)). Section 46C(5) provides that, in order to require a person to pay a fixed penalty under section 46A, a final notice must be served. A final notice may not be served before the expiry of the period of 28 days beginning with the day service of the notice of intent was effected (section 46C(6)). Section 46C(8) prescribes the contents of a final notice.

236. Section 46D makes provision for appeals to be made to the First-tier Tribunal against the imposition of a fixed penalty. The requirement to pay the fixed penalty is suspended

pending the determination or withdrawal of the appeal that is the final appeal (section 46D(3)), and the First-tier tribunal is given powers to withdraw or confirm the requirement to pay the fixed penalty under section 46D(2). Where the requirement to pay the fixed penalty is confirmed on appeal, payment must be made before the end of the period of 28 days beginning with the day on which the requirement is so confirmed (section 46D(4) and (5)).

237. *Subsections (4) and (5)* make consequential amendments.

238. *Subsection (6)* introduces Schedule 11 which makes amendments to the London Local Authorities Act 2007 that are based on new sections 46A to 46C of the EPA. See commentary on Schedule 11 below.

239. This clause, like the EPA, forms part of the law of England and Wales and Scotland but its effect is limited to England. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 44: Other measures relating to animals, food and the environment

240. This clause introduces Schedule 12, which makes further provision relating to animals, food and the environment. See commentary on Schedule 12 below.

Clause 45: Management of child trust funds: looked after children

241. This clause amends the Child Trust Funds Act 2004 ("CTFA") to allow regulations to be made which will enable a wider range of organisations to be authorised to manage the Child Trust Fund accounts ("CTFs") held by certain looked after children (that is, to give instructions to an account provider in relation to the account). It also provides for the payment of the organisation appointed to manage such CTFs, and for the transfer of relevant information to them (both by the organisation previously authorised to manage such CTFs and from local authorities).

242. A CTF is a tax advantaged savings account held by an eligible child born between 1 September 2004 and 2nd January 2011, into which money up to a specified amount can be invested each year. Until the account holder reaches 16 years old, CTFs are managed on their behalf by a 'registered contact', for example a person with parental responsibility for the account holder. Special arrangements are set out in legislation for the management of CTFs held by certain looked after children.

243. Section 3(10) of the CTFA provides that HM Treasury may, by regulations, authorise the Official Solicitors of England and Wales and Northern Ireland, or the Accountant of Court in Scotland, to manage the CTFs of certain children. Under the Child Trust Funds Regulations (S.I. 2004/1450) ("CTF Regulations"), these bodies are authorised to manage the CTFs of certain children under 16 who are looked after by local authorities. This applies until someone with parental responsibility for the account holder assumes management of the account, or the

account holder reaches the age of 16 - and can therefore personally manage their own account.

244. Section 16 of the CTFA enables regulations to be made requiring local authorities to provide (or otherwise make available) to HM Revenue and Customs ("HMRC") certain information relating to a child, where that child is in, or enters, the care of the local authority. This power has been applied within the CTF Regulations. HMRC then passes that information to the Official Solicitor or Accountant of Court (as appropriate) so that person can assume management of the relevant child's CTF.

245. This clause will make it possible for a wider range of organisations to be authorised to manage the CTFs of certain looked after children - including, where appropriate, third sector organisations. It is proposed that any such authorisation will be subject to safeguards and other detail set out in regulations and formal agreements with the appointed body. This is currently the case for Junior ISA children's savings accounts held by certain looked after children, which are managed on the account holder's behalf by a third sector organisation under a contract agreed with the Department for Education.

246. *Subsection (2)* amends section 3(10) of the CTFA to provide that, in circumstances specified in regulations, HM Treasury or the Secretary of State may appoint a person other than the Official Solicitors of England and Wales or Northern Ireland, or the Accountant of Court (Scotland), to manage CTFs.

247. *Subsection (3)* amends section 3 of the CTFA to provide that regulations may place a requirement on a government department specified in the regulations to pay the person appointed to manage CTFs held by certain looked after children, where the terms on which that person is appointed include provision for payment. Subsection (3) also allows for regulations to be made which ensure that information relevant to the management of a CTF account is passed by the person ceasing to be authorised to manage a CTF account to the person authorised to manage the CTF account in their place.

248. *Subsection (4)* amends section 16 of the CTFA so that regulations may be made which require local authorities to provide information relating to certain looked after children to the relevant person appointed by HM Treasury or the Secretary of State to manage accounts for the purpose of facilitating that person's management of a child's CTF.

249. The clause forms part of the law of England and Wales, Scotland and Northern Ireland.

250. The clause will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 46: Management of child trust funds: children 16 or over

251. This clause amends provisions in the Child Trust Funds Act 2004 ("CTFA") concerning the authority to manage a Child Trust Fund account ("CTF") (that is, the authority to give instructions to an account provider in relation to the account). It introduces flexibility which will allow a person other than the child holding the account to manage a CTF after that account holder reaches 16 years old.

252. Until the account holder reaches 16 years of age, CTFs are managed on their behalf by a 'registered contact', for example a person who has parental responsibility for that account holder. At present, CTF legislation provides that once a CTF holder reaches 16, only they have authority to manage their account.

253. Section 3(6) of the CTFA ensures that the person who has the authority to manage a CTF held by a child is either: (a) the account holder, if 16 or over; or (b) the person with that authority by virtue of CTFA (the "responsible person"), if the account holder is under 16.

254. Sections 3(8) and 3(9) of the CTFA define "responsible person" for the purposes of the CTFA, with reference to a person who has parental authority in relation to the child holding the CTF.

255. Section 3(10) of the CTFA provides that HM Treasury may, by regulations, authorise the Official Solicitors of England and Wales and Northern Ireland, or the Accountant of Court in Scotland, to manage the CTFs of certain children under 16. Under the current CTF Regulations (S.I. 2004/1450), these bodies are authorised to manage the CTFs of certain children under 16 who are looked after by local authorities.

256. The clause will provide for greater flexibility in the rules concerning management of CTFs after the account holder reaches 16, and will enable the rules in this area to be aligned with those already in place for the management of Junior ISA accounts. While a child will be able to assume management of their CTF when they reach 16 if they choose to do so, they may also permit a responsible person to manage the account on their behalf.

257. *Subsection (2)* amends the rules concerning authority to manage a CTF at section 3(6) of the CTFA, so that an account can be managed by a responsible person (other than the child) where the child does not choose to assume management of their account after they reach 16 years old.

258. *Subsections (3) and (4)* provide consequential amendments to section 3(8) and (10) of the CTFA to reflect the fact that it will be possible for a person other than the account holder to manage a CTF after that child has reached 16 years old.

259. The clause forms part of the law of England and Wales, Scotland and Northern Ireland.

260. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 47: Child trust funds: transfers

261. This clause inserts new provisions in the Child Trust Funds Act 2004 ("CTFA") concerning transfers of investments held in Child Trust Funds ("CTFs") in certain circumstances. It provides for increased flexibility in the children's savings market and additional choice for parents and CTF account holders, by allowing regulations to permit the transfer of investments held in a CTF to a Junior ISA, or (once the account holder reaches 18) to another tax advantaged account.

262. Funds held in a CTF are currently "locked in" to CTF and, although it is possible for these funds to be transferred to other CTF products (for example by transfer of investments between CTF providers), it is not currently possible to transfer these funds to any other non-CTF account, such as a Junior ISA. Junior ISA is a tax advantaged children's savings account introduced in November 2011 following the end of new eligibility for CTF.

263. In addition, CTF legislation currently makes no provision to allow funds held in a CTF at maturity (when the account holders reaches 18 years old) to be 'rolled' into another tax advantaged account, if the account holder wishes. Therefore, if an account holder wishes to retain funds in a tax advantaged savings environment following maturity of their CTF, this can only be achieved by paying those funds into an Individual Savings Account ("ISA"), subject to the normal ISA subscription limits for the relevant tax year.

264. The government considers that it should be possible to transfer CTF funds into a Junior ISA. The clause will enable regulations to be made that will permit the transfer of investments held in a CTF to a Junior ISA (or similar tax advantaged account). The Junior ISA rules will be changed separately to facilitate the holding of transferred funds in these accounts.

265. The government also considers that individuals with a maturing CTF account should be able to transfer their CTF funds into an ISA if they choose to do so, without this counting against the ISA subscription limit for the relevant year. The clause will allow for regulations to be made enabling investments held in a CTF to be transferred to another tax advantaged account on maturity of the CTF, once the account holder reaches 18 years old. The government intends to amend, separately, the ISA rules to make it possible for funds transferred in this way to be paid into an ISA outside the normal annual subscription limits.

266. *Subsection (2)* inserts a new section 7A into the CTFA concerning the transfer of CTF investments to other accounts for children. It allows for regulations to be made which would require a CTF account provider to transfer all the investments held in a CTF account to a "protected child account" held by the child (such as a Junior ISA) and to close that account following the transfer. Any such direction would be given by the person with authority to

manage that CTF. This new section 7A of the CTFA also contains a definition of 'protected child account.

267. *Subsection (3)* inserts a new section 7B into the CTFA concerning the transfer of CTF investments upon the account holder reaching 18. It provides that regulations may require an account provider to transfer all the investments in a CTF immediately before the account holder's 18th birthday to a "protected account" of a description prescribed in regulations, unless the account holder specifies otherwise. This new section 7B of the CTFA also contains a definition of "protected account". It is intended to provide in regulations that it will be possible for the account holder to transfer investments from this 'protected account' to an ISA, outside the normal annual subscription limits.

268. *Subsection (4)* consequentially amends section 3(4)(d) of the CTFA to clarify that investments may be withdrawn from CTF under regulations made pursuant to these new provisions of the CTFA, as well regulations made under section 3 of the CTFA.

269. *Subsection (5)* amends section 20(7)(b) of the CTFA to provide that a penalty may be imposed on an account provider who fails to comply with a requirement to transfer accounts under new section 7A or 7B.

270. The clause forms part of the law of England and Wales, Scotland and Northern Ireland.

271. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 48: Child trust funds: safeguards for children's interests

272. This clause inserts provisions in the Child Trust Funds Act 2004 ("CTFA") to provide new powers for HM Treasury to safeguard the interests of children holding a Child Trust Fund ("CTF").

273. Over 6 million children hold a CTF and accounts are available as cash or stocks and shares products. The first CTF accounts are due to mature in 2020, and the final CTF is scheduled to mature in 2029. The Bill contains provisions which will allow the transfer of CTF investments to a Junior ISA in certain circumstances. In view of the uncertainty around the potential impact of this change on the wider CTF market in the period running up to the scheduled maturity of the final CTF in 2029, the government considers it appropriate to seek new powers that would allow it, should the need arise, to intervene to protect the interests of CTF account holders.

274. This clause inserts a new section 7C into the CTFA which will enable HM Treasury, by regulations, to specify a number of different requirements or permissions in relation to some or all CTF accounts, where it considers this to be appropriate or necessary to safeguard

the financial interests of account holders, for example by ensuring that they can access suitable tax advantaged accounts. It also enables HM Treasury, by regulations, to specify that CTFs will become protected child accounts. In the event of that happening the providers of such CTFs will be authorised as providers of protected child accounts.

275. Subsections (2), (3) and (4) of new section 7C of the CTFA set out the potential requirements or permissions that may be provided in regulations in order to protect the interests of account holders. These include (at subsection (2)) powers for HM Treasury to permit withdrawals from some or all CTFs; or (at subsection (3)) to require a CTF provider to transfer investments held in an account to another CTF provider, or to a 'protected child account'. This 'protected child account' will be a tax advantaged account and is expected to be a Junior ISA. Under subsection (3), the "protected child account" specified in regulations may be an account of the same type as the CTF (whether cash or stocks and shares) or a cash account; and may be provided by a person chosen by the relevant CTF provider, or by a person specified by HM Treasury. Subsection (7) protects HM Treasury from liability in respect of requirements imposed under subsection (3). Subsection (4) provides that HM Treasury may, by regulations, specify that all or certain types of CTFs are to be treated as protected child accounts and that, in that instance, such providers are to be treated as providers of protected child accounts. If the powers provided in these subsections are required, HM Treasury will assess what are the most appropriate steps in the circumstances, in order to protect the interests of account holders.

276. Subsection (5) of new section 7C of the CTFA provides that HM Treasury may, by regulations, require the closure of a CTF following the transfer of investments held in that account pursuant to certain regulations made under new section 7C of the CTFA.

277. Subsection (6) of new section 7C of the CTFA provides that, where appropriate, HM Treasury may specify the order in which the various steps set out in subsection (3) of new section 7C must be taken by a CTF provider. It also allows regulations to require that once a provider no longer holds investments under a CTF, no further steps under subsection (3) of new section 7C will be required in relation to that account.

278. Subsection (8) of new section 7C defines 'protected child account' with reference to new section 7A of the CTFA (inserted by clause 47). This account is expected to be a Junior ISA.

279. The clause forms part of the law of England and Wales, Scotland and Northern Ireland.

280. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 49: Abolition of office of Chief Executive of Skills Funding

281. This clause gives effect to Schedule 13, which amends Part 4 of the Apprenticeship, Skills, Children and Learning Act 2009 ("ASCLA"). See commentary on Schedule 13 below. Part 4 of ASCLA provides for there to be a Chief Executive of Skills Funding (the "Chief Executive") and prescribes certain powers and duties in relation to the provision of education and training for learners who are aged 19 or over, including powers to fund further education colleges and training providers for the delivery of specified full or part time courses in further education or vocational training, and apprenticeship training for people aged 16 and over.

282. These changes repeal the statutory post of Chief Executive and its prescribed powers, duties and functions, and transfer certain powers and duties in respect of apprenticeship training, and further education and training for adults, to the Secretary of State. The changes will enable the Skills Funding Agency – the executive agency set up in April 2010 to support the Chief Executive exercise its functions – to operate through the powers and duties of the Secretary of State, rather than the Chief Executive. This is consistent with the government's wider commitment to improve the transparency and accountability for all public services, and will reduce administrative burden on the government by providing a clearer and more streamlined governance and accountability framework for the Agency.

Clause 50: Further and higher education sectors: reduction of burdens

283. This clause gives effect to Schedule 14, which makes amendments to the powers of the Secretary of State in relation to further education corporations, sixth form college corporations, designated institutions and local authority maintained institutions. The Schedule also makes amendments relating to the transfer of property, rights and liabilities from local authorities to further education corporations and designated institutions. See commentary on Schedule 14 below.

Clause 51: Schools: reduction of burdens

284. *Subsections (1) and (2)* of this clause provide for the Secretary of State's powers to require, through regulations, that governing bodies of maintained schools set annual targets in relation to school performance to cease to apply in relation to England.

285. Section 19 of the Education Act 1997 forms part of the law of England and Wales and currently applies to both England and Wales. It enables the Secretary of State (or in relation to Wales, the Welsh Ministers), by regulations, to make such provision as the Secretary of State considers appropriate (or as the Welsh Ministers consider appropriate) requiring the governing bodies of maintained schools to secure that annual targets are set in respect of the performance of pupils: in public examinations or in assessments for the purposes of the National Curriculum. Regulations made under section 19 applying to England were revoked in March 2011. The clause now provides for the power to make regulations to cease to apply in relation to England.

286. Section 19 will continue to apply to Wales (so that the Welsh Ministers will continue to be able to exercise the power conferred under section 19 to set, through regulations, annual school performance targets for maintained schools in Wales).

287. *Subsection (3)* repeals the Secretary of State's power, through regulations, to require local authorities in England to set annual targets in respect of the educational performance of pupils at schools maintained by them.

288. Section 102 of the Education Act 2005 forms part of the law of England and Wales but applies only to England. It enables the Secretary of State, by regulations, to require local authorities in England to set annual targets in respect of the educational performance of: (i) pupils at schools maintained by them; and (ii) any persons of compulsory school age (whether or not pupils at such schools) who are or have been looked after by them. The repeal will affect local authorities in England, since the Secretary of State will no longer have the power to require them to set annual targets. Regulations made under section 102 were revoked in December 2010.

289. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

290. The clause also introduces Schedule 15, which makes further provision for the reduction of burdens relating to schools in England. See commentary on Schedule 15 below.

Clause 52: Sale of alcohol: community events etc and ancillary business

291. The Licensing Act 2003 ("the 2003 Act") contains a system of authorisation for certain activities (referred to as "licensable activities"); these include the sale by retail of alcohol. It is a criminal offence to carry on, or attempt to carry on, a licensable activity on or from any premises without an appropriate authorisation under the 2003 Act. Such an authorisation may comprise a premises licence, a club premises certificate or a temporary event notice ("TEN"). Licensing authorities regulate the licensing regime in their respective areas and must exercise their functions with a view to promoting the licensing objectives. These are: the prevention of crime and disorder; the prevention of public nuisance; public safety; and the protection of children from harm.

292. This clause introduces a new form of authorisation into the 2003 Act to enable prescribed bodies (e.g. community organisations or small businesses which sell alcohol as an ancillary part of a wider service) to sell alcohol without having to use one of the existing forms of authorisation under the 2003 Act. The government's purpose is to create a lighter touch authorisation to reduce burdens on those persons or bodies.

293. This clause amends the 2003 Act so as to introduce the new form of authorisation ("Part 5A notice") in relation to the sale by retail of alcohol. *Subsection (1)* inserts reference to a Part 5A notice in section 2 of the 2003 Act. *Subsection (2)* inserts Schedule 16 into the

2003 Act as Part 5A; this sets out the framework for the Part 5A notice. *Subsections (3)* to *(10)* amend a number of sections in Part 7 of the 2003 Act which make provision for or in connection with offences relating to the carrying on of licensable activities (e.g. unauthorised licensable activities, sale of alcohol to a person who is drunk and persistently selling alcohol to children); these amendments apply the offences to or in relation to sales of alcohol made under a Part 5A notice. *Subsections (11)* and *(12)* amend section 194 (index of defined expressions) to include reference to a Part 5A notice and section 197 (regulations and orders) to include reference to a number of new regulation-making powers subject to the affirmative resolution procedure.

294. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 53: Temporary event notices: increase in maximum number of events per year

295. The Licensing Act 2003 contains a system of authorisation for certain activities (referred to as "licensable activities"), namely: the sale by retail of alcohol; the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; and the provision of late night refreshment. It is a criminal offence to carry on, or attempt to carry on, a licensable activity on or from any premises without an appropriate authorisation under the 2003 Act. Such an authorisation may comprise a premises licence, a club premises certificate or a temporary event notice ("TEN"). Licensing authorities regulate the licensing regime in their respective areas and must exercise their functions with a view to promoting the licensing objectives.

296. A TEN permits premises to be used for licensable activities for a finite period, and its availability and use is subject to a number of other restrictions in relation to how many may be used in any year, how many times they may be used in relation to the same premises in any year etc. A TEN is given by an individual to authorise the carrying on of licensable activities in accordance with the TEN, and it takes effect unless there are objections to it by the police or the environmental health authority. Part 5 of the 2003 Act contains the framework in accordance with which TENs are processed (and may be rejected) by a licensing authority etc.

297. Section 107(4) of the 2003 Act provides that only 12 TENs may be given in relation to the same premises in any calendar year. This clause amends that limit. *Subsection (1)* amends section 107(4) to the effect that the limit is increased from 12 to 15. *Subsection (2)* provides that this amendment takes effect in 2016.

298. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 54: Personal licences: no requirement to renew

299. Part 6 of the Licensing Act 2003 contains the framework governing personal licences. A personal licence is granted by a licensing authority to an individual to enable that individual to supply alcohol or authorise its supply in accordance with a premises licence. A personal licence does not authorise the use of premises for licensable activities, but subject to exceptions there must be at least one personal licence holder to authorise the supply of alcohol in accordance with a premises licence. An individual may apply for the grant of a personal licence and the application will be granted if that individual satisfies certain requirements. Section 115 of the 2003 Act provides that a personal licence has effect for 10 years from the date of its grant but may be renewed by making an application to that effect.

300. This clause amends section 115. *Subsection (1)* amends section 115(1) to provide that a personal licence has effect indefinitely. *Subsection (2)* provides that the indefinite duration of personal licences will apply to a licence granted on or after the day on which *subsection (1)* comes into force, and a licence granted or renewed before that day. *Subsection (3)* provides that any term in a personal licence limiting its duration in a licence granted or renewed before the day on which *subsection (1)* comes into force has no effect on or after that day.

301. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 55: Sale of liqueur confectionery to children under 16: abolition of offence

302. This clause repeals section 148 of the Licensing Act 2003 which makes it a criminal offence to sell liqueur confectionery to a person aged under 16.

303. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 56: Late night refreshment

304. Schedule 2 to the Licensing Act 2003 contains the framework for the regulation of the provision of late night refreshment. The provision of late night refreshment is defined as the supply of hot food or hot drink on or from premises to members of the public between 11pm and 5am for consumption on or off the premises. Schedule 2 makes provision for exempt supplies of hot food or hot drink; these include supplies which can only be made from premises which are recognised clubs or hotels to persons admitted to those premises as a member of the club or as an overnight guest at the hotel, and supplies by means of a self service vending machine or which are free.

305. This clause inserts new paragraph 2A into Schedule 2 to the 2003 Act to confer powers on a licensing authority to exempt a supply of hot food or hot drink from the requirements in Schedule 2 in three respects. New paragraph 2A(1) provides that a supply of hot food or hot drink is exempt if it takes place (a) on or from premises situated in an area in

the relevant licensing authority's area designated by the authority; (b) on or from premises in a relevant licensing authority's area of a description designated by the authority (by virtue of new paragraph 2A(2) premises may only be designated by the authority if they are of a description prescribed by regulations made by the Secretary of State); and (c) during a period (beginning on or after 11pm and ending on or before 5am) designated by the relevant licensing authority in its area. A relevant licensing authority can make one or more of these designations to apply simultaneously but not in conjunction with one another.

306. New paragraph 2A(3) enables a licensing authority to vary or revoke a designation. By virtue of new paragraph 2A(4), the authority must publish the designation, variation or revocation.

307. New paragraph 2A(5) provides that a "relevant licensing authority" in relation to a supply of hot food or hot drink is the licensing authority in whose area the premises on or from which the hot food or hot drink is supplied are situated, or if the premises are situated in the areas of two or more licensing authorities, any of those authorities.

308. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 57: Removal of requirement to report loss or theft of licence etc to police

309. This clause amends various sections of the Licensing Act 2003 to remove the requirement on a holder of a licence etc. to report the loss or theft of a licence etc. to the police before that person may apply to the licensing authority for a replacement copy.

310. This clause amends sections 25(3), 79(3), 110(4) and 126(3) so as to make this amendment in relation to each of a premises licence, club premises certificate, temporary event notice or personal licence.

311. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 58: Exhibition of films in community premises

312. The exhibition of a film is an activity for which an authorisation (i.e. a premises licence, club premises certificate or temporary event notice) may be required under the Licensing Act 2003. Where an authorisation is required in relation to an exhibition of a film, section 136(1) of the Licensing Act 2003 provides that a person who carries on, attempts to carry on or knowingly permits that exhibition without such an authorisation commits a criminal offence.

313. This clause creates a new exemption in relation to the exhibition of a film by inserting a new paragraph 6A into Part 2 of Schedule 1 to the Licensing Act 2003. This provides that no authorisation in relation to the exhibition of a film is required under the Licensing Act 2003 where that exhibition takes place at community premises and the conditions referred to in the following paragraph are satisfied. The term "community premises" is defined in section 193 of the 2003 Act and means premises that are (or form part of) a church hall, chapel hall or other similar building or a village hall, parish hall, community hall or other similar building.

314. The exemption requires that the following conditions are satisfied:

- prior written consent for the entertainment to take place at the community premises has been obtained by or on behalf of a person concerned in the organisation or management of the entertainment:
    - from the management committee of the community premises ("management committee" is defined in section 193 of the 2003 Act and means a committee or board of individuals with responsibility for the management of the community premises), or
    - where there is no management committee, from a person with control of the community premises in connection with the carrying on by that person of a trade, business or other undertaking (whether or not for profit), or
    - where there is neither a management committee nor any such person with control of the community premises, from an owner of the community premises;
- the entertainment is not provided with a view to profit;
- the audience consists of no more than 500 persons;
- the entertainment takes place between 8am and 11pm on the same day; and
- a recommendation concerning the admission of children to the exhibition of the film has been made by the film classification body or relevant licensing authority, and the admission of children to that exhibition of the film is subject to such restrictions (if any) as are necessary to comply with that recommendation (or, if a recommendation has been made by the body and the authority, the recommendation made by the authority).

315. Where the premises fall within the area of more than one licensing authority, the final condition operates by reference to each of those licensing authorities. So if more than one

licensing authority has made a recommendation, the admission of children will have to be subject to the restrictions necessary to ensure compliance with all of the recommendations.

316. The clause, as with the Licensing Act 2003, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 59: TV licensing: duty to review sanctions

317. This clause requires the Secretary of State to carry out a review of whether the sanctions for failing to have a TV licence in contravention of section 363 of the Communications Act 2003 are appropriate. Section 363 provides that a television receiver must not be installed or used unless the installation and use of the receiver is authorised by a licence. A person who installs or uses a television receiver without a licence is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale. The review will consider whether the current criminal sanction is appropriate and examine proposals for the decriminalisation of the offences under section 363. The review must start within 3 months of Royal Assent and must be completed within 12 months of the day it starts.

318. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 60: TV licensing: alternatives to criminal sanctions

319. This clause confers a power on the Secretary of State to either: (a) replace the TV licensing offences under section 363(2) and (3) of the Communications Act 2003 with a civil monetary penalty regime or (b) amend the Regulatory Enforcement and Sanctions Act 2008 to allow the Secretary of State to permit the BBC to impose civil monetary penalties as an alternative to prosecution for those offences.

320. It is intended that the exercise of this power will depend on the outcome of the review to be carried out under clause 59. *Subsection (1)(a)* enables the Secretary of State to make regulations to replace the TV licensing offences with civil monetary penalties. The regulations may provide for the amount of the penalty to be a fixed amount (specified in, or determined in accordance with, regulations) or a variable amount. The regulations must make provision for the procedures that must be carried out before any penalty is imposed and confer rights of appeal against the imposition of a penalty. The regulations may also make provision for early payment discounts, late payment, enforcement, powers to obtain information and powers of entry, search and seizure. The regulations may also amend or repeal Part 4 of the Communications Act 2003 and may include consequential, transitional, transitory or saving provision which be made by amending or repealing legislation.

321. *Subsection (1)(b)* enables the Secretary of State to make regulations amending Part 3 of the Regulatory Enforcement and Sanctions Act 2008 to enable an order to be made under section 36 of that Act. An order under that Act would then be able to confer the power on the

BBC to impose fixed and/or variable monetary penalties in relation to the TV licensing offences. This would create an alternative civil sanctions regime in relation to TV licensing offences. Such an order would also make provision in relation to the procedure that must be carried out before any penalty is imposed, rights of appeal, early payment discounts, late payments and the enforcement of a penalty.

322. The clause forms part of the law of England and Wales, Scotland and Northern Ireland. It may also be extended to the Channel Islands and the Isle of Man by Order in Council (see clause 89).

323. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 61: Repeal of Senior President of Tribunals' duty to report on standards

324. This clause removes the duty on the Senior President of Tribunals to report each year to the Secretary of State on the standards of decision-making by the Secretary of State based on cases which are appealed to the First-tier Tribunal. The duty is contained in subsections (2) and (3) of section 15A of the Social Security Act 1998.

325. Alternative and more direct methods for providing feedback from the judiciary to the Secretary of State have in practice been developed which have made the annual report of the Senior President of Tribunals unnecessary as well as burdensome on his time. The clause forms part of the law of England and Wales and Scotland (to reflect the extent of section 15A) and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 62: Criminal procedure: written witness statements

326. This clause amends section 9 of the Criminal Justice Act 1967 to provide that Criminal Procedure Rules can alter the period under which other parties can object to a written statement being tendered in evidence. That period may not be less than the current period in statute which is seven days. To allow for a longer period within which to object will remove any perceived need to enter a "holding" objection and so will reduce the number of witnesses brought to court to give oral evidence when the other parties do not really need them to do so.

327. The clause also removes certain procedural matters from section 9 relating to matters to be included in the statement, the serving of exhibits, the reading aloud at the hearing of the statement and the manner of service. Removing these elements of statute will allow the procedures to be governed instead by the Criminal Procedure Rules. In practice these changes will allow these procedures to be overseen by the Criminal Procedure Rule Committee, which was created by the Courts Act 2003 explicitly to make rules governing the practice and procedure to be followed in the criminal courts. The Committee will be able to ensure that the rules provide appropriate safeguards for defendants but do not require courts to follow procedures that are unnecessarily complex or lengthy.

328. Criminal Procedure Rules made under section 69 of the Courts Act 2003 govern procedure in criminal courts in England and Wales and this clause affects the law of England and Wales only. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 63: Criminal procedure: written guilty pleas

329. This clause amends section 12(7) of the Magistrates' Courts Act 1980 to provide that the Criminal Procedure Rules may dispense with the requirement for certain matters to be read aloud in court before that court may accept the guilty plea. Those matters are: the statement of facts or witness statements; any information contained in a notice served on the defendant; the guilty plea from the defendant; and any written submissions from the defendant by way of mitigation.

330. Sections 12 and 12A of the Magistrates' Courts Act 1980 allow a defendant to plead guilty in writing without attending court. The procedure can be used only for comparatively minor offences, and only where certain procedural requirements have been met. The procedure is widely used in minor road traffic cases and for TV licence evasion, for example. In these cases, even though the parties and witnesses are absent, the current statute requires the court to conduct an ordinary trial, in public, in a court room. The prosecution case and defence mitigation, if any, has to be read aloud, and the court has to announce the reasons for its sentence. Providing that Criminal Procedure Rules may dispense with certain requirements for matters to be read aloud will enable the Criminal Procedure Rule Committee to ensure that the rules provide appropriate safeguards for defendants but do not require courts to follow procedures that are unnecessarily complex or lengthy.

331. Criminal Procedure Rules made under section 69 of the Courts Act 2003 govern procedure in criminal courts in England and Wales and this clause affects the law of England and Wales only. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 64: Criminal procedure: powers to make Criminal Procedure Rules

332. This clause makes amendments that will allow Criminal Procedure Rules to provide simple procedures for various types of application to the court, including provision for applications to be made by email or by other electronic means.

333. Schedule 1 to the Police and Criminal Evidence Act 1984 allows a Circuit judge to make a production order, or in some circumstances to issue a warrant, authorising an investigator to obtain access to some types of potential evidence that investigators are not entitled to seize under a search warrant issued by a justice of the peace. Some of the current procedure is set out in that Act. Except where the investigator seeks a production order for access to material that includes journalistic material, this clause removes those provisions, so that Criminal Procedure Rules can supply all the necessary procedure.

334. Schedule 5 to the Terrorism Act 2000, and section 352 of the Proceeds of Crime Act 2002, allow a Circuit judge to issue a warrant for the same purpose as under the Police and Criminal Evidence Act 1984 but in connection with a terrorism investigation or in connection with an investigation into the disposal of the proceeds of crime. Section 59 of the Criminal Justice and Police Act 2001 allows a Crown Court judge to make an order for the return to its owner of property seized during an investigation. Section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 allows a prosecutor to apply to a High Court judge for permission to start proceedings in the Crown Court where, for some unusual reason, the case has not been sent for trial by a magistrates' court. In each of these four instances the clause makes amendments that will allow Criminal Procedure Rules to supply the necessary procedure.

335. The amendments made to the Administration of Justice (Miscellaneous Provisions) Act 1933 and the Police and Criminal Evidence Act 1984 form part of the law of England and Wales. The amendments to the Terrorism Act 2000 and the Proceeds of Crime Act 2002 form part of the law of England and Wales and Northern Ireland and the amendments to the Criminal Justice and Police Act 2001 form part of the law of England and Wales, Scotland and Northern Ireland. However, Criminal Procedure Rules made under section 69 of the Courts Act 2003 govern procedure in criminal courts in England and Wales. The amendments made by the clause therefore affect England and Wales only. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 65: "MAPPA arrangements" to cease to apply to certain offenders

336. Multi-Agency Public Protection Arrangements ("MAPPA") are a statutory set of arrangements operated by criminal justice and social care agencies that seek to reduce the serious re-offending behaviour of sexual, violent and other offenders and protect the public from serious harm. They were introduced by the Criminal Justice Act 2003. They are designed to allow criminal justice agencies to share information regarding serious offenders in order to protect the public.

337. The provisions of the Criminal Justice Act 2003 impose a duty on the agencies concerned to make arrangements to co-operate with each other in managing the risks posed by certain offenders. This offender group is largely comprised of those sexual and violent offenders described by section 327 of the Criminal Justice Act 2003.

338. The clause is only concerned with the duty as it relates to those offenders who receive, or meet the conditions to receive, a disqualification order (currently covered by section 327(5)). The court's power to impose disqualification orders was repealed by the Safeguarding Vulnerable Groups Act 2006 but the MAPPA arrangements currently apply to those who received them in the past. The government does not consider that it is necessary for the arrangements to continue to apply automatically to persons solely because they received a disqualification order. The clause therefore amends section 327 (including repealing section 327(5)) to ensure that the arrangements do not apply solely for this reason. In addition, it makes further amendments to ensure that this change does not result in a failure to manage

serious offenders. New subsection 327(4A) therefore lists six further offences that, in addition to those offences listed in Schedule 15 to the Criminal Justice Act 2003, will trigger the duty to make arrangements by virtue of section 327(3) and (4). The six new offences are the only offences for which a disqualification order could have been imposed which did not previously fall within another limb of section 327. Under section 327(3) and (4) these new offences trigger the duty only where the sentence imposed was of a certain level of seriousness or in other limited circumstances.

339. The amendments made by the clause form part of the law of England and Wales.

340. The amendments made by the clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 66: Removal of requirement that prison closures be made by order

341. *Subsection (2)* of this clause amends section 37(1) of the Prison Act 1952 by removing the requirement for prison closures to be effected by an order made by the Secretary of State. The result is that the Secretary of State may close prisons without the need for a statutory instrument to be made, consistent with the way in which the Secretary of State may open any prison. Subsection (2) also omits section 37(2) and (3) of the Prison Act 1952, which made special provision in relation to the closure of the only prison in a particular county.

342. *Subsection (3)* makes amendments to section 43 of the Prison Act 1952 consequential to the repeal of section 37(2) and (3) of that Act. *Subsection (4)* makes consequential amendments to section 52 of the Prison Act 1952, reflecting that prison closures no longer require the making of an order.

343. The clause, like the provisions of the 1952 Act it amends, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 67: Power of HMRC to disclose information for purposes of certain litigation

344. The Commissioners for Her Majesty's Revenue and Customs (HMRC) have a legal duty of confidentiality in respect of the information they hold, subject to certain exceptions. This clause gives a statutory power to HMRC to disclose information to claimants under the fatal accidents legislation (defined in subsection (2)) or to the personal representatives of a deceased person who suffered a personal injury before death.

345. Where the victim of a personal injury is alive, HMRC are able to supply the necessary information (usually an employment history) under the Data Protection Act 1998 (section 7 of which confers a right of access to personal data). However, this "gateway" becomes unavailable where the victim has died and as a result HMRC will only disclose information about former employers of the deceased to claimants or personal representatives by order of a

court. This measure avoids the need to obtain a court order, which currently adds to the costs of the claim and can delay the proceedings unnecessarily.

346. The disclosure problem is most acute in fatal diseases such as diffuse mesothelioma. Since the negligence (exposure to asbestos) occurred many years before the symptoms arose, it can be hard to prove how, when and where the victim was exposed. HMRC employment records are important in tracking down a potentially liable employer or insurer in these cases.

347. The Department for Work and Pensions Diffuse Mesothelioma Payment Scheme (which was implemented under the Mesothelioma Act 2014) may also require disclosure of HMRC information. The scheme began taking applications in April 2014 and will make payments (expected from July 2014) to eligible sufferers of mesothelioma (or their eligible dependants, where the victim has died) who are unable to trace a liable employer or insurer against whom to bring a claim for civil damages. Delays in obtaining HMRC records could also have an impact on dependency claims under that scheme. The clause therefore also enables disclosure to persons who wish to make an application for a payment under the scheme on the basis that they are dependants of the victim.

348. The clause forms part of the law of England and Wales, Scotland and Northern Ireland. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 68: Poisons and explosives precursors

349. This clause introduces Schedule 18. The Schedule abolishes the Poisons Board and amends the Poisons Act 1972 to introduce a common regime for regulating (a) activities involving non-medicinal poisons and (b) activities involving explosives precursors (explosives precursors are chemicals that can be used to make explosives). At present, the sale of non-medicinal poisons is regulated by the Poisons Act 1972, while activities involving explosives precursors are regulated by EU Regulation 98/2013 (which comes into force in the UK on 2nd September 2014). The new regime established by Schedule 2 will bring the regulation of poisons into line with the regulation of explosives precursors under the EU Regulation and allow for a single licensing regime to cover both poisons and explosives precursors.

350. This clause and Schedule 18 will form part of the law of England and Wales and Scotland and will come into force on a day to be appointed by the Secretary of State by commencement order.

Clause 69: London street trading appeals: removal of role of Secretary of State in appeals

351. The clause has the effect of transferring the function of determining certain London street trading appeals under the Local London Authorities Act 1990 and the City of Westminster Act 1999 from the Secretary of State to the Magistrates' Courts. Under these Acts, the majority of street trading appeals (such as appeals against the refusal of a licence)

are already heard by a Magistrates' Court. However, certain appeals are currently heard by the Secretary of State. These are appeals about matters of a more general nature (such as a decision to designate a street as one in which street trading may take place only with a licence). The government considers that this is an inefficient and inconsistent approach. The transfer of functions is therefore being made to ensure consistency of approach in relation to the forum for determining street trading appeals. In future, all street trading appeals under these Acts would be made to the Magistrates' Courts as they have considerably more expertise in making such determinations.

352. The clause forms part of the law of England and Wales. The changes apply only to the boroughs of participating London councils listed in Schedule 1 to the London Local Authorities Act 1990 that have passed a resolution commencing Part 3 of the London Local Authorities Act 1990 and to the City of Westminster.

353. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 70: Gangmasters (Licensing) Act 2004: enforcement

354. Section 15 of the Gangmasters (Licensing) Act 2004 confers power on the Secretary of State to appoint enforcement officers to enforce those provisions of the Act which prohibit an unlicensed person from acting as a gangmaster and create related offences. Alternatively or in addition, the Secretary of State may enter into arrangements with the Gangmasters Licensing Authority, or certain other specified bodies, for officers of the Authority to act as enforcement officers.

355. In England and Wales, it is considered that the terms of section 15 may have the effect that, where the Secretary of State appoints enforcement officers or makes arrangements for their appointment, decisions about whether to prosecute must be made by enforcement officers. One consequence of this is considered to be that functions of instituting proceedings cannot be assigned by the Attorney General under section 3(2)(g) of the Prosecution of Offences Act 1985 to the Director of Public Prosecutions. This has caused inconvenience, particularly for the Gangmasters Licensing Authority, whose officers do not normally discharge a prosecutorial role, in contrast to the Crown Prosecution Service. The amendment is therefore intended to clarify that the institution of prosecutions for offences under the Act may be carried out otherwise than by enforcement officers.

356. The amendment made by this clause (like section 15) forms part of the law of England and Wales, Scotland and Northern Ireland. However, it applies only to proceedings in England and Wales. The amendment will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 71: Reduction in regulation of providers of social work services

357. This clause repeals section 4(10) of the Care Standards Act 2000 which provides for the 2000 Act to apply to a provider of social work services in the same way as it applies to an

agency. The 2000 Act makes provision for the registration and inspection of agencies by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector"). Where a local authority enters into arrangements with a provider of social work services in England, the Chief Inspector may inspect those arrangements as part of its inspection of the local authority under section 136 of the Education and Inspections Act 2006. *Subsection (2)* makes consequential provision.

358. The Care Standards Act 2000 forms part of the law of England and Wales, as does the clause, but the clause is relevant only to England. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 72: Electoral Commission: changes to facilitate efficient administration

359. This clause amends the governance arrangements for the Electoral Commission in Schedule 1 to the Political Parties, Elections and Referendums Act 2000. That Act established a Speaker's Committee with statutory functions which include overseeing the procedure for the selection of Electoral Commissioners and examining the estimates and five-year plans of the Electoral Commission.

360. Currently, there is a requirement for the Electoral Commission to produce a five-year plan annually and for the Comptroller and Auditor General (the National Audit Office) to carry out an annual audit of the Commission's activities, which is reported to the Speaker's Committee.

361. *Subsections (3) and (4)* amend this requirement so that the Electoral Commission is to produce a five-year plan in respect of the first year of a new Parliament and subsequently as required by the Speaker's Committee.

362. *Subsection (5)* requires the National Audit Office to carry out an audit and to provide a report to accompany any five-year plan, rather than annually.

363. The amendments form part of the law of England and Wales, Scotland, Northern Ireland and Gibraltar. (Schedule 1 to the Political Parties, Elections and Referendums Act 2000 extends to Gibraltar – see section 163(11) of that Act).

364. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 73: LGBC for England: changes to facilitate efficient administration

365. This clause amends the governance arrangements for the Local Government Boundary Commission for England ("LGBCE") set out in Schedule 1 to the Local Democracy, Economic Development and Construction Act 2009. That Act provides that the functions of the Speaker's Committee include overseeing the procedure for the selection of the Chair of the LGBCE and examining the estimates and five-year plans of the LGBCE.

366. *Subsection (2)* enables the LGBCE to appoint up to two independent members to its audit committee. At present, members of any committees must be Commissioners.

367. Currently, there is a requirement for the LGBCE to produce a five-year plan annually and the Comptroller and Auditor General (the National Audit Office) to carry out an annual audit of the Commission's activities, which is reported to the Speaker's Committee.

368. *Subsections (4) and (5)* amend this requirement so that the LGBCE is required to produce a five-year plan in respect of the first year of a new Parliament and subsequently as required by the Speaker's Committee.

369. *Subsection (6)* requires the National Audit Office to carry out an audit and to provide a report to accompany any five-year plan, rather than annually.

370. The amendments form part of the law of England and Wales.

371. The clause will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clause 74: Access to registers kept by Gas and Electricity Markets Authority

372. This clause amends section 36 of the Gas Act 1986 and section 49 of the Electricity Act 1989. Those provisions govern the keeping of two registers by the Gas and Electricity Markets Authority, containing certain information relating to gas supply licensing and electricity supply licensing respectively. The amendments concern changes to the methods of access to the registers. *Subsections (2) and (6)* remove the requirement for the Authority to maintain physical registers at their premises.

373. *Subsections (3) and (7)* remove the right of public inspection, and the possibility of the requirement for the payment of a fee for such inspection. Instead, the contents of each register must be shown on the Authority's website. This will increase ease of access to the registers. *Subsections (4) and (8)* preserve the power of the Secretary of State to, by order, prescribe a fee for the provision of a certified copy of, or extract from, any part of the register.

374. This clause forms part of the law of England and Wales and Scotland. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 75: Repeal of duty to prepare sustainable community strategy

375. This clause repeals section 4 of the Local Government Act 2000. The effect of these provisions is to remove the duty for local authorities to prepare a Sustainable Community Strategy and the linked duty to, when preparing or modifying their Sustainable Community Strategy, consult with and seek the participation of their partner authorities and such other persons as they consider appropriate. The Sustainable Community Strategy is intended to set

the overall strategic direction and long-term vision for promoting or improving the economic, social and environmental well-being of a local area.

376. The repeal is being made as part of the localism agenda and gives local authorities the freedom to decide whether or not a Sustainable Community Strategy is needed for their area. On 13 April 2011 the statutory guidance to local authorities on preparing a Sustainable Community Strategy was withdrawn, and the intention to repeal both duties once a suitable legislative vehicle had been identified was announced.

377. Section 4 forms part of the law of England and Wales but the duty to prepare a Sustainable Community Strategy only applies to local authorities in England. This clause has the same extent and application and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 76: Repeal of duties relating to local area agreements

378. This clause repeals legislation relating to Local Area Agreements ("LAAs").

379. LAAs were three-year agreements between local authorities, their partners and the previous government to work collectively to improve local areas. The decision to "decentralise" existing LAAs and not to require LAAs in future years was announced on 13 October 2010. As there are no longer any LAAs in local areas, in Chapter 1 of Part 5 of the Local Government and Public Involvement in Health Act 2007, sections 105 to 113 and parts of sections 117 and 118 are no longer required.

380. The remaining sections in the Chapter are retained as they contain definitions used elsewhere in legislation (sections 103 – 104), amend current legislation (section 115) or relate to current policy – joint strategic needs assessments and joint health and wellbeing strategies (sections 116, 116A and 116B).

381. The 2007 Act forms part of the law of England and Wales, but the LAA-related provisions in Chapter 1 of Part 5 apply only to English authorities specified as "responsible local authorities" in section 103. This clause has the same extent and application and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 77: Repeal of provisions relating to multi-area agreements

382. This clause repeals Part 7 (sections 121 to 137) of the Local Democracy, Economic Development and Construction Act 2009. This legislation, which provides a formal basis for Multi Area Agreements ("MAAs"), has never been used and there are no plans to do so. The national and local collaboration within MAAs has subsequently been folded in to the government's approach to Local Enterprise Partnerships.

383. MAAs were signed in 2008, 2009 and 2010 and were voluntary, three-year agreements between local authorities, their partners and the government to work collectively to improve local economic prosperity. The legislation was introduced to allow for a formal basis to these and any future agreements. However, none of the 15 MAA areas chose to put their agreements on to a formal basis. No local authorities requested the Secretary of State to give a direction for the preparation and submission of a draft MAA for the proposed area; nor did any local authorities submit a MAA requesting approval from the Secretary of State. Consequently, the Secretary of State has not approved any MAAs following the commencement of the legislation.

384. Part 7 of the Local Democracy, Economic Development and Construction Act 2009 forms part of the law of England and Wales only (with the exception of specified provisions which also extend to Scotland and Northern Ireland), but the MAA related provisions of Part 7 are relevant only to specified kinds of English local authorities. The clause has the same extent and application and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 78: Repeal of duties relating to consultation or involvement

385. *Subsections (1) and (2)* repeal section 3A of the Local Government Act 1999 so as to remove the duty for best value authorities to involve local representatives in the exercise of any of their functions, where they consider it is appropriate to do so. The intention to repeal this duty was announced in April 2011, on the basis that local authorities should be trusted to engage with local people without a duty being imposed on them to do so.

386. Section 3A forms part of the law of England and Wales but the duty to involve applies only to best value authorities in England. The clause has the same extent and application will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 79: Power to spell out dates described in legislation

387. This clause confers a power on Ministers to amend legislation – primary and secondary – by statutory instrument in order to spell out dates described in it.

388. *Subsection (1)(a)* gives a power to a Minister to make an order which replaces a reference in legislation to the commencement of a provision – for example ‘the appointed day’ – with a reference to the actual date on which the provision came into force.

389. *Subsection (1)(b)* gives a power to a Minister to replace a reference in legislation to the date on which any other event occurs with a reference to the actual date on which that event occurs.

390. The following example may help to illustrate the power in subsection (1)(a).

BEFORE

Section 66(2) of the Adoption and Children Act 2002 currently reads:

"(2) But references in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force (referred to in this Chapter as "the appointed day")."

To know whether the Chapter applies to an adoption, the reader would need to find out when it came into force. The reader would need to look up the commencement order and would then discover that the Chapter came into force on 30 December 2005.

AFTER

The power in the Bill could be used to amend section 66(2) to read:

"(2) But references in this Chapter to adoption do not include an adoption effected before 30 December 2005 (the day on which this Chapter came into force)."

It would also be necessary to use the power to convert other references to "the appointed day" into references to "30 December 2005"; and to remove "the appointed day" from the glossary of defined terms in the 2002 Act. This would be done using the power under *subsection (2)* of the clause.

391. Legislation is sometimes brought into force early for the limited purpose of exercising powers under it; it is then brought into force for remaining purposes on a later date. In this sort of case, references in the legislation to the date on which it comes into force must usually be construed as references to the date on which it comes fully into force and, where appropriate, the power in subsection (1)(a) would therefore be used to replace references in the legislation to the date on which it comes into force with the date on which it comes fully into force.

392. The following examples may help to illustrate the power in subsection (1)(b).

Example 1

Before

Section 4(7) of the Holocaust (Return of Cultural Objects) Act 2009 says:

"This Act expires at the end of the period of 10 years beginning with the day on which it is passed."

After

Subsection (1)(b) could be used to amend the provision to say:

"This Act expires at the end of the period of 10 years beginning with 12 November 2009 (the day on which the Act was passed)."

Example 2

Before

Section 73(1) of the Charities Act 2006 says:

"The Minister must, before the end of the period of five years beginning with the day on which this Act is passed, appoint a person to review generally the operation of this Act."

After

Subsection (1)(b) could amend the provision to say:

"The Minister must, before the end of the period of five years beginning with 8 November 2006 (the day on which this Act was passed) appoint a person to review generally the operation of this Act."

393. The purpose of the power is to improve the accessibility of legislation, so that those reading legislation will be able to see on the face of the legislation what the relevant dates are without having to look them up, for example by searching through commencement orders. The power can be used on an ongoing basis, in relation to legislation passed or made after the enactment of a Bill, to replace references to commencement dates with actual dates as and when they become known. The power is often likely to be used at the same time as making a commencement order specifying the date on which the legislation is to come into force. But it will also be possible to use it to amend references to commencement dates in existing legislation.

394. The clause forms part of the law of England and Wales, Scotland and Northern Ireland but the powers given by the clause cannot be used in relation to areas within Scottish devolved competence or areas exclusively within Northern Ireland devolved competence. They also cannot be used to amend subordinate legislation made by the Welsh Ministers (or by the National Assembly for Wales at a time when, prior to the Government of Wales Act 2006, it made subordinate legislation). The clause will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 80: Combining different forms of subordinate legislation

395. This clause provides that powers to make orders, regulations and rules may be used to make a single instrument, where it is appropriate to do so.

396. This deals with the position where it is necessary to make a number of different orders, regulations or rules to give effect to a single policy. This clause would allow several powers to be exercised together to make a single instrument.

397. The government intends that this power be used to combine different forms of subordinate legislation where it is administratively convenient and would result in a more coherent legislative story.

398. There are ad hoc precedents for the approach taken in the clause. For example section 1292 of the Companies Act 2006 provides that any provision that may be made by regulations under that Act may be made by order; and any provision that may be made by order under that Act may be made by regulations. The clause generalises the approach in the precedents and avoids the need for such provisions to be repeated in future legislation.

399. *Subsection (2)* makes it clear that, although the clause allows for the combination of different kinds of subordinate legislation, it does not otherwise affect the procedure for making an instrument.

400. The clause will not apply to Scottish statutory instruments, Northern Ireland rules or to statutory instruments made by the Welsh Ministers.

401. The clause will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 81: Ambulatory references to international shipping instruments

402. This clause amends the Merchant Shipping Act 1995 (the "1995 Act") so that the powers to make secondary legislation wherever they appear in the 1995 Act can be exercised so as to provide for a reference in the legislation to an international instrument to be interpreted as a reference to the instrument as modified from time to time (and not simply to the version of the instrument that exists at the time the secondary legislation is made). The definition of "international instrument" in subsection (6) of the new section 306A inserted into the 1995 Act by the clause excludes an EU instrument.

403. The current practice of implementing international maritime conventions, and regular changes to them, by means of a mixture of primary legislation and secondary legislation has resulted in a complex regulatory structure that is confusing to industry and the regulator alike. It is also time consuming and resource intensive, leading to delays in implementation – which in turn can result in ships being challenged during inspections in foreign ports leading to delays and inconvenience to UK ships.

404. The new section 306A to be inserted in the 1995 Act provides a mechanism that will allow changes to international instruments in the maritime sector, to which the UK is a party, to take effect in UK law without the need to make further legislative or regulatory provision.

405. The practical effect of this clause would be that where the power has been applied through secondary legislation the government would not need to make further secondary legislation or publish any other regulatory document in order to give effect to changes to international obligations and standards; changes to the text of an international instrument would be automatically incorporated into UK law in the circumstances specified in the secondary legislation.

406. The clause forms part of the law of England and Wales, Scotland and Northern Ireland.

407. The provisions of the clause will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Clause 82: Legislation no longer of practical use

408. This clause introduces Schedule 20, which makes provision for legislation which is no longer of practical use to cease to apply. See commentary on Schedule 20 below.

Clauses 83 to 86: Exercise of regulatory functions: economic growth

409. Clause 83 imposes a duty on persons exercising certain regulatory functions to have regard (in the exercise of those functions) to the desirability of promoting economic growth. In carrying out this duty, the person must, in particular, consider the importance of ensuring that any regulatory action they take is necessary and proportionate.

410. The background to these provisions is the post-implementation review of the Regulators' Compliance Code which found that regulators had a tendency to regard the promotion of economic growth as subsidiary to their statutory duties, the Focus on Enforcement reviews which found that businesses experience inconsistent or disproportionate enforcement decisions and Lord Heseltine's independent report entitled "*No stone unturned: in pursuit of growth"* which recommended that the government should impose an obligation on regulators to take proper account of the economic consequences of their actions.

411. The regulatory functions to which this new duty applies will be those specified by a Minster of the Crown under a power set out in clause 84. The power is flexible enough to permit an order to specify some regulatory functions of a particular body but not others, if it is considered appropriate for the duty to apply in relation to some but not all of its regulatory functions.

412. The power to specify functions is subject to clause 84(2) and (3) which set out consultation requirements and restrictions on the exercise of the power in relation to the devolved administrations.

413. A statutory instrument containing an order under clause 84 may not be made unless a draft had been laid before, and approved by resolution of, each House of Parliament.

414. Clause 85 provides a power for a Minister of the Crown to issue guidance on: how regulatory functions can be exercised so as to promote economic growth; and how persons subject to the duty can demonstrate compliance with the duty. The draft guidance is subject to consultation requirements set out at clause 85(5).

415. The guidance must be laid in draft before, and approved by resolution of, each House of Parliament as set out in clause 85(6).

416. Clause 86 defines terms used in clauses 83 to 85. The definition of "regulatory function" in subsection (1) is of particular note. Functions falling within the definition might be exercised by government departments and independent statutory regulators. The first limb of the definition (*subsection (1)(a)*) is aimed at functions of "regulating" (for example, by producing rules, or imposing requirements, which apply to a category of persons). The second limb of the definition (*subsection (1)(b)*) covers functions of enforcing or securing compliance with such regulation.

417. *Subsection (2)(b)(i)* expressly excludes from the definition of regulatory function the function of instigating and conducting criminal proceedings. However, this would not exclude the making of enforcement decisions prior to a decision to prosecute, such as a decision to investigate a matter or the reference to a prosecuting authority with a view to the prosecuting authority considering the commencement of proceedings in relation to the matter.

418. *Subsection (2)(b)(ii)* expressly excludes from the definition of regulatory function the function of conducting civil proceedings. The instigation of civil proceedings is not excluded.

419. Clauses 83 to 86 form part of the law of England and Wales, Scotland and Northern Ireland. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Clauses 87 to 91: General

420. These clauses set out a power for the Secretary of State to make necessary consequential amendments, repeals and revocations as a consequence of the provisions in the Bill; the territorial extent of the Bill; information on the ways in which the various measures in the Bill will be commenced; and the short title of the Bill.

Schedule 1: Approved English apprenticeships

421. This Schedule inserts a new Chapter A1 in Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (the "2009 Act"). Part 1 forms part of the law of England and Wales. Chapter 1 of that Part currently provides a regime for both "English apprenticeships" and "Welsh apprenticeships". The new Chapter A1 relates only to "English apprenticeships" and introduces a new regime for them. Chapter 1 will continue to provide the regime for "Welsh apprenticeships".

422. Chapter 1 currently contains a number of detailed provisions about apprenticeships. The main structure of the Chapter is built around the concepts of completing an apprenticeship and conditions for the issue of a completion certificate by certifying authorities, apprenticeship frameworks (which specify requirements for apprenticeships), a specification of apprenticeship standards with which apprenticeship frameworks must comply and the requirement that apprentices are employed under an apprenticeship agreement.

423. The independent Review of Apprenticeships by Doug Richard (https://www.gov.uk/government/publications/the-richard-review-of-apprenticeships) in 2012 recommended that the government improve the quality of apprenticeships and make them more focused on the needs of employers. In order to implement these improvements and enable greater diversity and innovation there is a need to simplify the statutory arrangements for English apprenticeships. The new Chapter A1 therefore simplifies the arrangements. It replaces the complex provisions which currently govern English apprenticeships with new concepts of an approved English apprenticeship and approved apprenticeship standards which will be based on recognised industry standards and outcomes.

424. An approved English apprenticeship is an arrangement which takes place under an approved English apprenticeship agreement between employer and apprentice or is an alternative English apprenticeship. The approved English apprenticeship agreement is a combination of paid employment and training towards achievement of a recognised standard. The Secretary of State can make regulations requiring the apprenticeship and the agreement to satisfy specified conditions. The status of such an agreement is a contract of service. That is the same status as an apprenticeship agreement under the 2009 Act. There is also provision for alternative English apprenticeship arrangements of a kind described in regulations made by the Secretary of State. Such arrangements may include provision for apprentices who are not employed. Apprenticeship standards are prepared, and may be amended, by the Secretary of State or other persons. Where a standard is prepared or amended by another person it is subject to the approval of the Secretary of State. The Secretary of State is responsible for publishing standards, and amended versions, and may withdraw any standard. The Secretary of State has power to issue certificates to those who complete an approved English apprenticeship and to delegate the Secretary of State's powers under the new provisions (other than the power to make regulations). These provisions reduce bureaucratic burdens; for example by removing the existing detailed provision for the issue of apprenticeship frameworks by issuing authorities. The government intends to use the new provisions to

ensure that employers have more direct control over apprenticeship training, allowing them to focus on what they actually value.

425. The Schedule inserts a new subsection (1A) into section 100 of the 2009 Act to ensure that under that section the Secretary of State may make any payments or otherwise secure the provision of financial resources in connection with approved English apprenticeships. This is without prejudice to the Secretary of State's powers to make payments or otherwise secure the provision of financial resources in connection with such apprenticeships, or any other apprenticeship training, under section 100(1) of the 2009 Act or any other enactment. There are also consequential amendments to sections 100, 101 and 103 of the 2009 Act.

426. The amendments in Part 2 of Schedule 1 amend Chapter 1 of Part 1 of the 2009 Act so that the Chapter will apply only to "Welsh apprenticeships" and make other consequential changes to the 2009 Act.

427. Part 4 of the Schedule deals with transitional matters. The Secretary of State may, by order, make transitional provision to treat certain work as though it was done under an approved English apprenticeship. The work must have been done, under other arrangements described in the order, before paragraph 1 of the Schedule comes into force and continued for any period afterwards. A standard published by the Secretary of State in this context may be treated as if it were an approved apprenticeship standard. This provision will allow work done by apprentices on Trailblazer apprenticeships, under arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973, to be recognised appropriately as part of an approved English apprenticeship. It will also allow for Trailblazer standards to be treated as approved apprenticeship standards.

428. The provisions form part of the law of England and Wales but apply only to "English apprenticeships".

429. The provisions will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 2: Driving instructors

430. This Schedule amends Part 5 of the Road Traffic Act 1988 both before the commencement of amendments to that Part by Schedule 6 to the Road Safety Act 2006 and thereafter.

Part 1: Amendments of Part 5 Road Traffic Act 1988 (as amended by Road Safety Act 2006)

431. Part 1 of the Schedule amends Part 5 of the Road Traffic Act 1988 in the form it will be in once the amendments made by the Road Safety Act 2006 come into force. The Road Safety Act 2006 amendments to Part 5 of the Road Traffic Act 1988 mean that: the restrictions on the giving of paid driving instruction extend to all motor vehicles and not only

cars; registration is in respect of a prescribed description of driving instruction; and provision for the licensing of trainee instructors to deliver paid instruction prior to becoming registered is omitted.

432. The Part 1 amendments omit the provisions of Part 5 of the Road Traffic Act 1988 which relate to disabled driving instructors and amend the Part so that there will be one system of registration which will apply to all instructors.

433. Sections 125 and 125ZA of the Road Traffic Act 1988 are amended to provide for the Registrar of Approved Driving Instructors ("the Registrar") to have power to require a person, whether disabled or not, to undergo an assessment as to their ability to control a motor vehicle of a prescribed class in an emergency ("an assessment"). The Registrar will be able to exercise the power when a person applies to become an approved driving instructor ("ADI"), or at any time when a person is registered. The power is only exercisable if the Registrar has reasonable grounds for believing that the person in question would be unable to take control of the motor vehicle if an emergency arose whilst they were giving driving instruction.

434. Section 125 of the Road Traffic Act 1988 is also amended so that all persons applying to become an ADI must disclose any disabilities which currently, or may in the future, affect their driving and so that it is an offence not to do so.

435. Section 125ZA of the Road Traffic Act 1988 is also amended to provide that an ADI who is required to undergo an assessment must hold a certificate to the effect that such an assessment has been successfully undertaken in a prescribed class of vehicle ("a certificate").

436. Section 125ZA of the Road Traffic Act 1988 is further amended to impose a condition on an ADI that, if driving instruction is to be given where there is a reasonable expectation of an emergency arising which necessitates the ADI taking control of the prescribed vehicle, instruction will only be given if the ADI has the ability to take control in an emergency.

437. Section 133D of the Road Traffic Act 1988 is amended so that for those registered in respect of a description of driving instruction, and who are required to undergo an assessment, it is an offence to give paid instruction –

- unless they hold a current certificate; or

- in a vehicle other than one of a class specified in their certificate unless the driver holds a full licence for that class of vehicle and has not been notified by the Secretary of State that due to a disability their driving is likely to be a danger to the public.

438. Section 128B is inserted into the Road Traffic Act 1988 to allow the Registrar to withdraw a requirement to submit to an assessment or to direct that such a requirement is to

be disregarded and provide for an application to be made for a further assessment where an earlier one was undertaken unsuccessfully.

Part 2: Transitory amendments of Part 5 Road Traffic Act 1988 (before amendment by Road Safety Act 2006)

439. Part 2 amends the Road Traffic Act 1988 prior to the commencement of section 42 of, and Schedule 6 to, the Road Safety Act 2006. Before the commencement of those provisions, Part 5 of the Road Traffic Act 1988 relates to the provision of paid driving instruction in motor cars only and provides for the registration of persons as an ADI and the licensing of trainee driving instructors.

440. The Part 2 amendments are transitory and have the effect of amending the Road Traffic Act 1988 only until the commencement of section 42 of, and Schedule 6 to, the Road Safety Act 2006.

441. The Part 2 amendments are similar in effect to those made by Part 1 and take account of the differences between Part 5 of the Road Traffic Act 1988 before and after the amendments made by the Road Safety Act 2006.

Part 3: Consequential and related amendments

442. Consequential amendments are made to the Road Traffic (Driving Instruction by Disabled Persons) Act 1993, the Road Traffic Offenders Act 1988 and the Road Safety Act 2006.

443. The extent of clause 8 and Schedule 2 is the same as the Road Traffic Act 1988 and so the provisions form part of the law of England and Wales and Scotland. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 3: Motor insurance industry: certificates of insurance

444. Schedule 3 contains amendments which are consequential on the amendments made by clause 9.

Schedule 4: Agricultural Holdings Act 1986: resolution of disputes by third party determination

445. The Agricultural Holdings Act 1986 (the "1986 Act") governs agricultural tenancies entered into before 1st September 1995 and also applies to certain tenancies granted after that date. The 1986 Act refers disputes between the landlord and tenant to the First-tier Tribunal in England or the Agricultural Land Tribunal in Wales, arbitration or the courts.

446. Most disputes, particularly those governed by practical agricultural considerations, are currently compulsorily referable to arbitration under the 1986 Act. In some situations the 1986 Act also provides for a system of notice of referral to arbitration by one party to the other and time limits for actions to be taken. For example, in rent reviews under section 12 of

the 1986 Act a notice of referral to arbitration must be served at least 12 months in advance of the next termination date, thereafter the arbitrator must be appointed by the parties or an application to the Royal Institute of Chartered Surveyors for appointment of the arbitrator must be made by one of the parties before the next termination date of the tenancy otherwise the notice of referral will become invalid.

447. This Schedule amends the 1986 Act to provide for disputes, other than those regarding notices to quit a tenancy, which are referable to arbitration to be capable of determination by a jointly appointed third party; for example rent reviews which form the majority of arbitration cases. Under the provisions the parties have autonomy to select the third party best suited to determine their dispute and to agree the terms and conditions of that appointment including timeframes and process. The notice requirements and time limits applicable to arbitration under the 1986 Act will not apply to third party determination.

448. These provisions bring the 1986 Act more in line with the Agricultural Tenancies Act 1995 (which governs Farm Business Tenancies entered into on or after 1st September 1995) regarding dispute resolution providing greater consistency across all existing agricultural tenancies in the way disputes may be resolved. The provisions are deregulatory and reduce the burden on agricultural landlords and tenants governed by the 1986 Act by providing an alternative mechanism for dispute resolution to the existing prescribed option of arbitration.

449. The Schedule inserts a new section 84A in the 1986 Act to make provision about third party determination and its interplay with arbitration, namely that parties who wish to refer a matter for third party determination must jointly appoint the third party, that the parties cannot make such a referral if they have appointed an arbitrator to determine the matter and that where the matter has been referred to third party determination the matter may not be determined by arbitration unless the third party appointed to determine the matter dies or is incapable of acting.

450. The Schedule also amends various of the provisions of the 1986 Act to provide for particular disputes to be capable of being referred for third party determination, rather than to arbitration, and to provide for the third party to have the same powers and be subject to the same duties as an arbitrator would have been.

451. The Schedule retains the current frequency of a demand or reference to arbitration in relation to sections 8 (arbitration where terms of written agreement are inconsistent with the section 7 model clauses) and 12 (arbitration of rent) of the 1986 Act, namely the expiry of a three year period from a previous award or direction of an arbitrator or third party. The frequency of third party determinations is not so restricted.

452. Clause 14 and Schedule 4 form part of the law of England and Wales and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Schedule 5: Auditors ceasing to hold office

Part 1: Notification requirements

453. Part 1 of Schedule 5 makes amendments to Chapter 4 of Part 16 of the Companies Act 2006 (the "2006 Act") and, together with Part 2 of the Schedule, forms part of the law of England and Wales, Scotland and Northern Ireland (in line with the extent of the 2006 Act).

454. *Paragraphs 2 and 4* omit sections 512 and 517 respectively of the 2006 Act and, in doing so, remove the requirements for a company to notify the registrar of companies if its auditor is removed from office by the company or resigns from office.

455. *Paragraph 3* amends subsection (2) of section 516 of the 2006 Act. Currently section 516 provides that a notice of resignation sent by an auditor of a company is ineffective if that notice is not accompanied by the statement required by the current section 519. The effect of the amendment is that an auditor's notice of resignation will only be ineffective if the auditor is resigning from a public interest company and that notice is not accompanied by a statement pursuant to the amended section 519.

456. *Paragraphs 5, 7 and 8* make amendments to sections 518, 520 and 521 (respectively) of the 2006 Act consistent with the changes to section 519 made by clause 19. In section 518, the effect is that, for a non-public interest company, a resigning auditor's rights (to call a shareholders' meeting to explain his or her (or its) reasons for resigning) do not apply where the auditor's statement under new section 519(1) includes a declaration pursuant to new section 519(3B) that the auditor considers that none of his or her (or its) reasons for leaving, and no connected matters, need to be brought to the attention of shareholders or creditors.

457. *Paragraphs 7 and 8* make similar amendments to sections 520 and 521 (respectively). The effect is that, where the auditor's statement includes the declaration pursuant to new section 519(3B) described above, a non-public interest company does not need to circulate a copy of the auditor's statement under new section 519(1) to its shareholders and creditors, and the auditor does not need to send a copy to the registrar of companies.

458. Currently section 522 provides that an auditor must in many cases notify the audit authority of his or her (or its) reasons for leaving office. *Paragraph 9* amends this requirement such that only an auditor who must send a statement to the company in accordance with new section 519(1) must send a copy of that statement to the appropriate audit authority.

459. *Paragraph 10* removes the mandatory duty in section 524 for an audit authority to inform the accounting authorities (the Financial Reporting Council's conduct committee and the Secretary of State) about an auditor's departure. However, the amending provision makes it clear that the audit authority has a discretion to pass on to the accounting authorities a copy of the auditor's statement or any other relevant information connected to the auditor's departure.

Part 2: Miscellaneous

460. *Paragraph 14* substitutes, for subsections (1) and (2) of section 514 of the 2006 Act, subsections (1), (2) and (2A). Generally speaking, this section applies where a resolution is proposed as a written resolution of a private company whose effect is the appointment, at the end of the "period for appointing auditors" (see section 485 of the 2006 Act), of a new auditor in place of the current auditor or, where the company does not have an auditor, of an individual (or firm) who was not the auditor when the company last had an auditor. Section 514 sets out a special procedure that must be followed where such a resolution is proposed, which includes the sending by the company of a copy of the written resolution to both the current/last auditor and the new auditor, and allowing the former to make representations. The amendments make it clearer when section 514 does and does not apply. The special procedure will not apply where the current/last auditor already has or had analogous rights to make representations under section 511 (there has been a resolution at a general meeting removing the auditor) or 518 (the auditor has resigned). In cases where the company does not have an auditor, the special procedure is also not applicable where the previous auditor has already had the opportunity to make representations under section 514 (or 515 – see below) or where a period for appointing auditors has already ended since the departure.

461. *Paragraph 15* amends section 515 by substituting new subsections (1), (1A), (2) and (2A) for existing subsections (1) and (2). Section 515 makes similar provision to section 514 where a resolution is proposed at a shareholder meeting whose effect would be to appoint a new auditor in place of the incumbent or, where the company does not have an auditor, an individual (or firm) other than the individual (or firm) who (or which) was the last auditor. Section 515 stipulates that special notice of such a resolution is required and provides for the sending by the company of a copy of the intended resolution to both the current/last auditor and the new auditor. It gives the former the opportunity to make representations. Like the amendments being made to section 514, the paragraph 15 amendments make it clearer when special notice and the related rights to make representations etc do and do not apply. Special notice etc will not apply where the current/last auditor has or had analogous rights to make representations under section 511 or 518. In cases where the company does not have an auditor, special notice etc is also not applicable where the individual (or firm) who was the last auditor has already had the opportunity to make representations under section 515 (or 514 – see above) or where, in the case of a private company, a period for appointing auditors has already ended or, in the case of a public company, an accounts meeting has already taken place since the departure.

462. Broadly speaking, *paragraphs 16 to 20* replace references to documents being "deposited" (e.g. at the company's registered office) with references to documents being "sent" or "received". The effect is to facilitate electronic communication by engaging section 1143 of, and Schedules 4 and 5 to, the 2006 Act.

463. Schedule 5 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 6: Insolvency and company law

Part 1: Deeds of arrangement

464. *Paragraphs 1 and 2* repeal the Deeds of Arrangement Act 1914 ("DOAA 1914") and make consequential amendments to other legislation. A deed of arrangement is an alternative to bankruptcy. It is a contract between a debtor and his creditors that provides for the assignment of the debtor's assets for the benefit of his creditors or a composition, where some or all creditors agree to accept a lesser sum in full satisfaction of their claims. The DOAA 1914 sets out the statutory scheme whereby an individual can execute a deed or other instrument.

465. In June 1982 *The Report of the Review Committee* ("the Cork Committee") recommended that the DOAA 1914 be repealed and be replaced by introduction of a formal voluntary arrangement. This recommendation was based on the grounds that deeds of arrangement were legally complex, unreliable in practice and therefore little used. Individual voluntary arrangements were introduced by the Insolvency Act 1986, although the DOAA 1914 was not repealed at that time.

466. Since 1986, individual voluntary arrangements have increased in popularity and in 2011/2012 there were 49,932 such arrangements. They have effectively replaced deeds of arrangement. There is only one deed of arrangement still in existence, which was registered in 2004. This deed of arrangement will have the benefit of the saving provision at *paragraph 3*. Individual voluntary arrangements better meet debtor's requirements as they are binding on all creditors, even where a creditor was unaware of the proposal at the time it was approved.

467. The DOAA 1914 forms part of the law of England and Wales only and its repeal will have the same extent. Paragraphs 1 to 3 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 2: Administration of companies

Appointment of administrators

468. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.

469. *Paragraph 5* inserts a new paragraph 25A into Schedule B1 to the Insolvency Act 1986 to enable a company or the directors of a company to appoint an administrator despite the presentation of a winding-up petition, if the petition was presented during an interim moratorium. Like that Schedule to that Act, paragraph 5 forms part of the law of England and

Wales and Scotland. The act of filing with the court notice of intent to appoint an administrator under paragraph 27 of Schedule B1 to the Insolvency Act 1986 commences an interim moratorium in respect of the company (paragraph 44(4) of that Schedule). The interim moratorium prevents other insolvency proceedings or legal processes against the company being instituted or continued. The new paragraph 25A clarifies that the prohibition (under paragraph 25(a) of Schedule B1) on appointing an administrator when a winding-up petition has been presented and not yet disposed of applies only to a petition presented before an interim moratorium comes into effect.

470. *Paragraph 6* removes a requirement in paragraph 26(2) of Schedule B1 to the 1986 Act to give notice of intention to appoint an administrator to persons who are not themselves entitled to appoint an administrative receiver or administrator in certain circumstances. Paragraph 6 forms part of the law of England and Wales and Scotland.

471. At present a company or its directors intending to appoint an administrator must give notice of the intention to appoint to anyone entitled to appoint an administrative receiver of the company, to any holder of a qualifying floating charge entitled to appoint an administrator, and to other prescribed persons. The prescribed persons are set out in rule 2.20 of the Insolvency Rules 1986, and include the company (if the company is not intending to make the appointment) and a supervisor of a company voluntary arrangement under Part 1 of the Insolvency Act 1986. Unlike those entitled to appoint a receiver or administrator, the prescribed persons cannot block the appointment of an administrator.

472. The requirement to give notice to these prescribed persons can lead to unnecessary delays in the administrator's appointment where there is no one else to whom notice of intention to appoint must be given and so the requirement is being removed by paragraph 6. The prescribed persons will in any event receive notice of the appointment when it is made.

473. Paragraph 5 will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act and paragraph 6 will come into force on a day to be appointed by the Secretary of State in a commencement order.

<u>Release of administrator where no distribution to unsecured creditors other than by virtue of section 176A(2)(a)</u>

474. *Paragraph 7* amends paragraph 98 of Schedule B1 to the Insolvency Act 1986 and like that Schedule forms part of the law of England and Wales and Scotland. The amendment makes it clear that where an administrator of a company has been appointed by a floating charge holder or by the company or its directors and there are insufficient assets to enable a distribution to be made to the unsecured creditors (other than under section 176A(2)(a) of the Insolvency Act 1986 - the "prescribed part"), there is no requirement for all of the creditors to resolve to give the administrator his/her release. Release is the release of an office-holder from liability in respect of his or her acts and omissions as an office-holder. (The "prescribed

part" is a proportion of a company's assets over which secured creditors have security which can nonetheless be applied in certain circumstances to unsecured creditors.)

475. Currently paragraph 98(2)(b) of Schedule B1 to the Insolvency Act 1986 provides that such an administrator obtains his release by a resolution of a creditors' committee or by a resolution of the creditors. Paragraph 98(3) of Schedule B1 to that Act goes on to provide that where such an administrator makes a statement under paragraph 52(1)(b) of Schedule B1 (company has insufficient property to make a distribution to unsecured creditors), a resolution requires the approval of every secured creditor and (where distributions to preferential creditors have been or may be made) the approval of at least 50% of the preferential creditors by value. This implies that a normal resolution of all the creditors is required plus a resolution of all of the secured creditors.

476. The amendments made by paragraph 7 distinguish paragraph 52(1)(b) cases from non-paragraph 52(1)(b) cases. Thus, where the unsecured creditors have no interest in the administration (other than by virtue of the "prescribed part"), it will be clear that the unsecured creditors are not involved in the administrator's release - the release only needs to be given by (all of) the secured creditors (together with at least 50% of the preferential creditors if relevant) and is effective from the time they decide. It will not be necessary for the secured creditors to hold a meeting.

477. Paragraph 7 will come into force on a day to be appointed by the Secretary of State in a commencement order. Paragraph 7 is deregulatory because it will avoid the calling of unnecessary creditors' meetings at which the creditors formally resolve to give administrators their release.

Part 3: Winding up of companies

Removal of power of court to order payment into Bank of England of money due to company

478. *Paragraph 9* repeals section 151 of the Insolvency Act 1986, a provision which provides the court with a power to order any contributory (that is a person liable to contribute to the assets of a company in the event of its being wound up), purchaser or other person from whom money is due to a company that is the subject of a winding-up order to pay the amount due into the Bank of England to the account of the liquidator instead of to the liquidator. The role of a liquidator of a company which is being wound up by the court is to secure, realise and distribute assets and distribute any surplus.

479. The origins of the provision date back to the Companies Act 1862 and it appears that its purpose was to have been a method for protecting creditors' interests from an unregulated insolvency profession. Since 1986, there has been a strong regulatory framework in place to monitor and control the activities of liquidators and so this provision no longer serves any useful purpose. The last recorded use of the power was in 1991.

480. Section 151 applies to companies that are being wound up by the court in England and Wales and in Scotland. The repeal of the section forms part of the law of England and Wales and Scotland. Paragraph 9 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Release of liquidator where winding-up order rescinded

481. The amendment made by *paragraph 10* will form part of the law of England and Wales and Scotland. The amendment will not apply in Scotland, however. This is because the amendment concerns a liquidator's release upon the rescission of a winding-up order and in Scotland the courts do not rescind winding-up orders. The amendment will come into force on a day to be appointed by the Secretary of State in a commencement order. It is deregulatory because it will ensure that, where a court in England and Wales rescinds a winding-up order, the liquidator's release is addressed at the same time, as opposed to being the subject of a subsequent, separate court application. A winding-up order may be rescinded where, for instance, it is shown that the company's circumstances are markedly more favourable than they were when the winding-up order was made or where the court did not have the full facts when it made the order.

482. Liquidators are liable for their acts in the winding-up unless and until released from that liability. It is important to liquidators to obtain their release as this provides significant protection against being sued for their acts and omissions in the winding-up. There is nonetheless currently no specific statutory provision concerning the release of a liquidator when a court order is rescinded. The release of liquidators in all other circumstances is already addressed – see section 174 of the Insolvency Act 1986. Paragraph 10 remedies this omission. It inserts a new subsection into section 174 which provides that the liquidator when a winding-up order is rescinded has his or her release with effect from the time the court may determine.

Part 4: Disqualification of unfit directors of insolvent companies

483. *Paragraph 11* amends section 7(4) of the Company Directors Disqualification Act 1986 and like that section of that Act forms part of the law of England and Wales and Scotland. The amendments will enable the Secretary of State or the official receiver to request information relevant to a person's conduct as a director of a company that has been insolvent directly from any person, including from officers of the company themselves. The amendments will also ensure that books, papers and other records are to be produced when the Secretary of State or official receiver consider the respective documents to be relevant.

484. Currently, where the Secretary of State or official receiver is considering whether to make an application for a disqualification order against a director, the Secretary of State or the official receiver may require only office-holders of a company (a liquidator, administrator or administrative receiver) to provide information or books, papers etc. about any person's conduct as a director.

485. This approach creates an administrative burden on the office-holder and can give rise to delays in information and document provision. Furthermore, office-holders also sometimes refuse or delay requests for information as they do not deem it "relevant" to the person's conduct as director (see s.7(4)(b) CDDA 1986). This can have the effect of delaying the Secretary of State's or the official receiver's decision as to whether to make a disqualification application.

486. The amendments made by paragraph 11 permit the Secretary of State or the official receiver to obtain information about any person's conduct as a director of a company direct from any person, including officers of the company, and ensures that the Secretary of State and the official receiver may request any document which they consider to be relevant to their decision as to whether to make an application for disqualification.

487. Paragraph 11 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 5: Bankruptcy

Appointment of insolvency practitioner as interim receiver

488. *Paragraphs 13 and 14* form part of the law of England and Wales only. They will come into force on a day to be appointed by the Secretary of State in a commencement order. The effect is deregulatory because they will allow a wider choice of persons – including (importantly) the person who will subsequently be appointed the trustee in bankruptcy – to act as an interim receiver. An interim receiver is someone appointed to preserve a debtor's assets in the period between a bankruptcy petition being presented and a bankruptcy order being made.

489. Both the official receiver (a civil servant) and insolvency practitioners (who operate in the private sector) can act as trustee of a bankrupt's estate. Creditors often wish to appoint an insolvency practitioner to act as both interim receiver (where one is appointed) and the subsequent trustee. Except in limited circumstances, however, the court at the moment can only appoint the official receiver as interim receiver. These circumstances are where, following a debtor petitioning for his or her own bankruptcy pursuant to section 272 of the Insolvency Act 1986, the court has appointed an insolvency practitioner to prepare a report under section 273 of that Act stating whether the debtor is willing to make a proposal for a voluntary arrangement. In such a case, the court may appoint as interim receiver the insolvency practitioner who prepared the report.

490. Paragraph 13 amends section 286 of the Insolvency Act 1986 to permit the court to appoint the official receiver or any insolvency practitioner as interim receiver in all circumstances. Paragraph 14 makes consequential amendments to section 370 of that Act – given the changes being made by paragraph 13 these section 370 amendments provide that any type of interim receiver (whether or not the official receiver) may make an application to

the court for the appointment of a "special manager" (someone, usually with specific sector expertise, to assist the interim receiver).

Statement of affairs

491. *Paragraph 15* amends section 288 of the Insolvency Act 1986 and like that section of that Act forms part of the law of England and Wales only. The amendments replace the requirement on every person made bankrupt on a creditor's petition to deliver a statement of affairs to the official receiver with a discretionary power for the official receiver to require a statement of affairs from the person made bankrupt.

492. At present there is a requirement for a statement of affairs to be submitted in every bankruptcy. A debtor who petitions for their own bankruptcy is required to submit a statement of affairs with their petition. Where a creditor petitions, the creditor will not know all of the debtor's affairs, so the debtor is required to submit a statement of affairs within 21 days of the bankruptcy order, unless either the official receiver or the court releases him from doing so or extends the 21 day period. Failure without reasonable excuse to comply with this requirement constitutes contempt of court (section 288(4) of the 1986 Act).

493. In practice, the bankrupt individual will not usually provide a statement of affairs due to lack of awareness of the requirement. Currently a person made bankrupt on a creditor's petition is only likely to submit a statement of affairs when the official receiver requests it, for example if he is carrying out further investigations. The official receiver often obtains the required information by other means but may not formally release the bankrupt from the requirement.

494. The amendments of section 288 seek to reduce the burden on bankrupt individuals by providing that a statement of affairs is not required in a case where a creditor presented the petition unless requested by the official receiver. This mirrors the position where a company has been wound up by the court (see section 131 of the 1986 Act).

495. The statement of affairs may be requested by the official receiver at any time until the bankrupt's discharge from bankruptcy. It must be submitted in a prescribed form and, unless the official receiver or the court extends the period, within 21 days of the official receiver requiring it.

496. Paragraph 15 will come into force on a day to be appointed by the Secretary of State in a commencement order.

After-acquired property of bankrupt

497. *Paragraph 16* amends section 307 of the Insolvency Act 1986 to facilitate banks offering accounts to undischarged bankrupts. There is some uncertainty at present about the

way in which section 307 operates in relation to bank accounts and the amendments seek to reduce a burden by removing that uncertainty. Paragraph 16, like section 307, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

498. Section 307 allows a trustee in bankruptcy to claim by notice after-acquired property that is anything which becomes the property of the bankrupt before they are discharged (usually 12 months after the bankruptcy order was made). Where that property is or becomes money that passes through a bank account, and the trustee is unable to recover it from the bankrupt or ultimate recipient, the trustee may claim against the bank for its loss to the bankrupt's estate. Currently the trustee can consider such a claim as the bank would have been aware of the bankruptcy order.

499. Section 307(4) of the Insolvency Act 1986 prevents the trustee from taking action against certain persons who have dealt with after-acquired property in good faith and without notice of the bankruptcy – namely persons acquiring property for value and bankers entering into transactions. The amendment takes bankers outside the scope of section 307(4) and instead provides protection for them by means of a new subsection (4A) inserted into section 307. The new subsection (4A) prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.

Part 6: Authorisation of insolvency practitioners

Repeal of provision for authorisation of nominees and supervisors in relation to voluntary arrangements

500. *Paragraphs 18 and 19* repeal sections 389(1A) and 389A of the Insolvency Act 1986. These provisions allow individuals to be authorised to act solely as nominees or supervisors in voluntary arrangements. Once the partial authorisation regime for insolvency practitioners in clause 18 is introduced, it is considered there will be no demand for authorisation to act in voluntary arrangements alone, hence the provisions will become obsolete.

501. *Paragraph 20* makes amendments to primary legislation that are consequential on the repeals made by paragraphs 18 and 19.

Repeal of provision for authorisation of insolvency practitioners to be granted by competent authority

502. *Paragraph 21* repeals sections 392 to 398 of, and Schedule 7 to, the Insolvency Act 1986 which provide for a competent authority to grant, refuse and withdraw authorisation to act as an insolvency practitioner. As no other competent authority has been designated, the Secretary of State is currently the only competent authority. The effect of the repeal will be

that the Secretary of State will no longer be able to authorise individuals to act as an insolvency practitioner. Individuals will only be able to obtain authorisation from one of a number of professional bodies recognised by the Secretary of State for that purpose. The vast majority of insolvency practitioners are already authorised by one of these bodies. The changes will reduce inconsistency of regulation by ensuring that all insolvency practitioners are authorised by one of the recognised professional bodies. The repeal of the provisions also removes a perceived conflict of interest with the Secretary of State's role as an oversight regulator of the professional bodies.

503. *Paragraph 22* makes a number of amendments to primary legislation that are consequential to the repeals made by paragraph 21. These amendments include removal of references to the Insolvency Practitioners Tribunal, which exists only to consider objections to a competent authority's decision to refuse or withdraw a person's authorisation to act as an insolvency practitioner. Consequently, the Insolvency Practitioners Tribunal will become redundant once the repeals made by paragraph 21 take full effect.

504. *Paragraph 23* is a transitional and savings provision for two categories of individuals: those who are authorised by the Secretary of State to act as an insolvency practitioner at the date the repeals made by paragraph 21 take effect; and those who have applied to the Secretary of State for authorisation by that date but whose application has not been dealt with. Those who are already authorised will continue to be authorised for a period of one year after the repeals take effect. Those who apply to the Secretary of State for authorisation before the repeals made by paragraph 21 take effect will have their applications determined in accordance with the existing provisions.

505. The main amendments made by Part 6 of the Schedule form part of the law of England and Wales and Scotland, in line with the enactments that they amend. Part 6 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 7: Liabilities of administrators and administrative receivers of companies and preferential debts of companies and individuals

Treatment of liabilities relating to contracts of employment

506. *Paragraphs 24 to 28* repeal one element of the priority given to employees' wages in certain insolvency proceedings, as the type of employee contract it relates to no longer exists.

507. In administration and administrative receiverships a company can continue to trade under the direction of the administrator (usually pending a sale of the business or assets). All debts incurred by the company after entry into such insolvency proceedings are classified as an expense of the insolvency proceeding and are payable ahead of the fees of the insolvency practitioner. For an employee to become entitled to have their wages paid as an expense, the insolvency practitioner needs to adopt their contract. As well as including salary for actual days worked, the definition of wages extends to cover payment for holiday entitlement,

absence and payment in lieu of holiday. Certain employment contracts ('year-in-hand' schemes) earned an employee holiday entitlement for the year ahead. Social security legislation provides that this holiday is counted as being accrued in the year it was earned.

508. In order not to discriminate against employees on these schemes, section 19(10) (pre-Schedule B1 administration which continues in force for some purposes) and section 44(2D) of (administrative receiverships), and paragraph 99(6)(d) of Schedule B1 (administration) and paragraph 15 of Schedule 6 (categories of preferential debts) to, the Insolvency Act 1986 provide that "wages or salary" includes, in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security. This enables a claim for this earned holiday entitlement to be made after entry into an insolvency proceeding. However, such provision is now redundant as 'year in hand' schemes are no longer legally possible since the Working Time Regulations 1998. Removing unnecessary provision from the statute book reduces a burden.

509. Paragraphs 24 to 28 form part of the law of England and Wales and Scotland, in line with the provisions that they amend. However, the change made by paragraph 25 applies only to administrative receivers appointed in England and Wales, as does the provision it amends. These paragraphs will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 8: Requirements of company law: proxies
Proxies at a poll taken 48 hours or less after it was demanded

510. *Paragraphs 29 and 30* repeal two minor drafting errors in the Companies Act 2006 in relation to the notice provisions for appointing a proxy or terminating a proxy's authority. The provisions to be repealed are redundant and were never commenced.

511. These paragraphs form part of the law of England and Wales, Scotland and Northern Ireland. They will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Schedule 7: Ascertainment of rights of way
Part 1: Wildlife and Countryside Act 1981
512. Part 1 of Schedule 7 makes various amendments to Part 3 of the Wildlife and Countryside Act 1981 (the "1981 Act"). Under this Part, it is the duty of local authorities (referred to in the Part as "surveying authorities") to maintain and keep under review maps and statements (referred to in the legislation as "definitive maps and statements") showing public rights of way. It also sets out the procedure which the authorities must follow before modifying definitive maps and statements, whether on their own initiative or on an application by an interested person.

513. *Paragraph 2* removes the words "or is reasonably alleged to subsist" from section 53(3)(c)(i) of the 1981 Act. Currently, the effect of section 53(2), read with section 53(3)(c)(i), is that a surveying authority is required to make such modifications to a definitive map and statement as appear to it to be requisite in consequence of the discovery by the authority of evidence which shows that a right of way which is not shown in the map and statement subsists, or is reasonably alleged to subsist, over land in the area to which the map relates. The effect of the removal of the words "or is reasonably alleged to subsist" is that a surveying authority in England is required to modify the definitive map by order under section 53(2) only where it is satisfied to the ordinary civil standard of proof that a right of way subsists. This measure therefore raises the threshold at which an authority must make an order. The burden on an authority of having to make orders in respect of applications which contain reasonable allegations but do not satisfy the ordinary civil standard of proof is removed.

Modifications arising from administrative errors

514. *Paragraph 3* inserts a new section 53ZA into the 1981 Act. The new section 53ZA confers power on the Secretary of State to provide for Schedules 13A and 14A to the Act to apply with prescribed modifications in relation to the making of orders under section 53(2) of the 1981 Act where a surveying authority is satisfied that the conditions set out in subsection (1)(a) to (c) are met. The conditions are that:

- it is requisite to make a modification to a definitive map and statement in consequence of an event mentioned in section 53(3)(c);
- the need for the modification has arisen because of an administrative error; and
- both the error and the modification needed to correct it are obvious.

515. Under the new subsection (4) an authority must, in deciding whether paragraphs (a) to (c) apply, have regard to any guidance given by the Secretary of State.

516. These new powers will enable the Secretary of State to put in place a simpler and shorter order-making procedure, based on Schedules 13A and 14A to the 1981 Act, where the need for a modification to a map and statement arises because of an administrative error. This will remove the burden on an authority which must presently follow lengthy procedures designed for potentially contentious situations.

Amendment of the requirement to register applications in relation to the new preliminary assessment

517. *Paragraph 4* inserts new subsections (4A) and (4B) into section 53B of the 1981 Act. Under this new provision the Secretary of State may by regulations provide that the duty to

keep a register of applications in subsection (1) does not apply, or does not apply to any prescribed description of such applications, unless the authority serves notice under paragraph 2(4)(b) of Schedule 13A to the Act (preliminary assessment and notice of applications: England).

518. This measure will enable the Secretary of State to provide that applications are not required to be registered unless they have passed the new preliminary assessment procedure and notice has been served on every owner and occupier of any land to which the application relates. The burden on an authority of having to register an application which does not satisfy the preliminary assessment test is therefore removed. An explanation of the new preliminary assessment procedure is given below in the commentary on paragraph 6 of this Schedule.

Modification of the definitive map and statement by consent

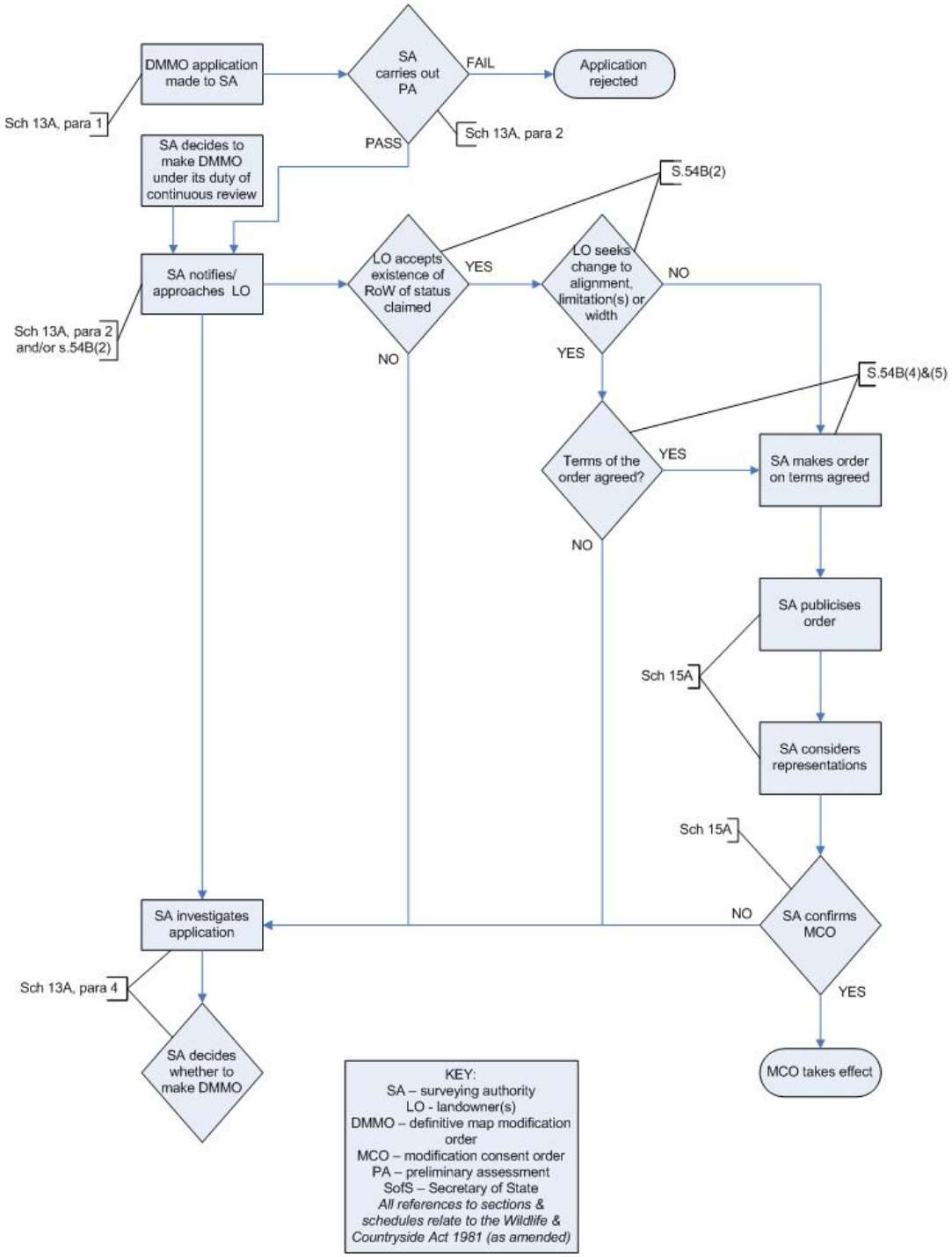
519. *Paragraph 5* inserts two new sections into the 1981 Act: sections 54B and 54C. The new section 54B sets out a new procedure by which an authority may by order modify the definitive map in consequence of:

a) an application under section 53(5) of the Act; or
b) the discovery of evidence that a right of way exists; or
c) there having been a period of use by the public that raises a presumption of deemed dedication.

520. The new procedure is available where:

a) the documentary evidence in support of the application is evidence that relates to the existence of a right of way before 1949; and
b) where there has been an application under section 53(5) of the 1981 Act, the authority have served notice under paragraph 2(4)(b) of Schedule 13A to the Act (preliminary assessment and notice of applications: England).

Figure 1 illustrates how the process would fit into the revised procedures for making a definitive map modification order.



The above is Figure 1

521. Under the new procedure, the authority is required to ascertain whether every owner of the land to which the application relates consents to the making of the order modifying the

definitive map. The landowner (or landowners) may only be willing to consent to the order modifying the definitive map if, at the same time, certain changes are authorised to the alleged public right of way. Under the new subsection (2) an authority may therefore make one or more of the following further orders, known as "special orders", in order to secure the landowner's (or the landowners') consent:

a) a diversion order;
b) an order altering the width of the path or way;
c) an order imposing a new limitation or condition affecting the right of way.

522. The new subsection (4) provides that if the landowner (or every landowner if there is more than one) consents to the making of an order under section 53(2) (without the making of a special order) the authority may make the order. The order must include a statement that it is made with the consent of the landowner (or every landowner if there is more than one).

523. The new subsection (5) provides that if the landowner (or one or more of the landowners) would consent only if one or more special orders are made, the authority may make the special order (or orders) and the order under section 53(2). Under the new subsection (6) the authority must, before making any special order diverting a right of way, be satisfied that the path or way will not be substantially less convenient to the public in consequence of the diversion and have regard to any guidance given by the Secretary of State. The order must include a statement that it is made with the consent of the landowner (or every landowner if there is more than one). The authority must, under subsection (5)(c), combine any special orders and the order under section 53(2) into a single document.

524. The new subsection (9) provides that an authority must determine whether to make such an order before 12 months have elapsed since the authority first notified the landowner of their decision that the definitive map and statement should be modified. The Secretary of State may extend that 12 month period by order (see new subsection (10)).

525. This measure will reduce the burden on a landowner (or landowners) of the impact of a newly discovered public right of way that conflicts with the current land usage. It will have the secondary effect of reducing the number of applications that are opposed by landowners and result in submission of a case to the Secretary of State to determine. It will also reduce the administrative burden on surveying authorities and others involved in the process by providing, in certain cases, a single procedure under which a change to a public right of way can be authorised as well as the recording of the right of way on the definitive map.

526. The new section 54C makes new provision to supplement the new procedure. The new provision provides that:

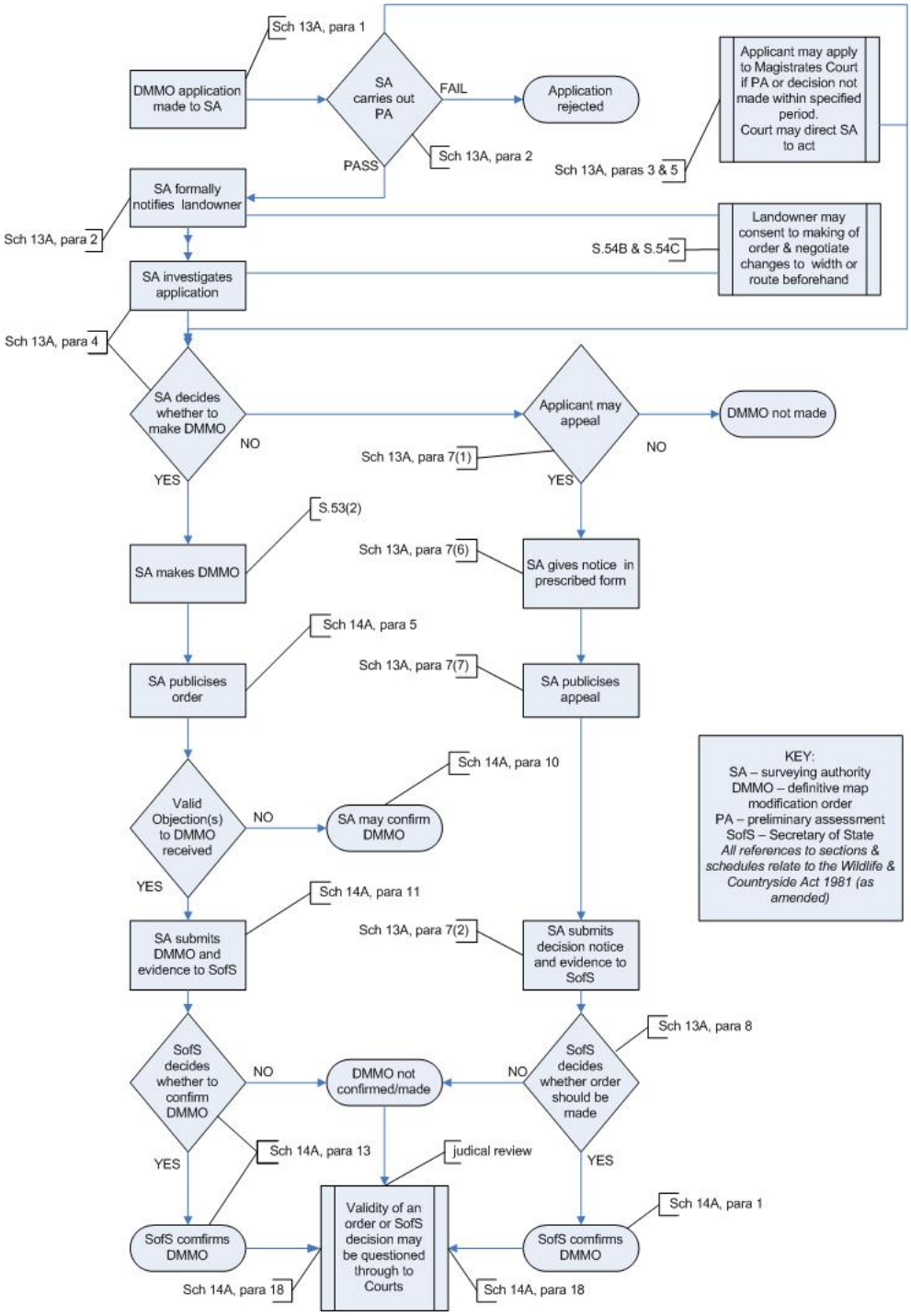
a) a modification consent order cannot alter the termination point of a right of way if that point is not on a highway;

b) a modification consent order cannot divert the right of way onto land owned by another landowner without the other landowner's consent;
c) any authority that makes a modification consent order is responsible, as from the date when the order takes effect, for maintaining any path or way shown on the definitive map as a consequence of the order;
d) where work is required to be done to bring the path or way, or the part, into a fit condition for use by the public, the authority may not confirm the order under Schedule 14A until they are satisfied that the work has been carried out.

Part 2: New Schedule 13A to the Wildlife and Countryside Act 1981
527. Parts 2 and 3 of Schedule 7 introduce two new Schedules (in relation to England) to replace the existing Schedules 14 and 15 with amended versions incorporating a number of measures to reduce the administrative burden on local authorities and other parties involved in the identification and recording of public rights of way. These include:

a) a preliminary assessment of applications to reduce the administrative burden of investigating and determining applications for a definitive map modification order that are spurious or poorly founded;
b) a new right of appeal to the magistrates' court to replace an existing right of appeal to the Secretary of State, which is widely regarded as ineffective; and
c) preventing a given case being submitted to the Secretary of State two or more times before being resolved.

528. The new Schedule 13A replaces the existing Schedule 14, which sets out the procedure for dealing with applications for definitive map modification orders under section 53(5) of that Act. The new Schedule 14A replaces the existing Schedule 15, which sets out the procedure for dealing with definitive map modification orders made under section 53(2) of that Act. Figure 2 illustrates the amended procedures under Schedules 13A and 14A.



The above is Figure 2

529. Whereas in England, Schedules 13A and 14A will replace the existing Schedules 14 and 15, in Wales Schedules 14 and 15 will continue to apply.

New Schedule 13A to the Wildlife & Countryside Act 1981

530. *Paragraph 6* of Schedule 7 introduces a new Schedule 13A to the 1981 Act.

Prescribed form of application

531. Paragraph 1 of Schedule 13A sets out the existing requirement for an application to be made in the prescribed form and be accompanied by a map drawn to the prescribed scale and copies of any documentary evidence which the applicant wishes to adduce in support of the application. But it has been amended to enable a surveying authority to inform a potential applicant for an order modifying the definitive map that they already have access to a particular piece of documentary evidence and do not require a copy of it to be submitted to them. This reduces the burden on applicants, who are mostly from the voluntary sector, of having to make unnecessary copies of documents for submission with an application.

532. A new sub-paragraph (2) obliges regulations under sub-paragraph (1) to require each application for an order modifying the definitive map to include an explanation as to why the applicant believes that the definitive map and statement should be modified. The requirement in the existing sub-paragraph (2) of Schedule 14, for an applicant to serve notice of the application on the landowner, no longer applies.

Preliminary assessment and notice of applications

533. Paragraph 2 of Schedule 13A makes provision for preliminary assessment and notice of applications. Sub-paragraph (1) provides that a surveying authority must, within 3 months of receiving an application, decide whether there is a reasonable basis for the applicant's belief that the definitive map should be modified in consequence of the occurrence of one or more events falling within section 53(3)(b) or (c) of the Act. Sub-paragraph (2) provides that, in so deciding, the authority must have regard to any guidance given by the Secretary of State. Under sub-paragraph (3) the authority must, if they decide there is no reasonable basis for the application, inform the applicant of their decision and their reasons for it.

534. Sub-paragraph (4) provides that, if they decide there is a reasonable basis, the authority must so inform the applicant and serve notice on every affected landowner and occupier, stating that an application has been made, which the authority are investigating further. (This replaces the requirement for the applicant to serve notice of the application on landowners and occupiers, currently in paragraph 1(2) of Schedule 14). There is provision, in sub-paragraph (5), for the authority to post notices on the land if they cannot reasonably ascertain who the owner or occupier is. The introduction of the new preliminary assessment procedure will reduce the administrative burden on, and cost to, local authorities of investigating and determining applications (under paragraph 3 of Schedule 14 to the 1981 Act) that are spurious or poorly founded (and reduce the burden on affected landowners of resisting such ill-founded applications).

Failure by an authority to conduct a preliminary assessment

535. Paragraph 3 of Schedule 13A provides a right of application to the magistrates' court for anyone who has applied for an order modifying the definitive map, where a surveying authority have not carried out the preliminary assessment of an application within 3 months of receiving it. Under sub-paragraph (1), the applicant must give notice to the surveying authority of the intention to apply to the magistrates' court. The application to the court may then, under sub-paragraph (2), be made after 1 month has passed since the giving of notice to the authority, but not after more than 6 months have passed.

536. Under sub-paragraph (3) the magistrates' court may order the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. There is provision, in sub-paragraph (5), for the authority or applicant to appeal to the Crown Court against the decision of the magistrates' court. Sub-paragraph (6) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or, if there is an appeal, until the appeal is determined or withdrawn.

Determination of an application by the authority

537. Paragraph 4(1) of Schedule 13A provides for the determination by an authority of an application under section 53(5) for an order modifying the definitive map. A surveying authority must, as soon as reasonably practicable after serving notice under paragraph 2(4)(b) of Schedule 13A, investigate the matters stated in the application, consult relevant local authorities and decide whether to make an order. The authority must then, under sub-paragraph (4), give notice of their decision to the applicant and any landowners and occupiers that they notified as a result of the preliminary assessment and set out the reasons for their decision.

538. Sub-paragraph (2) disapplies paragraph 4(1) in cases where the new section 54B (modifications by consent) applies. However, sub-paragraph (3) provides that in such cases the authority must take the steps mentioned in sub-paragraph (1)(a) and (b) as soon as reasonably practicable after any of the following events:

- an owner does not consent to the making of an order under section 53(2);
- the authority decide for any other reason not to make a modification consent order;
- the period of 12 months expires without the authority deciding whether to make an order;
- the authority make such an order but decide not to confirm it.
- +

Failure by an authority to determine an application

539. Paragraph 5 of Schedule 13A provides a right of application to the magistrates' court, for anyone who has applied for an order modifying the definitive map and any landowner or occupier of land to which the application relates, where a surveying authority have not decided an application within 12 months of receiving it. This does not apply to an application for an order modifying the definitive map where the authority informed the applicant under paragraph 2(3) (preliminary assessment and notice of applications) of their decision not to consider the application further.

540. The applicant (or landowner, or occupier) must first, under sub-paragraph (1), give notice to the surveying authority of the intention to apply to the magistrates' court. Under sub-paragraph (2), an application to the court may then be made after 1 month has passed after the giving of notice to the authority, but not after more than 12 months have passed. Under sub-paragraph (4) the magistrates' court may direct the authority to take specified steps in relation to the application for an order modifying the definitive map within a reasonable period. The authority may make one application to the court for an order extending that period by up to 12 months. Under sub-paragraph (7) the applicant or authority, or any relevant owner or occupier, may appeal to the Crown Court. Sub-paragraph (8) provides that any order of the magistrates' court will not take effect until 21 days after it has been made or the matter is decided in the Crown Court on appeal.

541. Paragraph 6 makes further provision about notices relating to an application to the magistrates' court under paragraph 5 to ensure, where possible, that any other parties that might be affected by the application are alerted to it. This new right of appeal to the magistrates' court will (following a transitional period) replace the existing right of appeal to the Secretary of State (in Schedule 14, paragraph 3(2)), which is widely regarded as ineffective. Appeals to the Secretary of State may result in a lengthy period of uncertainty for those with an interest in the outcome. The change will reduce the period of uncertainty. It is also designed to remove the burden on the Secretary of State, who may be required to become involved following an application under section 53(5) of the 1981 Act at several different junctures.

Procedure where an authority decides not to make an order

542. Paragraph 7 of Schedule 13A provides that where a surveying authority decides (under paragraph 4) not to make an order following a definitive map modification order application, the applicant may, within 28 days after the authority serve notice of the decision, give notice of appeal and the grounds for that appeal to the authority. Regulations will prescribe the form of such notice. The authority is required to submit the matter to the Secretary of State for a decision and the Secretary of State is required to deal with it as an appeal against the authority's decision.

543. This new procedure replaces the existing right of appeal (in Schedule 14, paragraph 4(1)) to the Secretary of State. It provides for the Secretary of State to deal with both the appeal and any objections (that might arise from making an order on the strength of the application) at the same time. This is one of several measures to streamline the process of dealing with an application by preventing a single case being submitted to the Secretary of State two or more times before being resolved. The following provisions are consequential unless the notes state otherwise.

544. Provision is made in sub-paragraph (3) for the surveying authority to decide not to submit the appeal to the Secretary of State if they believe that nothing in the grounds of appeal would be relevant to the Secretary of State's decision on appeal. In doing so the authority would have to have regard to any guidance issued by the Secretary of State (sub-paragraph (4)) and must inform the applicant of the reasons for its decision (sub-paragraph (5)). This reduces the administrative burden by removing an absolute requirement to submit all disputed cases to the Secretary of State, regardless of merit. Where the appeal is submitted to the Secretary of State, the authority must give notice that the matter has been submitted to the Secretary of State (sub-paragraph (6)).

545. Regulations will prescribe the form of notice, which will set out the decision, and state that the matter has been submitted to the Secretary of State, where a copy of the decision may be inspected or obtained and the time and manner in which representations or objections about the decision may be made to the Secretary of State. Sub-paragraph (7) sets out the requirements for publicising the appeal; these essentially replicate the requirements for publicising an order modifying the definitive map as set out in the existing Schedule 15 with modifications to reflect the particular circumstances of the appeal.

546. Paragraph 8(1) provides that the Secretary of State may decide the appeal through an inquiry, or by providing interested persons with an opportunity of being heard by a person appointed by the Secretary of State, or through written representations. Sub-paragraph (2) provides that the Secretary of State may choose not to decide the appeal through an inquiry, hearing or written representations if he believes that nothing in the grounds of appeal and nothing in any representation or objection duly made would be relevant to the decision on appeal.

547. Sub-paragraph (3) provides that on considering the grounds of appeal and any representations or objections, the Secretary of State may agree with the authority that an order should not be made, or direct the authority to make an order as directed, or make an order.

548. Sub-paragraphs (4) to (10) of paragraph 8 and paragraphs 9 to 11 replicate the existing provisions in paragraphs 3(3), 8(1) to 8(4), 10 and 10A of the existing Schedule 15. This makes the arrangements for holding hearings and inquiries and for the appointment of inspectors the same as those for determining opposed orders, which are described in the notes for the new Schedule 14A below.

Equivalent provisions in the respective schedules		
New Schedule 13A (England only) concerning applications and appeals	**New Schedule 14A** (England only) concerning orders and objections	**Existing Schedule 15** (Wales only) concerning orders and objections
paragraph 8(4)-8(10)	paragraph 14	paragraph 8
paragraph 9	paragraph 15	paragraph 10
paragraph 10	paragraph 16	paragraph 10A
paragraph 11	paragraph 5(3)	paragraph 3(3)

Transfer of application for order modifying the definitive map

549. Paragraph 12 is a new measure that enables a person who has made an application for an order modifying the definitive map to transfer ownership of that application, at any time before the application is decided, to another named person, who would then be treated as the applicant. This measure reduces a burden on the voluntary sector by providing that where an applicant is unable to pursue an application the work they have already done will not have to be undertaken again from scratch.

Part 3: New Schedule 14A to the Wildlife and Countryside Act 1981

550. *Paragraph 7* of Schedule 7 introduces a new Schedule 14A to the 1981 Act.

Part 1 – orders made in accordance with paragraph 8 of Schedule 13A

551. Paragraph 1 provides that orders made further to action taken under paragraph 8(3) of Schedule 13A must be confirmed by the Secretary of State and take effect when confirmed by the Secretary of State.

Part 2 – other orders

552. Paragraph 2 states that Part 2 of Schedule 14A applies to orders other than those made in accordance with paragraph 8(3) of Schedule 13A.

Consultation

553. Paragraph 3 replicates paragraph 1 of Schedule 15 in requiring the authority to consult with every local authority whose area includes the land to which the order relates.

Coming into operation

554. Paragraph 4 replicates paragraph 2 of Schedule 15 in stipulating that orders do not take effect until confirmed by either the authority or Secretary of State, but specifies that for modification consent orders confirmation will be by the authority under paragraph 9 of this Schedule.

Publicity for orders

555. Paragraph 5 replicates paragraph 3 of Schedule 15, which sets out the existing arrangements for publicising definitive map modification orders, but with the following modifications. Sub-paragraph (2) is amended so that the surveying authority are no longer required to give notice of an order modifying the definitive map by publication in at least one local newspaper circulating in the area. Instead, they are required to give notice by publication on the authority's website and on such other websites or through the use of such other digital communications media as the authority may consider appropriate. This measure will significantly reduce the cost to the local authority of making an order.

556. In the case of a modification consent order, sub-paragraph (4) provides that the authority may itself (without a direction from the Secretary of State) decide that it is not necessary to comply with the requirement in sub-paragraph (2)(b)(i) to serve notice on every owner and occupier of any of the land affected. But they must nonetheless affix a notice addressed to "The owners and any occupiers" of the land to some conspicuous object(s) on the land.

Abandoned surveys or reviews

557. The existing paragraph 4 in Schedule 15, which deals with representations or objections made with respect to abandoned surveys or reviews, is omitted from Schedule 14A as it is now redundant.

Irrelevant representations or objections and severance of orders

558. Paragraph 6 is a new provision that empowers the surveying authority to decide not to submit the order to the Secretary of State if they believe that nothing in any representation or objection would be relevant to the Secretary of State's decision to confirm the order. The authority must have regard to any guidance given by the Secretary of State and where the authority decide to exercise that power, they must inform the applicant and any person who made a representation or objection of their decision and the reasons for it. This measure is intended to reduce the number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State. (Paragraph 6 does not apply to modification consent orders.)

559. Paragraph 7 replicates the existing provision in paragraph 5 of Schedule 15 that enables an authority to sever an opposed order so that the Secretary of State need only consider the disputed element of the original order. Paragraph 8 extends this provision so that the authority is given discretion to sever an order where part of the order has attracted representations or objections that the authority considers are not relevant and not submit that part of the order, only submitting that part of the order that has attracted representations or objections that are relevant. In doing so the authority would have to have regard to any guidance issued by the Secretary of State and must inform the applicant and any person who made the representation or objection (and has not withdrawn it) of the reasons for its decision. This measure is intended to reduce the number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State. (Paragraphs 7 and 8 do not apply to modification consent orders.)

Confirmation of orders

560. Paragraph 9 confirms that the authority may themselves confirm a modification consent order, with or without modifications and whether or not any representations or objections are made.

561. The provisions in paragraphs 6 to 8 and 10 to 16, which are concerned with submission of an order to the Secretary of State for confirmation, do not apply to a modification consent order.

562. Paragraph 10 replicates paragraph 6 of Schedule 15, which provides that if no representations or objections are outstanding, the authority may confirm the order without modification, or submit it to the Secretary of State for confirmation if the authority require modifications and that the Secretary of State may confirm the order with or without modifications.

563. Paragraphs 11, 12 and 13 replicate paragraph 7 of Schedule 15, which provides that opposed orders must be submitted to the Secretary of State for confirmation.

564. Paragraph 12 enables the Secretary of State to sever an order modifying the definitive map submitted to him where some but not all of the modifications in it have attracted representations or objections. The Secretary of State will determine that part of the order that attracted representations or objections; leaving the other part of the order for the authority to confirm as unopposed. This measure is intended to reduce the number of instances where the Secretary of State has to review the authorities' decisions, which will reduce the administrative burden on both local authorities and the Secretary of State.

565. Paragraph 13 enables the Secretary of State, in deciding whether to confirm the order, to do so by receipt (through a person appointed) of written representations, as an alternative to

holding an inquiry or hearing. This will provides a less costly option than an inquiry or hearing.

Restriction on power to confirm orders with modifications

566. Paragraph 14 replicates paragraph 8 of Schedule 15, which provides that, where the Secretary of State proposes to make significant specified modifications to an order, the modified order must be publicised and any objections or representations taken into account. The provisions in Schedule 15 are amended insofar as paragraph 14(3) enables the Secretary of State, in deciding whether to confirm the order, to do so by receipt (through a person appointed) of written representations as an alternative to holding an inquiry or hearing. This will provide a less costly option than an inquiry or hearing.

Appointment of inspectors etc

567. Paragraph 15 replicates paragraph 10 of Schedule 15 without substantive amendment. This paragraph essentially provides that a decision of the Secretary of State may be made by a person appointed by the Secretary of State, but that the Secretary of State may call in a decision in order to make it himself.

Hearings and local inquiries

568. Paragraph 16 replicates paragraph 10A of Schedule 15 without substantive amendment. This paragraph applies the provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 and section 322A of the Town and Country Planning Act 1990 (which are concerned with giving of evidence and defraying costs) to decisions made by the Secretary of State on definitive map modification orders.

Part 3: Orders: general

569. Paragraph 17 replicates paragraph 11 of Schedule 15, which sets out the requirements for giving notice of final decisions on orders. This entails describing the general effect of a confirmed order and the date on which it took effect and publicising the order in a similar way to that set out in paragraph 5 of this Schedule; this notice to be accompanied by a copy of the confirmed order. It also involves giving notice of a decision not to confirm an order.

570. Paragraph 18 replicates paragraph 12 of Schedule 15, which sets out the procedure for challenging orders through the High Court. It provides that if any person is aggrieved by an order which has taken effect and wishes to question its validity on the ground that it is not within the powers of sections 53, 54, 54B and 54C, or that any of the requirements of Schedule 13A or Schedule 14A have not been complied with, the person may within 42 days from the date of publication of the notice make an application to the High Court.

571. The High Court may quash the order (or any provision of the order) and, in an extension of the High Court's power (see sub-paragraph (4)), may also quash the decision (or any part of the decision) of the Secretary of State rather than the order (or any part of the order). This measure is intended to reduce the number of cases where the order-making process has to start over again from scratch, which will reduce the administrative burden on both local authorities and the Secretary of State.

Part 4: Highways Act 1980

572. *Paragraph 8* of Schedule 7 makes the following amendments to Schedule 6 to the Highways Act 1980. That Schedule sets out the procedure that must be followed before certain "public path orders" are made under that Act, for example, an order extinguishing a public right of way.

573. Paragraphs 1 and 4A of Schedule 6 are amended so that the surveying authority are no longer required to give notice of the making of a public path order by publication in at least one local newspaper circulating in the area. Instead they are required to give notice by publication on the authority's website and on such other websites or through the use of such other digital communications media as the authority may consider appropriate. This measure is intended to reduce the cost to the local authority of making an order and the cost to the landowner where the cost is passed on to the landowner because the order is for the landowner's benefit.

574. The new measures in paragraph 2 enable:

a) the surveying authority to decide not to submit an order that has attracted one or more representations or objections to the Secretary of State for confirmation if they believe that nothing in the representation or objection would be relevant in determining whether or not to confirm the order (the authority would have to have regard to any guidance issued by the Secretary of State and must inform the person who made the representation or objection of the reasons for its decision); and
b) the Secretary of State to decide not to hold an inquiry or hearing if he believes that nothing in the grounds of the representation or objection would be relevant in determining whether or not to confirm the order.

575. In both cases the order may be confirmed by the surveying authorities as if it were an unopposed order. These measures are intended to reduce that number of instances where the Secretary of State has to review the authorities' decisions, which would reduce the administrative burden on both local authorities and the Secretary of State.

576. A new measure in paragraph 2 gives the authority the power to sever a public path order where some but not all of the modifications in it have attracted representations or objections and submit only that part of the order that attracted representations or objections to the Secretary of State. A further measure gives the Secretary of State the power to sever a

public path order submitted to him where some but not all of the modifications in it have attracted representations or objections. The Secretary of State will then determine that part of the order that attracted representations or objections; leaving the other part of the order for the authority to confirm as unopposed.

577. The authority may also sever an order where part of the order has attracted representations or objections that the authority considers are not relevant and not submit that part of the order, submitting only that part of the order that has attracted representations or objections that are relevant. In doing so the authority would have to have regard to any guidance issued by the Secretary of State and must inform the applicant and any person who made the representation or objection (and has not withdrawn it) of the reasons for its decision. These measures are intended to reduce the number of instances where the Secretary of State has to review the authorities' decisions, which would reduce the administrative burden on both local authorities and the Secretary of State.

578. Paragraph 5 is amended so that where the validity of an order is questioned by application to the High Court then the Court may quash the decision of the Secretary of State rather than the order. This measure is intended to reduce the number of cases where the order-making process has to start over again from scratch, which would reduce the administrative burden on both local authorities and the Secretary of State.

Part 5: Consequential amendments

579. *Paragraphs 9 to 11* of Schedule 7 make amendments providing for the new Schedules 13A and 14A to apply in England, while the existing Schedules 14 and 15 will continue to apply in Wales.

Schedule 8: Provision of passenger rail services

Consequential amendments

580. *Paragraphs 1 to 7* set out provisions which are consequential on the changes made to section 10 of the Transport Act 1968 in clause 35. In particular:-

- paragraph 2(4), in effect, removes the 25 mile distance limit from inhibiting a PTE in England from letting locomotives and other rolling stock on hire to a non franchisee, for use outside the area of the PTE; and

- paragraph 5 provides that the expression "railway", for the purposes of the changes to the Transport Act 1968, has the same meaning as in section 67(1) of the Transport and Works Act 1992. (The Railways Act 1993 also adopts this definition).

581. Paragraphs 1 to 5 form part of the law of England and Wales, Scotland and Northern Ireland. Paragraph 6 forms part of the law of England and Wales and Scotland only. Paragraph 7 forms part of the law of England and Wales only. However, all these paragraphs

only affect PTEs which are in England. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Franchise exemptions granted by Secretary of State: protection of railway assets etc

582. *Paragraph 8* inserts a new section 24A into the Railways Act 1993. Section 24A extends the scope of what provision may be made by the Secretary of State in a section 24 Railways Act 1993 de-designation order (i.e. an order de-designating passenger rail services from the franchising regime of that Act and authorising those services to be provided by persons other than the Secretary of State). Section 24A would enable the Secretary of State to apply similar railway asset protection, contract enforcement and asset transfer provisions in connection with an "operator agreement" (i.e. a contract for de-designated passenger rail services) as currently apply in connection with franchise agreements of the Secretary of State. (Although clause 35 of the Bill removes the 25 mile distance limit on the power of a PTE in England to provide passenger rail services, for such a PTE to take over services from the Secretary of State a de-designation order would still be required.) More specifically section 24A would enable a section 24 de-designation order of the Secretary of State to provide as follows.

- Section 24A(1) provides that a section 24 order may set conditions to be complied with by a railway operator engaged to provide passenger rail services.

- Section 24A(2)(a) to (d) would enable the Secretary of State, through a section 24 order, to apply various statutory protections to railway assets used for de-designated rail services as currently apply to railway assets used for franchised rail services. The asset protection measures could be similar to those in section 27(3), and (5) to (7), and section 31 of the Railways Act 1993.

    - Section 27(3) and (5) of the Railways Act 1993 prevent a franchise operator dealing with (e.g. agreeing to dispose of, charge, or grant rights over) assets needed for railway operations without the franchising authority's consent, in default of which the transaction would be void.

    - Section 27(6) and (7) of the Railways Act 1993 prevent franchise assets being seized and sold by due legal process to satisfy monies owed by a franchise operator.

    - Section 31 of the Railways Act 1993 would deny security of tenure to an operator in relation to tenancies of railway premises.

    - These provisions, in section 27 and 31 of the Railways Act 1993, are designed to ensure that assets needed for railway operations are kept intact, such that upon operator default or failure the railway operations could be taken over as a

going concern by a successor, thus enabling continuity of passenger rail services.

- Section 24A(2)(e) would enable the Secretary of State, through a section 24 order, to make similar provision for enforcement of an operator agreement as applies to franchise agreements with the Secretary of State (in sections 55 to 58 of the Railways Act 1993).

    - Under sections 55 to 57F of the Railways Act 1993, if a franchise operator was in breach of a franchise agreement, the Secretary of State could (a) make an order requiring the operator to take steps to comply with it, in default of which a civil penalty would be payable or (b) impose a civil penalty. Penalties are restricted to a maximum of 10% of turnover. An operator can make representations and objections, and challenge the enforcement action in the High Court for exceeding powers or for being in breach of procedural requirements. The duty of the franchisee to comply with an order is a duty owed to any person who may be affected by its contravention, and actionable as such for breach. The Secretary of State may enforce the order by civil proceedings for an injunction, or any other appropriate remedy.

    - Section 58 of the Railways Act 1993 applies where it appears a franchisee is in breach of a franchise agreement or an enforcement order under section 55. It enables the Secretary of State to require documents to be produced, or information furnished, for purposes in connection with the enforcement of a franchise agreement. It does not enable documents to be produced, or information to be furnished, which could not be required in civil proceedings. Failure to comply, without reasonable excuse, is an offence subject to a fine on summary conviction not exceeding level 5 on the standard scale. It is also an offence for a person, who has been so required to produce a document, to intentionally alter, suppress or destroy any such document. This offence is subject, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment to an unlimited fine.

- Section 24A(2)(f), read with section 24A(4), would empower the Secretary of State, through a section 24 order, to enable a transfer scheme to be made to transfer railway assets, rights and liabilities from an outgoing operator, where an operator agreement ends (on expiry or for default), which is similar to a transfer scheme made under section 12 of, and Schedule 2 to, the Railways Act 2005 at the end of a franchise agreement with the Secretary of State in order to facilitate continuity of rail services. The power would only apply in relation to operator agreements made with a PTE, local transport authority or relevant company (i.e. a company wholly owned by a PTE, or local transport authority, or a company in respect of which all the owners are either a PTE or local transport authority). The power would enable the Secretary of State to

authorise a PTE, or local transport authority, which was party to an operator agreement (or which was an owner of a relevant company which was party to an operator agreement) to make the transfer scheme. The scheme could transfer assets, rights and liabilities held by the outgoing operator to any PTE or local transport authority which was party to the operator agreement (or which was an owner of a relevant company which was party to an operator agreement), or to a relevant company or to a successor operator contracted by the public authority. It would require payment of such consideration for the transfer as would be specified in, or determined in accordance with, the operator agreement.

583. Paragraph 8 forms part of the law of England and Wales and Scotland only. But it only affects section 24 Railways Act 1993 de-designation orders made by the Secretary of State (i.e. orders which relate to passenger rail services other than ones which start and end in Scotland). It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Minor correcting amendments

584. *Paragraph 9* relates to section 30 of the Railways Act 1993. Section 30 imposes a duty on the Secretary of State to provide, or secure the provision of, passenger rail services where a franchise agreement comes to an end, and identifies where that duty does not apply, or ceases to apply. How section 30 applies in any particular case is relevant to any proposal to decentralise regional rail services, and take them out of the franchising system. The purpose of paragraph 9 is to correct anomalies in its wording.

585. Paragraph 9 forms part of the law of England and Wales and Scotland only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 9: Regulation of the use of roads and railways

Part 1: Duration of driving licences to be granted to drivers with relevant or prospective disabilities

586. Under section 99(1)(b) of the Road Traffic Act 1988, the Secretary of State may issue a driving licence to a person appearing to him to be suffering from a relevant or prospective disability for a period of not more than three years and not less than one year. A relevant or prospective disability for the purposes of the Road Traffic Act means a medical condition that could now, or may in the future, affect the ability of a person to drive safely.

587. *Paragraph 2* increases the period for which a driving licence for drivers suffering from a relevant or prospective disability can be granted from a maximum of three years to a maximum of ten years. The maximum reduces to three years once a person has reached the age of 67.

588. Licences issued to bus or lorry drivers suffering from a relevant or prospective disability will continue to be subject to a maximum of three years.

589. Under section 100(1)(b) of the Road Traffic Act 1988, an individual may appeal against a decision of the Secretary of State under section 99(1)(b) to grant a licence for three years or less. A consequential amendment to that section in *paragraph 3* enables an individual to appeal against a decision of the Secretary of State to grant a licence for ten years or less (or three years or less in the case of those over 67).

590. These amendments form part of the law of England and Wales and Scotland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 2: Permit schemes: removal of requirement for Secretary of State approval

591. In the Traffic Management Act 2004, Chapter 18 of Part 3 introduced the ability for local highway authorities to develop permit schemes. Local highway authorities do not have to introduce permit schemes, but schemes provide greater control over works in their area, and enable the authorities to promote better working practices, for example, working outside peak hours where appropriate. A permit scheme also enables improved co-ordination of works, so minimising inconvenience and disruption to all road users.

592. Currently, the Act requires, in relation to a permit scheme designed and developed by a local highway authority in either England or Wales, that before the permit scheme can be brought into operation it must be submitted to the relevant national authority for approval.

593. Following the examination of several permit schemes operating in the areas of both urban and rural local transport authorities in England, which had been subject to approval by the Secretary of State, the government has decided that there is no longer a need for the Secretary of State to approve future permit schemes. Instead permit schemes, developed by English local highway authorities for their communities, are to be approved by that council's own order.

594. The approval process for permit schemes developed by local authorities in Wales is to remain unchanged. Therefore the amendments in Part 2 of Schedule 9 relate only to England and leave the existing position unchanged as regards Wales.

595. The government consulted on the proposal to remove the requirement for local highway authority permit schemes in England to be approved by the Secretary of State for twelve weeks between January and April 2012. The results of that consultation were placed on the Department for Transport's website. On 23rd January 2013 the government announced, in the House of Commons by written ministerial statement, that the requirement for the Secretary of State to approve permit schemes prepared by English local highway authorities would cease by 2015.

596. Section 37 of the Traffic Management Act 2003 (permit regulations) is amended to reflect the changes made to Part 3 of the Act to remove the Secretary of State's approval for

future permit schemes. However, the Secretary of State will retain powers to make regulations with respect to permit schemes, including the power to make regulations covering the fee structure for permits. Consequential changes will be made to regulations made under section 37.

597. Part 2 forms part of the law of England and Wales. However, the amendments will only affect permit schemes in England. The provisions will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 3: Road humps

598. *Paragraph 14* relates to the removal of the Secretary of State's additional powers under section 90B of the Highways Act 1980 (the "HA 1980") to construct road humps. In view of the fact that in practice the construction of road humps is undertaken by local authorities, this power is no longer required. Paragraph 12(2) removes the Secretary of State's powers. Powers of the Welsh Ministers to construct road humps under this section are retained. *Paragraph 15* includes consequential amendments to section 90C of the HA 1980.

599. Section 90C of the HA 1980 currently makes provision in relation to consultation requirements where it is proposed to construct road humps. In doing so, it sets out requirements about such matters as publication of notices and procedures for dealing with objections. Paragraph 12 amends section 90C to enable the consultation requirements to be dealt with in regulations rather than by section 90C. This is intended to provide flexibility to simplify the requirements, in particular by making them less prescriptive.

600. Part 3 of the Schedule includes amendments to sections 90A to 90F of the HA 1980 to deal with transferred functions on the face of the Bill, changing references to the Secretary of State to references to the appropriate national authority (as defined in section 90F) where appropriate. New section 90FA is inserted by *paragraph 19* to deal with parliamentary procedure for regulations under section 90C or 90D.

601. The repeal and amendments made in this Part of the Schedule form part of the law of England and Wales and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 4: Pedestrian crossings: removal of requirement to inform Secretary of State

602. *Paragraph 21* removes a requirement in section 23 of the Road Traffic Regulation Act 1984 that the Secretary of State or, in relation to Wales, the Welsh Ministers are informed in writing before certain pedestrian crossings are established or removed.

603. This repeal will mean local traffic authorities ("LTAs") will no longer need to notify the Secretary of State if they wish to install or remove a zebra, pelican or puffin crossing. In practice few of them do; repealing it will remove an outdated and unnecessary requirement. LTAs do not have to notify when installing other facilities such as traffic signal junctions or

toucan crossings. It does not fit with the current climate where responsibility for provision of traffic management measures rests with local authorities.

604. This repeal forms part of the law of England and Wales and Scotland (as does the provision repealed). It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 5: Off-road motoring events

605. Section 13A of the Road Traffic Act 1988 (the "RTA") provides that a person shall not be guilty of an offence under section 1, 1A, 2 or 3 of the RTA if he shows that he was driving in accordance with an authorisation for a motoring event given under regulations made by the Secretary of State. *Paragraph 22* amends section 13A of the RTA by also disapplying section 2B of the RTA (causing death by careless driving) in the case of participants in authorised off-road motor events.

606. The amendment to section 13A of the RTA by Part 5 forms part of the law of England and Wales and Scotland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 6: Testing of vehicles

607. Part 6 amends sections 46, 51 and 52 of the Road Traffic Act 1988 (the "RTA") to alter the current provision for the charging of fees by the Secretary of State in connection with the annual roadworthiness testing of lorries, buses and coaches. Where such testing is carried out other than at the Secretary of State's premises (operated by the Vehicle and Operator Services Agency) the amendment provides for the Secretary of State to charge the occupier of premises at which testing is carried out for testing services provided or to charge in respect of the issue of test certificates.

608. *Paragraph 23* amends section 52 of the RTA to extend the Secretary of State's power to designate premises as testing stations for the purposes of roadworthiness testing to the testing of lorries.

609. *Paragraphs 24 and 25* amend sections 46 and 51 respectively of the RTA to allow the Secretary of State to make regulations to charge those occupying testing stations for lorries or for buses and coaches in respect of the provision of testing services or in connection with the issue or correction of test certificates. In relation to occupiers of lorry testing stations, the regulations may provide for payment of charges on account or for the supply of test certificates. Regulations may also provide for the keeping by testing station occupiers of test certificate registers and other records.

610. Part 6 of the Schedule forms part of the law of England and Wales and Scotland (like the RTA). It will come into force on a day to be appointed by the Secretary of State in a commencement order. It reduces a burden in allowing simplification of the regulatory

environment for the testing of lorries, buses and coaches by enabling an alternative to the current administratively complex charging structure.

Part 7: Rail vehicle accessibility regulations: exemption orders

611. Rail vehicle accessibility regulations ("RVAR") ensure that new and refurbished rail vehicles have features that make them more accessible to disabled people. The current regulations are the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010. The Secretary of State may by order grant, under a power in section 183 of the Equality Act 2010, exemptions from parts of RVAR on a case by case basis, if the Secretary of State considers this is warranted and following consultation with groups representing disabled people.

612. Since 2008, RVAR has only applied to a minority of rail vehicles – those used on tramways, metros and underground, for example. Rail vehicles used on mainline services ("heavy rail" or "trains") have, since that time, been subject to an equivalent European accessibility regime instead.

613. Section 207(2) of the Equality Act 2010 requires that exemptions from RVAR be made by statutory instrument. This is unlike the similar accessibility regime in place for buses and coaches, where the Equality Act 2010 allows exemptions to be made administratively. Exemptions for stations and trains from their equivalent European accessibility requirements are also granted administratively. Part 7 of the Schedule amends section 183 of the Equality Act 2010 so that exemptions from RVAR can be made and amended by administrative order rather than by statutory instrument. It also removes provisions of that Act dealing with the parliamentary procedure for exemption orders, as these will no longer be necessary.

614. Section 183 of the Equality Act 2010 also contains a power for the Secretary of State to make regulations as to exemption orders, for example as to the information to be supplied with an application for an exemption order. Part 7 of the Schedule removes that power to make regulations.

615. Part 7 of the Schedule forms part of the law of England and Wales and Scotland. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 10: Enforcement of transport legislation

Part 1: Drink and drug driving offences

Removal of "statutory option" to have breath specimen replaced: road and rail transport

616. Section 8(1) of the Road Traffic Act 1988 (the "RTA") provides that out of the two specimens of breath provided, it is the one with the lower proportion of alcohol in the breath that is used (the other being disregarded). Section 8(2) of the RTA provides that if the lower

specimen of breath has a reading of no more than 50mcg/100 ml of breath, then that person has the right to elect to have that specimen replaced with a blood or urine specimen. If that person then provides such a specimen, neither specimen of breath is used. It is this right to have the breath reading replaced with either a blood or urine test that is commonly known as "the statutory option".

617. *Paragraph 1* omits subsection (2), (2A), (3) and (4) of the RTA and makes consequential amendments. This removes the option for individuals to opt for a replacement blood or urine specimen and means that the evidential breath test is now the primary means of testing unless there are particular reasons (e.g. medical) why breath specimens cannot be obtained.

618. The statutory option is also provided for in the corresponding regime for railways in the Transport and Works Act 1992 (the "TWA"). *Paragraph 2* removes the statutory option by omitting section 32(2) to (4) of the TWA.

No need for preliminary breath test before evidential breath test: road transport

619. The current legal provisions for breath testing drivers involves a preliminary test, usually at the roadside (carried out under section 6A of the RTA), and two evidential breath tests at a police station or elsewhere (for example in a hospital under section 7(2) of the RTA). The type approved equipment used to conduct preliminary tests includes an indication and or display of the result of the test, which can then be judged against the prescribed limit for breath by a police officer deciding whether to arrest a drink-driver.

620. At the police station the suspect is required to provide two evidential breath specimens. There is minimal time delay between the two evidential tests, with the tests being conducted in quick succession. The two specimens of breath are tested separately and a decision on whether or not to charge the driver with an offence under section 5 of the RTA is taken on the basis of the lower result from the two tests at the police station.

621. *Paragraph 3* would allow a police officer to proceed directly to evidential breath testing at the roadside in those instances where a portable evidential breath test device is available. This does not remove the ability to require a preliminary breath test.

Removing restriction that evidential breath test must be taken at police station: rail transport

622. Under the current regime for railways evidential tests can only be taken at a police station. *Paragraph 4* amends section 31(2) of the TWA so that a constable may require an evidential breath test at a police station or hospital or, if the constable is in uniform, anywhere else.

Healthcare professionals advising whether condition is due to drugs: road and rail transport

623. Section 6 of the RTA provides the police with a power to administer one or more of three types of preliminary test, one of which is a preliminary impairment test intended to assist an officer to ascertain whether a suspected drug driver is impaired. In circumstances where the officer considers that they have sufficient evidence (with or without a preliminary impairment test) the constable may arrest the suspect under section 24 of the Police and Criminal Evidence Act 1984 in order to continue with the investigation by obtaining a specimen of blood or urine for analysis.

624. Section 7(3)(c) of the RTA provides that a specimen may be taken if the suspected offence is one under section 3A or section 4 of the RTA and the constable requiring the specimen has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug. *Paragraph 5* amends the RTA to provide that in addition to a medical practitioner, a registered healthcare professional may make the assessment of the suspect's condition in these circumstances.

625. Section 31 of the TWA enables a constable to require a person to provide a blood or urine test when investigating a suspected offence relating to drugs under the railways regime. Section 31(4)(c) provides that a specimen may be taken if the suspected offence is one under section 27(1) of the TWA and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen may be due to some drug. *Paragraph 6* amends the TWA to provide that in addition to a medical practitioner, a registered healthcare professional may make the assessment of the suspect's condition in these circumstances.

Further extension of role of healthcare professionals: road and rail transport

626. *Paragraph 8* amends section 7A of the RTA to provide that, in addition to medical practitioners, a registered healthcare professional may, in the course of an investigation, take a blood specimen from a person who may be incapable of consenting to that specimen being taken. *Paragraph 12* makes a corresponding change to the TWA for the railways regime.

627. *Paragraph 9* amends section 11 of the RTA to remove a restriction on a registered healthcare professional from taking a specimen of blood only in a police station. *Paragraph 13* makes a corresponding change to the TWA for the railways regime.

Extent and commencement: road and rail transport

628. The amendments to the road and railways regimes by Part 1 of the Schedule form part of the law of England and Wales and Scotland and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Application of Road Traffic Act provisions in shipping regime

629. *Paragraphs 14 and 15* provide for the changes made by the Schedule to the enforcement provisions in the RTA to flow through to the shipping regime.

630. Sections 78 to 80 in Part 4 of the Railways and Transport Safety Act 2003 (the "RTSA") create a number of drink driving offences applicable to professional staff on and off duty and to non-professionals. The RTSA applies the enforcement provisions of the RTA and the Road Traffic Offenders Act 1988 (the "RTOA") to the maritime regime by reference. The RTSA also modifies these provisions where appropriate. The amendment in paragraph 14(2) makes it clear that the references in the RTSA to provisions of the RTA and RTOA are ambulatory and so changes to the RTA and RTOA enforcement provisions (for example through the Deregulation Bill) also apply to those provisions as applied by the RTSA, unless the contrary intention appears. Paragraph 14 also adds some modifications to the way that the RTA provisions apply in the shipping regime in order to deal with the amendments to the RTA made by the Crime and Courts Act 2013 which are not to flow through to the shipping regime.

631. Paragraphs 14 and 15 form part of the law of England and Wales, Scotland and Northern Ireland. They will apply, as part of the shipping regime, to United Kingdom ships everywhere, foreign ships in United Kingdom waters and unregistered ships in United Kingdom waters. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Application of Road Traffic Act provisions in aviation regime

632. Part 5 of the RTSA deals with drink and drug driving offences in the aviation regime. The Part applies the enforcement provisions of the RTA and RTOA to the aviation regime by reference. *Paragraph 16* of the Schedule makes changes to Part 5 of the RTSA corresponding to those made by paragraph 14 of the Schedule for the maritime regime. This will enable the changes made by Schedule 10 to the enforcement provisions in the RTA to flow through to the aviation regime.

633. Paragraph 16 forms part of the law of England and Wales, Scotland and Northern Ireland. It will apply, as part of the aviation regime, in relation to aviation functions and activity performed or carried out in the United Kingdom (with some limitations in relation to Scotland), and in relation to certain functions carried out on a United Kingdom aircraft. Paragraph 16 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 2: Bus lane contraventions

634. Part 2 of Schedule 10 amends the procedure by which the Secretary of State (as the "relevant national authority") may specify a local authority as an "approved local authority" for the purposes of enforcing bus lane contraventions.

635. *Paragraph 17* removes the requirement under section 144(3)(b) of the Transport Act 2000 (the "TA 2000") for the Secretary of State to specify an "approved local authority" by means of an order and, instead, allows the Secretary of State to do so by means of a notice in writing. Section 144 has been repealed, but that repeal is not yet in force in England. The amendment made by paragraph 17 only has effect until the date when that repeal comes into force.

636. *Paragraph 18* is a transitional provision enabling an authority that has already been specified as an "approved local authority" by an order made under section 144 of the TA 2000 to continue to be treated as such, as if it had been notified in writing once these changes take effect. This is intended to ensure that the amendment of section 144 does not have the unwanted effect of rendering invalid any orders already made by the Secretary of State.

637. *Paragraph 19* inserts a new sub-paragraph (3A) into paragraph 9 of Schedule 8 to the Traffic Management Act 2004 (the "TMA 2004"), which is not yet in force in England. That Schedule introduces a new regime for enforcement of bus lane contraventions which will replace that in the TA 2000. Sub-paragraph (3A) provides that a notice under section 144 of the TA 2000 that has been given (and not withdrawn) before the commencement of paragraph 9 of Schedule 8 will be treated as an order under that paragraph. This will enable a local authority that could enforce bus lane contraventions under the old system to continue to do so under the new system without the need for an order to be made under the TMA 2004.

638. The amendments made in this Part of the Schedule form part of the law of England and Wales but will only affect England. They will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Schedule 11: Household waste: London

639. This Schedule makes amendments to the London Local Authorities Act 2007 that are based on new sections 46A to 46C of the Environmental Protection Act 1990 (the "EPA"), as inserted by subsection (3) of clause 43. This is so as to ensure consistency of approach.

640. The London Local Authorities Act 2007 introduced a number of measures intended to improve and develop local government services in London. It was considered at that time that the powers of London borough councils should be extended and amended: civil penalty charge procedures were introduced for a number of areas, including those related to household waste collection. The 2007 Act provides for its own system of penalty notices relating to the presentation for collection of household waste, and there are differences from the system set out in the EPA, e.g. requirements as to the placing of household waste for collection may be made by London borough councils in regulations rather than by individual

notices (although nothing in that Act prevents the ability of a borough council to serve notices under section 46 of the EPA). There is no criminal offence for a failure to comply with a requirement made in regulations; instead, a penalty charge is payable. The system of appeals is also different. Whilst making some consequential changes to the appeal procedure, the amendments made by this section do not alter the existing right of appeal or the tribunal determining the appeal.

641. The Schedule will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 12: Other measures relating to animals, food and the environment
Part 1: Destructive imported animals
642. The Destructive Imported Animals Act 1932 provides for the prohibition or control of the importation into, and/or keeping within, Great Britain of destructive non-indigenous mammalian animals, and facilitates the eradication of any such mammals established in the wild. The Act assumes that, where there are such animals at large, the policy will be to destroy them before the wild population becomes so established that eradication ceases to be viable.

643. Amongst other controls, it requires occupiers of land to report the presence of such animals at large on their land, so as to facilitate their eradication.

644. The 1932 Act applies expressly to musk rats (which were eradicated in the 1930s), but section 10 permits its provisions to be extended to other similarly destructive non-indigenous mammal species via an order. Such orders now include the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937.

645. The amendment to the Grey Squirrels (Prohibition of Importation and Keeping) Order 1937 removes the obligation under section 5(2) of the Act upon occupiers to notify the authorities of any grey squirrels (save those kept lawfully under licence) on their land, and the associated offence provision (in section 6(1)(f) of the Act) for failing to do so.

646. Eradication of grey squirrels is currently considered neither feasible nor widely supported, so the general obligation to report grey squirrels at large to the authorities serves no useful purpose and is neither observed by occupiers (who thereby commit an offence) nor enforced by government. It undermines the criminal law to maintain unenforced offences.

647. The amendment to section 10 of the 1932 Act revises the test that must be satisfied before an order may be made or amended. Rather than the Secretary of State or the Welsh Ministers (as the case may be) needing to be satisfied that it is desirable to destroy all such animals at large it will be enough if they are satisfied that it is desirable to keep under review whether any which may be at large should be destroyed.

648. These amendments, like the 1932 Act, form part of the law of England and Wales only.

649. These amendments will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 2: Farriers

650. The Farriers Registration Council is the regulatory body for the farriery profession in Great Britain. Its responsibilities are set out in the Farriers (Registration) Act 1975. The constitution of the Council is also prescribed in the Act, in Part 1 of Schedule 1. Five of the 16 persons on the Council are "lay members" and are appointed by named organisations.

651. Part 2 of Schedule 12 amends Part 1 of Schedule 1 to the Farriers (Registration) Act 1975 by replacing two of the named appointing organisations.

652. The regulatory responsibilities of the Jockey Club were transferred to the British Horseracing Authority Limited; thus the former will be replaced by the latter.

653. The Council for Small Industries in Rural Areas (CoSIRA) no longer exists. There was no legal succession provided for when this body was abolished. There is a clear link, however, to the Department for Environment, Food and Rural Affairs. Therefore, Lantra (the UK's Sector Skills Council for land-based and environmental industries) will replace CoSIRA as an appointing body to the Council.

654. Without these amendments, the number of members of the Council would be reduced and there is a concern that it would not then be able to function properly.

655. Like the 1975 Act itself, Part 2 of the Schedule forms part of the law of England and Wales and Scotland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 3: Joint waste authorities

656. Part 3 of Schedule 12 repeals, in relation to England, Part 11 of the Local Government and Public Involvement in Health Act 2007, which allows for the establishment of joint waste authorities. The provisions repealed continue to have effect for the purposes of the exercise by the Welsh Ministers of the power conferred on them by section 210 of that Act (which enables them by order to make provision in relation to Wales applying any provisions of sections 205 to 208 with modifications).

657. Joint waste authorities ("JWAs") were intended to integrate services across more than one local authority area to achieve efficiencies for member authorities and ensure quality of service for residents. However, the powers have never been used and there are no JWAs established under this legislation. The repeal of these provisions is a deregulatory measure

which removes an unused layer of statutory regulation. Local authorities remain able to make their own arrangements amongst themselves without the need for this legislation, establishing more informal partnerships based on local needs.

658. The repeals in paragraph 4 of Schedule 12 form part of the law of England and Wales; however, their practical effect is limited to England. Part 3 of Schedule 12 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Part 4: Air quality

659. Part 4 of the Environment Act 1995 outlines a regime for the domestic control of air pollution by local authorities. Part 4 of the Act extends to England and Wales and Scotland. Local authorities are required under section 82 of the Act to review the air quality and likely future air quality in their area. As part of this review, the local authority must assess whether the air quality standards and objectives are being achieved or are likely to be achieved. The local authority must identify any parts of its area within which those standards are not being achieved.

660. If air quality standards are not being achieved in any parts of its area, then the local authority must designate the relevant part as an Air Quality Management Area (section 83 of the Act). Section 84(1) of the Act requires that the local authority must undertake a further assessment of air quality ("Further Assessments") in relation to the designated area to supplement information it already has.

661. Local authorities see Further Assessments as an unnecessary burden that is an impediment to speedy implementation of local action plans, which are required under section 84(2)(b) of the Act. This view has been confirmed in recent consultation where the majority of local authority respondents in England were content for the repeal of Further Assessments to go ahead.

662. Part 4 of Schedule 12 repeals the requirement for local authorities to carry out a Further Assessment. This repeal will form part of the law of England and Wales only and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act. Scotland is making the repeals, to apply to Scotland, by means of their Regulatory Reform (Scotland) Bill, which was passed by the Scottish Parliament on 16th January 2014.

Part 5: Noise abatement zones

663. Part 5 of Schedule 12 repeals provisions within the Control of Pollution Act 1974 on the establishment of noise abatement zones and makes consequential amendments to other legislation.

664. A local authority currently has the power to make a noise abatement order establishing a noise abatement zone in all or part of its area. This enables the local authority to set

maximum noise levels for premises covered by the noise abatement order. The local authority is required to measure the level of noise emanating from these premises and record this in a publicly accessible register. Noise from these premises may not exceed the level of noise recorded in the register without the local authority's consent. The local authority may also serve noise reduction notices in certain circumstances. The local authority may also determine set maximum noise levels for new buildings or premises which will become subject to the noise abatement order in the future because of works being undertaken.

665. These powers are not being widely used by local authorities in England and Wales. Investigations carried out by Defra indicate that only 49 local authorities have noise abatement zones in their areas, and that there are only 81 noise abatement zones of which only 2 are actively managed. Some local authorities have indicated that they are reluctant to use these powers because they find them difficult to use. Local authorities have other more effective powers for managing noise including the planning, licensing and statutory nuisance regimes. The existence of noise abatement zones which are not being actively managed may give rise to uncertainty for premises in those areas particularly in relation to property transactions. The repeals made by Part 5 will automatically revoke the remaining noise abatement orders.

666. The Control of Pollution Act 1974 forms part of the law of England and Wales and Scotland. Part 5 of Schedule 12, however, forms part of the law of England and Wales only. Steps are already being taken in Scotland to repeal the provisions about noise abatement zones in relation to Scotland by means of the Regulatory Reform (Scotland) Bill, which was passed by the Scottish Parliament on 16 January 2014.

667. Part 5 of Schedule 12 will come into force on a day to be appointed by the Secretary of State in a commencement order.

Schedule 13: Abolition of the Office of the Chief Executive of Skills Funding

668. Schedule 13 amends Part 4 of the Apprenticeship, Skills, Children and Learning Act 2009 ("ASCLA") in consequence of the repeal of the post of the Chief Executive of Skills Funding (the "Chief Executive") by clause 49(1). See also the commentary on clause 49.

669. *Paragraph 2* omits section 81 of the ASCLA which will remove the requirement for there to be a Chief Executive. *Paragraphs 4 to 6 and 17* transfer powers and duties from the Chief Executive to the Secretary of State in relation to the provision of apprenticeship training, while *paragraphs 9 to 12 and 30* transfer functions from the Chief Executive to the Secretary of State in relation to the provision of education and training and *paragraphs 19, 23, 24 and 28* transfer supplementary functions. *Paragraph 26* provides that these functions are exercisable in relation to England only, except in relation to the functions conferred by section 107 (provision of services) which applies to the United Kingdom. *Paragraphs 13 to 16* transfer the powers of the Chief Executive to provide financial resources to the Secretary of State. *Paragraphs 3, 7, 8, 18, 20 to 22 and 25* repeal all other powers and duties of the

Chief Executive in relation to apprenticeship functions and the provision of education and training.

670. The Schedule has the same extent as the provisions it amends and so, in the main, forms part of the law of England and Wales only. The exceptions are paragraphs 19 and 20 (amendments to section 107 and repeal of sections 108 and 109) which also form part of the law of Scotland and Northern Ireland. Clause 49 and the Schedule will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Schedule 14: Further and higher education: reduction of burdens

671. In this note on the Schedule, references to further education institutions are to institutions which provide further education and are maintained by a local authority, or to institutions within the further education sector. References to institutions within the further education sector are to further education corporations, designated institutions and sixth form colleges (see section 91(3) of the Further and Higher Education Act 1992 (the "FHEA 1992")). A further education corporation is a body corporate established under section 15 or 16 of the FHEA 1992, or which has become a further education corporation by virtue of section 33D or 47 of that Act. A sixth form college corporation is a body corporate that is designated as a sixth form college corporation under section 33A or 33B of the FHEA 1992, or established under section 33C of that Act. References to sixth form colleges are to institutions conducted by sixth form college corporations. A designated institution is a further education institution that has been designated by the Secretary of State under section 28 of the FHEA 1992.

Part 1: Measures applying to England and Wales

672. The measures in this part apply to England and Wales.

Control of interest rates on loans

673. *Paragraph 1* omits section 3 of the Further Education Act 1985. This section confers powers on the Secretary of State and the Welsh Ministers to determine the minimum interest rate on loans made under that Act by local authorities to certain educational bodies. This power has never been used and its retention is no longer considered necessary.

Powers of Secretary of State in relation to local authority maintained institutions

674. *Paragraph 2(2)* omits section 61 of the Education (No. 2) Act 1986. Section 61(1) provides that governors of higher or further education institutions maintained by local authorities must be at least eighteen years old or students of the institution. Section 61(2) confers powers on the Secretary of State and the Welsh Ministers to make provision by regulations restricting the participation by students in the proceedings of the governing bodies of those institutions. *Paragraph 2(3)* omits section 62 of the Education (No. 2) Act 1986 which confers powers on the Secretary of State and the Welsh Ministers to make provision by regulations requiring governing bodies of higher or further education institutions maintained by local authorities to make documents and information relating to the governing documents

available. These provisions are being removed so as to bring the governance requirements which apply in relation to such institutions into line with other higher and further education institutions.

675. *Paragraph 3(2)* omits section 158 of the Education Reform Act 1988. This section requires the governing bodies of institutions providing full-time education which are maintained by local authorities in exercise of their higher or further education functions to make reports and returns etc to the Secretary of State or the Welsh Ministers on request. *Paragraph 3(3)* omits section 159 of the Education Reform Act 1988 which confers powers on the Secretary of State and the Welsh Ministers to make provision by regulations requiring local authorities to publish information relating to institutions providing full-time education which are maintained by the authorities in exercise of their higher or further education functions. These powers are being removed so as to bring them into line with the powers held by the Secretary of State and the Welsh Ministers in relation to other higher and further education institutions.

676. *Paragraph 3(4)* omits section 219 of the Education Reform Act 1988 which applies in relation to England and Wales. This section confers default powers on the Secretary of State and the Welsh Ministers in relation to governing bodies of institutions maintained by local authorities and providing higher or further education.

Transfer of property etc
677. *Paragraph 4(2) to (4)* omits sections 23 to 26, 32, 33 and 34 of the FHEA 1992. Sections 23 to 26 make provision about the transfer of property, rights and liabilities to further education corporations established to conduct certain other institutions in the education sector. Sections 32 and 33 make provision about the transfer of property, rights and liabilities to designated institutions. Section 34 confers power on the Secretary of State and the Welsh Ministers by order to provide for property of a local authority to be made available for use by institutions within the further education sector. The sections which are being repealed concern the initial incorporation of further education corporations and are now considered to be obsolete. *Paragraph 4(5)* makes consequential amendments and repeals.

Part 2: Measures applying to England only

678. The measures in this Part apply in relation to England only.

Control of governance of designated institutions conducted by companies
679. *Paragraph 5* provides for section 31 of the FHEA 1992 to cease to apply in relation to England. Section 31 confers power on the Secretary of State to give directions for the purpose of securing that the articles of association of designated institutions conducted by companies are amended as specified in the directions. This amendment will ensure that the powers available to the Secretary of State in relation to the articles of association of designated institutions are reduced in line with other further education institutions in England.

These powers will continue to be available to the Welsh Ministers in relation to designated institutions conducted by companies in Wales.

Conversion of sixth form college corporations into further education corporations

680. *Paragraph 6* omits section 33D(2)(b) and (4) of the FHEA 1992. Section 33D(2)(b) confers power on the Secretary of State to convert a sixth form college corporation into a further education corporation if satisfied that it is no longer appropriate for the body to be a sixth form college corporation. The government considers that the retention of the Secretary of State's power to unilaterally convert sixth form college corporations into further education corporations is inconsistent with the aim of giving greater autonomy to such institutions. Sixth form college corporations will still be able to apply to the Secretary of State to be converted into a further education corporation under section 33D(2)(a) of the FHEA 1992.

Power of Secretary of State in relation to local authority maintained institutions

681. In consequence of the change made by paragraph 3(4), *paragraph 7* amends section 56A of the FHEA 1992 to extend the Secretary of State's power to intervene in relation to institutions in the further education sector to cover institutions in England which are maintained by local authorities and provide further education, except where the institution is within the higher education sector. This will ensure that the Secretary of State has the same powers of intervention in relation to all further education institutions in England. It remains the case that section 56A will apply irrespective of whether or not a complaint is made by any person.

Regulation of teaching requirements for teaching staff and principals

682. *Paragraph 8* provides for sections 136(a), 136(b), 137 and 138 of the Education Act 2002 to cease to apply in relation to England. These sections confer powers on the Secretary of State, by regulations, to impose qualification requirements in respect of staff and principals at further education institutions in England. All regulations made under these sections have been revoked in line with Lord Lingfield's recommendations (*Professionalism in Further Education*, March 2012) which questioned the effectiveness of qualification requirements in improving the standard of teaching. The newly-established Education and Training Foundation will support the development of teaching best practice in the further education sector. These powers will continue to be exercisable by the Welsh Ministers in relation to further education institutions in Wales.

683. The provisions of this Schedule will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act. All the provisions form part of the law of England and Wales and their application to England and Wales has been set out in the commentary on each provision.

Schedule 15: Schools: reduction of burdens

Responsibility for discipline

684. *Paragraph 1* amends sections 88 and 89 of the Education and Inspections Act 2006 (the "EIA 2006"). Sections 88 and 89 of the EIA 2006 set out the requirements for governing bodies and head teachers in relation to discipline.

685. The effect of these amendments is to limit to Wales the application of the requirement on governing bodies of relevant schools[1] to make and review a statement of general principles that the head teacher is to have regard to when formulating the behaviour policy. Governing bodies of relevant schools in Wales will remain required to ensure that a behaviour policy is pursued at the school.

686. Paragraph 1 provides that governing bodies of relevant schools in England will be under a duty to ensure that the head teacher determines the behaviour policy under section 89(1). Section 89 is amended consequentially so that head teachers of relevant schools in England will not be required to act in accordance with the governing bodies' written statement of general principles.

687. Sections 88 and 89 of the EIA 2006 form part of the law of, and apply to, England and Wales. The amendments made by paragraph 1 preserve the current position for Wales and alter the position for relevant schools in England. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Home-school agreements

688. Section 110 of the School Standards and Framework Act 1998 requires the governing body of maintained schools, city technology colleges, city colleges for the technology of the arts and Academy schools in England and Wales to adopt a home school agreement ("HSA") and a parental declaration. A HSA is a statement which sets out the school's aims and values, its expectations of pupils and the responsibilities of the school and parents with regard to their child's education. A parental agreement is the document used by parents to record that they acknowledge their responsibilities.

689. *Paragraph 2* repeals section 110 and makes consequential repeals and other amendments. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Determining school terms

690. *Paragraph 3* transfers responsibility for determining term dates in community, voluntary controlled and community special schools and maintained nursery schools from local authorities in England to governing bodies. The governing body of all such maintained

[1] Section 88(5) defines "relevant school" as a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school, a pupil referral unit or a non-maintained special school.

schools will be responsible for determining their school's term and holiday dates each year. This change applies to England only.

691. Section 32 of the Education Act 2002 sets out who has responsibility for determining the dates when school terms and holidays shall begin and end. Currently the local authority is responsible for determining the term dates of a community, voluntary controlled or community special school or a maintained nursery school. The governing body is responsible for determining the term dates of a foundation, voluntary aided or foundation special school.

692. Section 32 of the Education Act 2002 forms part of the law of England and Wales but amendments to be made by the Education (Wales) Bill, currently being considered by the National Assembly for Wales, will confine its application to England. This paragraph amends section 32 in the form in which it will be in when the amendments made by the Education (Wales) Bill take effect. The amendments made by the paragraph will not therefore apply to Wales.

693. This provision will come into force on a day to be appointed by the Secretary of State in a commencement order.

Staffing matters

694. Sections 35 and 36 of the Education Act 2002 form part of the law of England and Wales and make provision about staffing in maintained schools in England and Wales. *Paragraphs 4 and 5* remove the duty in sections 35(8) and 36(8) of the Education Act 2002 that requires the governing bodies and head teachers of maintained schools in England (community, voluntary controlled and community special schools, maintained nursery schools and foundation, voluntary aided and foundation special schools) and local authorities in England to have regard to guidance issued by the Secretary of State relating to the appointment, discipline, suspension and dismissal of school staff (teachers and other school employees). The position is preserved for governing bodies and local authorities in Wales who will continue to be required to have regard to guidance issued by the National Assembly for Wales. Consequently the current statutory guidance, which supplements the provisions and duties set out in the School Staffing (England) Regulations 2009 (S.I. 2009/2680) and describes in detail the processes and procedures that must be followed, will be removed**.** This provision will come into force on a day to be appointed by the Secretary of State in a commencement order.

Publication of reports

695. *Paragraph 6* removes a number of duties of governing bodies relating to the dissemination of Ofsted reports and reports of religious inspections. The provisions amended by this paragraph form part of the law of England and Wales but apply to England only. The amendments will come into force on a day to be appointed by the Secretary of State in a commencement order.

696. Paragraph 6(2)(a) repeals the duty of the governing body to provide a copy of a report about the investigation of a complaint about a school to registered parents of registered pupils at the school to which the complaint relates. Paragraph 6(2)(b) repeals the duty of the governing body to make a copy of any interim statement available for inspection by members of the public, to provide one copy of the statement free of charge to any person who asks for one, and to secure that every registered parent of a registered pupil at the school receives a copy of the statement.

697. Paragraph 6(3) replaces the duty of the governing body to make a copy of all inspection reports it receives available for public inspection, to provide a copy to anyone who asks for one, and to make arrangements for parents of pupils at the school to receive a copy of the report with a new duty to secure that every registered parent of a registered pupil at the school is informed of the overall assessment contained in the report of the quality of education provided in the school.

698. Paragraph 6(4) replaces the duty of the governing body to ensure that any report on outcomes from a religious inspection is made available for inspection by members of the public, that a copy is sent to every parent of pupils who receive denominational education at the school (or who take part in acts of collective worship to which the inspection relates) and that a copy is provided to anyone else who asks. Instead, it requires governing bodies to secure that every registered parent of a registered pupil at the school is informed of the overall assessment contained in the report of the quality of the denominational education provided by the school and the content of the school's collective worship.

699. Paragraph 6(5). From September 2012 schools have been required, under the School Information (England) Regulations 2008 (the "2008 Regulations"), as amended, to publish on their website information as to where and by what means parents may access the most recent Ofsted report about the school. These regulations also ensure that schools provide a paper copy of any information to parents on request and free of charge. Paragraph 6(5) amends the 2008 Regulations to require a voluntary or foundation school which has been designated as having a religious character, to provide information as to where and by what means parents may access the most recent report about the denominational education and content of the school's collective worship as sent to the governing body.

Schedule 16: Part to be inserted as Part 5A of the Licensing Act 2003

700. This Schedule contains Part 5A, which sets out the framework for the new Part 5A notice.

701. New section 110A provides that a sale by retail of alcohol is permitted by a Part 5A notice provided that the community event conditions (set out in or under section 110B) or the ancillary business sales conditions (set out in or under section 110C) and the conditions in subsections (2) to (5) are met. These provide that the sale must take place on premises specified in a Part 5A notice that complies with new section 110D, no counter notice must have been given under new section 110J, the sale must take place during the period of 36

months starting on the date on which the Part 5A notice takes effect and the sale of alcohol must take place between 7am and 11pm.

702. New section 110B prescribes the community event conditions in subsections (2) to (6) (additional conditions may be prescribed in regulations made under subsection (7)). These provide that a sale of alcohol at community events must be made by or on behalf of a body that is of a prescribed description, does not trade for profit and meets any prescribed criteria. The sale must be ancillary to an event that is taking place on the premises, during the course of the event and for consumption during the course of that event; and the event must be organised by the body by or on whose behalf the sale is made, advertised in advance and must meet any other prescribed criteria. The maximum number of persons at such an event, at the time of the sale, is 300. Prescribed matters will be set out in regulations subject to the affirmative resolution procedure.

703. New section 110C prescribes the ancillary business sales conditions in subsections (2) to (5) (additional conditions may be prescribed in regulations made under subsection (6)). These provide that a sale of alcohol must be made by or on behalf of a body that is of a prescribed description and meets prescribed criteria. The sale must take place on premises that are managed by the body and are premises of a prescribed description and which meet prescribed criteria. The sale must be ancillary to the provision of goods or services provided to a person on the premises where the sale takes place. Subject to prescribed exceptions, the alcohol must be sold for consumption on the premises. Prescribed matters will be set out in regulations subject to the affirmative resolution procedure.

704. New section 110D provides that a Part 5A notice is valid if it satisfies the conditions set out in subsections (2) to (10). These are that the Part 5A notice:

a) must specify whether the community event conditions (under new section 110B) or the ancillary business sales conditions (under section new 110C) are met;
b) must specify, in relation to ancillary business sales, the premises to which it relates or, in relation to community event sales, no more than three sets of community premises (defined in section 193 of the 2003 Act) to which it relates, each of which must be wholly or partly in the area of the same licensing authority;
c) must be given by a person who is aged 18 years or over and is concerned in the management of the body by or on whose behalf the sale of alcohol on the premises would take place;
d) must be given to the relevant licensing authority (defined in new section 110N) and accompanied by the prescribed fee;
e) must be copied by the person giving it to each relevant person (defined in subsection (11)), unless the notice is given to the relevant licensing authority by means of a relevant electronic facility (defined in section 193 of the 2003 Act);
f) must specify the date when it takes effect which must be at least 10 working days but no more than 3 months after the day on which the notice is given to the relevant licensing authority; and

g) contain any other information prescribed in regulations (which are subject to the affirmative resolution procedure).

705. New section 110E provides for special restrictions on the giving of a Part 5A notice. This section applies where a Part 5A notice is given on behalf of a body and a counter notice (under new section 110J) is given in relation to that notice. It prevents, in relation to any premises specified in the notice, a further Part 5A notice being given in respect of those premises by the body, or by any other body that is an associate of it, within the period of 12 months of the counter notice being given. This restriction does not apply if the counter notice is revoked under new section 110K or quashed by a court. Subsection (4) provides that for the purposes of this new section a body is an associate of another body if it would be an associate of the other body for the purposes of section 32(4) to (6) of the Estate Agents Act 1979.

706. New section 110F provides that the date on which the Part 5A notice takes effect will be the date specified under new section 110D(8), but this does not apply if a counter notice is given under new section 110J.

707. New section 110G sets out the requirements (in subsections (2) to (5)) on a licensing authority that receives a Part 5A notice. These requirements are that:

a) the authority must give written acknowledgement of the receipt of a notice to the person who gave it;
b) the acknowledgement must be given before the end of the first working day following the day on which it was received, or if the day it was received was not a working day, before the end of the second working day following the day it was received;
c) if the authority considers that the Part 5A notice does not comply with the conditions under new section 110D, it must as soon as possible give to the person who gave the notice written notification of the reasons for its opinion.

708. If, by the time the licensing authority is required to give written acknowledgement the person who gave the Part 5A notice has been given a counter notice, the requirement for the licensing authority to give acknowledgement does not apply.

709. New section 110H provides (at subsection (1)) that where a Part 5A notice is lost etc., the person who gave the notice may apply to the licensing authority for a replacement copy. This must be accompanied by any prescribed fee (subsection (2)) and, where such an application is made, the licensing authority must issue a replacement copy (certified as a true copy) if it is satisfied that the original notice has been lost etc. (subsection (3)). The 2003 Act applies to the copy in the same way as it applies to an original.

710. New section 110I provides (by virtue of subsection (1)) that, where a "relevant person" (defined in new section 110D(11) as meaning the police or environmental health authority for the area in which the premises are situated) gives an objection notice to a Part

5A notice on the basis that the sale of alcohol at premises to which a notice relates would undermine one of the statutory licensing objectives, the relevant person must give the notice to the licensing authority, the person who gave the Part 5A notice and every other relevant person. This does not apply after a counter notice has been received by the relevant person under new section 110J (subsection (2)). Subsection (3) provides that an objection notice may only be given during a 3 day period beginning on the day that the Part 5A notice was received, but by virtue of subsection (4) this does not apply in respect of things occurring after the end of the 3 day period or information that the relevant person could not reasonably have been aware of during that period.

711. New section 110J enables (subsection (1)) a relevant licensing authority (defined in new section 110N) to give a counter notice to a person who gives it a Part 5A notice and to give a copy of the counter notice to each relevant person. Subsection (2) provides that where a licensing authority receives an objection notice from a relevant person (under new section 110I), and before the Part 5A notice comes into effect, the authority must decide whether to give a counter notice. A counter notice must be given no later than the day before the date when the Part 5A notice would take effect or, if the Part 5A notice has been given with a long notice period, within 28 days of the date on which it was received by the authority. Subsection (3) provides that the licensing authority may not give a counter notice once a Part 5A notice takes effect unless an objection notice has been given under new section 110I(4). Subsection (4) provides that the counter notice must be in the prescribed form and given in the prescribed manner; these matters are prescribed by regulations subject to the negative resolution procedure.

712. New section 110K provides that (subsection (1)) the licensing authority must revoke a counter notice given under new section 110J if it is given as a result of an objection notice under new section 110I and that objection notice is withdrawn by the relevant person or quashed by the court. Subsection (2) provides that, where a counter notice is revoked or quashed by a court, it is disregarded (except in relation to any time before it is revoked or quashed), the Part 5A notice takes effect on that day and the licensing authority must as soon as possible notify the person who gave the Part 5A notice of this date.

713. New section 110L makes provision for rights of entry. Subsection (1) provides that a constable or authorised officer (defined in subsection (5)) may at any reasonable time enter premises to which a Part 5A notice relates to assess the likely effect of the notice on the promotion of the crime prevention objective. Subsection (2) requires an authorised officer exercising the power in subsection (1) to produce on request evidence of his authority. Subsection (3) makes it an offence to intentionally obstruct an authorised officer exercising his powers under this section, and subsection (4) provides that a person guilty of this offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

714. New section 110M applies by virtue of subsection (1) to premises used for the sale of alcohol authorised, or purportedly authorised, by a Part 5A notice. Subsection (2) requires the person who gave the Part 5A notice to ensure that a copy of the notice is prominently

displayed at the premises, or is kept at the premises under his control or the control of a person nominated by him who is present and working at the premises. Subsection (3) requires, where the copy of the Part 5A notice is kept in the custody of a nominated person (and not prominently displayed at the premises), that the person who gave the Part 5A notice display a notice to that effect and stating the position held at the premises by the nominated person. Subsection (4) makes it an offence to fail, without reasonable excuse, to comply with the requirements under subsections (2) and (3). Where those requirements are not met, subsections (5) and (6) enable a constable or authorised person to require the person who gave the Part 5A notice, or the nominated person (as the case may be), to produce a copy of the notice. Subsection (7) requires an authorised officer exercising the power in subsection (5) or (6) to produce on request evidence of his authority. Subsection (8) makes it an offence to fail, without reasonable excuse, to produce a copy of the Part 5A notice on request by a constable or authorised officer. Subsection (9) provides that a person guilty of this offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

715. New section 110N provides the basis on which the relevant licensing authority is determined for the purposes of Part 5A. Subsections (2) to (4) prescribe the relevant licensing authority in cases where, amongst other things, one or more of the premises to which a Part 5A notice relates straddles the area of more than one licensing authority.

Schedule 17: Amendments consequential on clause 54

716. This Schedule contains amendments to the Licensing Act 2003 that are consequential on the changes made by clause 54.

717. *Paragraph 2* removes reference to the determination of an application for the renewal of a personal licence from the list of matters in section 10(4) of the 2003 Act which cannot be delegated to a licensing officer. *Paragraphs 3, 4 and 7 to 11* amend a number of provisions in sections 115, 117, 122 to 124, 128 and 134 of the 2003 Act which apply only in relation to a renewal of a personal licence. *Paragraphs 5 and 6* omit sections 119 and 121 of the 2003 Act which relate solely to an application for the renewal of a personal licence. *Paragraphs 12 to 14* amend section 158 (false statements made for the purposes of the 2003 Act) of, and Schedules 3 (matters to be entered in licensing register) and 5 (appeals) to, the 2003 Act to remove reference in each provision to the renewal of a personal licence. *Paragraph 15* amends section 111 of the Police Reform and Social Responsibility Act 2011 to remove reference in it to section 121 of the 2003 Act which is repealed by paragraph 6 of this Schedule.

Schedule 18: Poisons and explosives precursors

718. *Paragraph 1* of this Schedule abolishes the statutory advisory committee known as the Poisons Board and makes various amendments in consequence of that abolition.

719. *Paragraph 3* substitutes a new section 2 of the Poisons Act 1972. The new section defines some key terms used in the Poisons Act. In particular, it defines which substances are to be regulated by the Act. These are referred to as “regulated substances” and comprise

"regulated explosives precursors" and "regulated poisons". In each case, the substances to be regulated are listed in new Schedule 1A to the Poisons Act 1972. The list for explosives precursors comes from Annex I to EU Regulation 98/2013 and the list for poisons comes from Part I of the Poisons List (made under existing provisions of the Poisons Act). "Regulated substances" also include mixtures and other substances that include a substance listed in Part 1 or 2 of Schedule 1A. In some cases, substances are only regulated if they are present in a concentration above a % mentioned in Schedule 1A. Substances are not "regulated", however, if they are either "medicinal" or contained in a "specific object", as defined in section 2.

720. In addition to "regulated substances", section 2 defines a further category of substances referred to as "reportable substances". These are mainly only relevant for the offences in section 3C (which relate to the reporting of suspicious transactions, thefts etc). The list of "reportable explosives precursors" comes from Annex II to the EU Regulation and the list of "reportable poisons" comes from Part II of the Poisons List.

721. *Paragraph 3* also inserts a new section 2A into the Poisons Act 1972. This contains a power to amend Schedule 1A by regulations.

722. *Paragraph 4* inserts sections 3 to 3C into the Poisons Act 1972. These sections create a number of offences in line with Articles 4, 5 and 9 of EU Regulation 98/2013 and with existing section 3(1)(a) and (2)(b) of the Poisons Act.

- New section 3 makes it an offence for a member of the public to import, acquire, possess or use a regulated substance without a licence. But, in the case of possession and use, the prohibition does not begin until 3rd March 2016 (in line with Article 16 of the EU Regulation).

- Section 3A imposes certain duties on those supplying regulated substances to members of the public. Breach of these duties will be an offence.

- Section 3B prohibits the supply of regulated poisons to members of the public by anyone other than a pharmacist.

- Section 3C requires businesses to notify the Home Office of any suspicious transactions involving regulated substances or reportable substances or any disappearances or thefts of such substances. Failure to notify will be an offence.

723. In ease case, the offences are subject to any general dispensation or relaxation that is made by virtue of section 9B (see below).

724. *Paragraph 6* inserts two new sections into the Poisons Act 1972 in connection with the new licensing regime needed in consequence of section 3.

- Section 4A provides for the granting by the Home Office of licences to do the things for which a licence is required under section 3 (importing, acquiring, possessing or using a regulated substance). The new powers comply with the requirements of Article 7 of EU Regulation 98/2013. The procedure for applying for a licence is to be set out in regulations to be made by the Secretary of State.

- Section 4B allows for the recognition of equivalent licences granted by the authorities in other EU Member States or in Northern Ireland. This will mean that a person does not commit an offence under section 3 if he or she holds either a licence granted by the Home Office or a licence granted by one of those other authorities.

725. *Paragraph 7* omits sections 5 and 6 of the Poisons Act, and removes the requirements for retailers of substances listed in Part II of the Poisons List 1982 to annually pay and enter names into a local authority list.

726. *Paragraph 8* replaces section 7 of the Poisons Act with a new section providing the Secretary of State with power to make regulations about, amongst other things, the importation, supply, acquisition, possession or use of substances by or to any person or class of person.

727. *Paragraph 9* inserts a new section 7A into the Poisons Act creating a defence in relation to some of the offences where the accused lacks the necessary knowledge. This operates where the accused proves (on a balance of probabilities) that he or she lacked the necessary knowledge.

728. *Paragraph 10* amends the penalty provisions in section 8 (penalties) of the Poisons Act 1972 and inserts a new section 8A dealing with the liability of directors and other officers who consent to or connive in an offence.

729. *Paragraph 11* makes consequential changes to the powers of inspectors appointed by the General Pharmaceutical Council under section 9 of the Poisons Act 1972 to take account of the new offences created by the Act.

730. *Paragraph 12* applies certain powers of entry and search conferred by the Police and Criminal Evidence Act 1984 to the newly created summary only offences. This only applies to offences in England or Wales.

731. *Paragraph 13* inserts a new section 9B into the Poisons Act 1972. Section 9B makes provision allowing the Secretary of State to relax or disapply the requirements of the Poisons Act 1972 in certain circumstances such as when a substance is used for a specific purpose. The new power may be used, for example, to replicate some of the exemptions currently contained in Schedule 4 to the Poisons Rules (the Poisons Rules are made under existing section 7 of the Poisons Act). Section 9B also allows the Secretary of State to restrict the

exclusions in section 2 for substances that are "medicinal" or contained in a "specific object". For example, this power could be used to confine the "medicinal" exclusion to cases where the medicine is supplied on prescription.

732. *Paragraph 16* inserts new Schedule 1A into the Poisons Act 1972 which lists reportable substances and regulated substances (as defined) and any relevant concentration limits.

Schedule 19: Removal of consultation requirements

733. This Schedule removes a number of statutory requirements to consult that are currently imposed on the Secretary of State or other public authorities. The government considers that these are unnecessary. The Secretary of State or the other public authority will continue to be able to consult where this is considered appropriate.

734. The requirements that are being removed are summarised briefly below.

Part 1: Measures affecting England only

National Parks and Access to the Countryside Act 1949: making of byelaws

735. *Paragraph 1* removes the requirement in section 91(1) of the National Parks and Access to the Countryside Act 1949 for the Secretary of State to consult Natural England before using default powers to make byelaws affecting any land or waterway in a National Park or an Area of Outstanding Natural Beauty in England.

736. Section 91 forms part of the law of England and Wales. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Pests Act 1954: designation of rabbit clearance areas

737. *Paragraph 2* disapplies the consultation requirement contained in section 1(11)(a) of the Pests Act 1954 in relation to England. Section 1 of the Act permits the Secretary of State to make rabbit clearance orders ("RCOs"), which designate areas in which occupiers are then obliged to take steps to keep their land free of wild rabbits or, where this is not practicable, to prevent damage caused by them. Section 1(11)(a) currently provides that, before making an RCO, the Secretary of State must (unless compliance would be unreasonable in the circumstances) consult such persons as appear to him to be representative of interests of farmers, agricultural land owners, and agricultural workers, and of any forestry interests in the area.

738. Section 1 of the 1954 Act forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Agriculture and Horticulture Act 1964: grading etc of horticultural produce

739. *Paragraph 3* removes the requirement in section 23(1) of the Agriculture and Horticulture Act 1964, which requires the authority proposing to make any regulations or orders under Part 2 of the Act (which deals mainly with the grading of horticultural produce), to consult with organisations appearing to be representative of interests affected by the regulations or orders.

740. Section 23 forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Control of Pollution Act 1974: reduction of noise from plant or machinery

741. *Paragraph 4* removes the requirement in section 68(4) of the Control of Pollution Act 1974 for the Secretary of State to consult persons who represent producers and users of plants and machinery before making regulations in connection with reducing the noise caused by the plant or machinery and for limiting the level of noise which may be caused by any plant or machinery when used for certain works. The requirement is removed only where the regulations apply to England only.

742. Section 68 forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Agriculture (Miscellaneous Provisions) Act 1976: metrication of measurements

743. *Paragraph 5* removes the requirement in section 7(4) of the Agriculture (Miscellaneous Provisions) Act 1976 to consult interested parties before making regulations under section 7 on the adaptation of enactments to metric units. The requirement is removed only where the regulations apply to England only. (It is, in any event, unlikely that regulations will be made in future under this section. The last time such regulations were made was in 1979.)

744. Section 7 forms part of the law of England and Wales and Scotland. The amendment affects England only. The amendment will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Forestry Act 1979: metrication of measurements

745. *Paragraph 6*. Section 2(2) of the Forestry Act 1979 made provision for the Forestry Commissioners, in relation to England, and the Welsh Ministers, in relation to Wales, to make regulations to change various imperial measurements in relevant forestry legislation to metric units. The power in section 2(2) extends to public general, local or private Acts. Section 2(4) obliged the Forestry Commissioners and the Welsh Ministers to consult persons or organisations whose interests might be affected by such changes. Paragraph 6 removes this requirement but only in relation to regulations made by the Forestry Commissioners. The requirement to consult continues in relation to regulations made by the Welsh Ministers.

746. Section 2 forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Derelict Land Act 1982: grants reclaiming or improving derelict land etc

747. *Paragraph 7* removes the requirement upon the Secretary of State in section 1(6A) of the Derelict Land Act 1982 to consult Natural England before making any grant to reclaim or improve derelict, neglected or unsightly land which is in a National Park or in an Area of Outstanding Natural Beauty.

748. Section 1 forms part of the law of England and Wales. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Horticultural Produce Act 1986: movement of horticultural produce

749. *Paragraph 8* removes the requirement in section 3(2) of the Horticultural Produce Act 1986 on Ministers to consult such organisations as appear to them to represent interests likely to be affected by the order, before making an order to change the circumstances in which consent must be given to the movement of produce. The requirement is removed only where the order applies to England only.

750. Section 3 forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Housing Act 1988: designation of Housing Action Trust Areas

751. *Paragraph 9* removes, for England, the requirement under section 61(1) of the Housing Act 1988 which requires the Secretary of State to consult local housing authorities before designating any part of their area as a housing action trust area.

752. By way of background, Housing Action Trusts are formed under Part 3 of the Housing Act 1988. A HAT is a corporation that takes over the housing and planning functions of the local authority in the designated area. Their purpose is to improve the area's services and facilities and the condition of local authority and other housing stock in the area. Once this work is complete the HAT is wound up.

753. Section 61 forms part of the law of England and Wales. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Land Drainage Act 1991: codes of practice

754. *Paragraph 10.* Section 61E of the Land Drainage Act 1991 provides powers for Ministers to approve any code of practice which provides guidance to internal drainage boards

and/or local authorities in England and Wales on a range of conservation, biodiversity, sites of special scientific interest and public access issues. Section 61E(4) requires that Ministers must consult before they make an order under 61E. Paragraph 10 removes this requirement where the order applies to England only.

755. Section 61E forms part of the law of England and Wales. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Environment Act 1995: National Park grant

756. *Paragraph 11* removes the requirement in section 72(2) of the Environment Act 1995 for consultation with Natural England over the level and purpose of any proposed grant to a National Park authority in England.

757. Section 72 forms part of the law of England and Wales. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Environment Act 1995: hedgerows

758. *Paragraph 12* removes the requirement, in section 97(6)(d) of the Environment Act 1995, for Ministers, before making regulations under section 97 of the Act "for the protection of important hedgerows", to consult bodies whose statutory functions include giving advice to Ministers on matters relating to environmental conservation. The requirement is removed only where the regulations apply to England only.

759. The amendment would remove only the requirement to consult those with statutory duties to advise Ministers on environmental matters. It would not remove the requirement for Ministers, before making regulations "for the protection of important hedgerows", to consult other bodies/organisations as set out in the remaining provisions of section 97(6).

760. Section 97 forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Environment Act 1995: environmental subordinate legislation

761. *Paragraph 13* removes the requirement in section 99 of the Environment Act 1995 on Ministers to consult before making or modifying for England certain subordinate legislation dealing with environmental matters.

762. Section 99 forms part of the law of England and Wales and Scotland. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Local Government Act 1999: keeping of accounts by best value authorities

763. *Paragraph 14* omits section 23(4) of the Local Government Act 1999. The effect of this provision is to remove the requirement for the Secretary of State to consult when making regulations about the keeping of accounts by best value authorities. Section 1 of the Local Government Act 1999 lists best value authorities, all of which are types of authorities existing only in England. So, although section 23 forms part of the law of England and Wales, the repeal will only affect authorities in England. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

Countryside and Rights of Way Act 2000: grants to conservation boards

764. *Paragraph 15* removes the requirement in section 91(2) of the Countryside and Rights of Way Act 2000 for consultation with Natural England over the level and purpose of any grant to an Area of Outstanding Natural Beauty conservation board.

765. Section 91 forms part of the law of England and Wales. The amendment affects England only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Fire and Rescue Services Act 2004: schemes for combining fire and rescue authorities

766. *Paragraph 16* removes the duty of the Secretary of State to consult where proposing to vary or revoke a scheme to combine fire and rescue authorities made under the Fire and Rescue Services Act 2004 (the "2004 Act"), or a scheme to combine fire authorities made under the Fire Services Act 1947 (the "1947 Act"), where such variation or revocation has been proposed by the fire (and rescue) authority concerned.

767. Currently, section 2(6) of the 2004 Act requires the Secretary of State to consult when varying or revoking (whether on his own initiative or to give effect to proposals submitted by the authority) a combination scheme made under section 2 of that Act. This amendment disapplies that consultation requirement (in England) in circumstances where the authority concerned has proposed such changes. The amendment does not affect the duty on the Secretary of State to consult where he wishes, on his own initiative, to make a new combination scheme, or to vary or revoke an existing such scheme made under this section.

768. Under section 4(5) of the 2004 Act, the Secretary of State must consult affected authorities and other persons as appropriate when he intends (whether on his own initiative or to give effect to changes proposed by the authority) to vary or revoke a combination scheme approved or made under the 1947 Act. This amendment disapplies that consultation requirement (in England) in circumstances where the authority concerned has proposed such changes. It does not affect the duty on the Secretary of State to consult where he wishes to make such changes on his own initiative.

769. The amendments form part of the law of England and Wales but affect England only. They will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 2: Measures affecting England and Wales
Water Industry Act 1991: provision of sewers

770. *Paragraph 17* removes the requirement under section 101A(5) of the Water Industry Act 1991 to consult: the Environment Agency; the Authority (OfWAT, the economic regulator for the water industry); or any other appropriate bodies or persons, when the Secretary of State is (or Welsh Ministers are) issuing guidance on the provision of a public sewer under section 101A of that Act.

771. Section 101A forms part of the law of England and Wales. The amendment will apply to England and Wales. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Local Government Act 2003: commencement of BID arrangements following appeal

772. *Paragraph 18* omits the duty to consult in section 53(7) of the Local Government Act 2003 which requires the Secretary of State in England, or the Welsh Ministers in Wales, to seek the views of billing authorities and ratepayers about the day on which Business Improvement District arrangements should come into force following an appeal against a veto.

773. By way of background, a Business Improvement District ("BID") is a partnership arrangement between a local authority and the local business community to develop projects and services for the benefit of a defined area. The non-domestic ratepayers in the area pay a levy in return for the benefits outlined in the BID arrangements, for example projects to regenerate the area, or to increase security. The provisions relating to BID arrangements are contained in Part 4 of the Local Government Act 2003 (the "2003 Act") and the Business Improvement Districts (England) Regulations 2004 (S.I. 2004/2443) (the "2004 Regulations").

774. BID arrangements may not come into force unless proposals for the arrangements are approved by ballot of the non-domestic ratepayers who are to be liable to pay the levy. Where the result of the ballot is to approve the proposals, the billing authority may veto the proposals in prescribed circumstances (see regulation 12 of the 2004 Regulations). Section 52 of the 2003 Act allows any person entitled to vote in the ballot to appeal against the veto to the Secretary of State or the Welsh Ministers, as the case may be. In the event that an appeal against the veto is successful the Secretary of State or the Welsh Ministers determine the day on which the BID arrangements are to come into force (section 53(5)). Before making such a determination the Secretary of State or the Welsh Ministers must consult the relevant billing authority and such persons as appear to be representative of the non-domestic ratepayers who are to be liable for the proposed levy (section 53(7)). It is this requirement which is being repealed.

775. Section 53 forms part of the law of England and Wales. The repeal will apply to BID arrangements in both England and Wales. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Schedule 20: Legislation no longer of practical use

776. Schedule 20 disapplies specified legislation which is no longer of practical use.

Part 1: Companies

777. *Paragraph 1* removes unnecessary provisions relating to the audit of charitable companies. The provisions were originally included in the Companies Act 2006 to address an anticipated transitional issue in relation to moving the rules requiring audits of some small charitable companies from the Companies Acts to charities legislation. The envisaged situation only arose in Scotland and England and Wales for a short transitional period, and did not arise in Northern Ireland. This means that the provisions are no longer needed and can be repealed.

778. The repeal generally forms part of the law of England and Wales, Scotland and Northern Ireland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 2: Industry

Newspaper Libel and Registration Act 1881 (c. 60)

779. *Paragraph 2* of this Schedule repeals the registration provisions in the Newspaper Libel and Registration Act 1881. The repeals, like the 1881 Act, will form part of the law of England and Wales and Northern Ireland.

780. The 1881 Act introduced a system of registration for newspaper titles that were not registered as companies. The effect of registration is to provide information on the name and address of proprietors of newspaper titles for the purpose of enabling libel suits to be brought against them.

781. Newspapers published by companies registered under the Companies Act 2006 or registered in another EEA state do not need to register under the Act. The overwhelming majority of UK newspapers are run as registered companies, formed and registered under the Companies Act 2006 or incorporated in another EEA state.

782. With the majority of newspapers being registered as companies, and therefore not required to register their details under these provisions, and the increased use of the internet for the dissemination of information, registration no longer serves a purpose. The Department for Business, Innovation and Skills consulted on whether to repeal the registration provisions of the 1881 Act in January 2012 (*"Providing a flexible framework which allows companies to compete and grow: discussion paper"*). There was support for doing so.

783. The amendments of the 1881 Act will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Mining Industry Act 1920 (c.50)

784. *Paragraph 4* of this Schedule repeals the Mining Industry Act 1920 ("the 1920 Act") in its entirety.

785. The 1920 Act concerned the re-organisation of the mining and quarrying industries post World War One, and in particular covered recruitment, welfare and pension provisions. The majority of the Act has been repealed as having achieved its objective, and the remaining provisions concern administrative arrangements which are no longer useful. The coal mining industry in particular has been completely restructured, most recently by the Coal Industry Act 1994 (c. 21), since the 1920 Act became law.

786. Sections 2, 4 and 23 concern outdated administrative arrangements. Section 2(1) conferred on the Board of Trade ("The Board") the powers of a Secretary of State under mining and quarrying legislation. However the Board of Trade's powers have, by various transfers of functions orders over the years, been transferred back to the Secretary of State. Section 2(3) imposed functions on the Board of Trade, firstly, concerning information and statistics relating to the mining industry. This provision is no longer needed as similar functions were conferred on the Coal Authority by the Coal Industry Act 1994 in relation to coal mining, and in respect of other aspects of the mining industry the Secretary of State's existing powers to gather and disseminate information and statistics are considered sufficient. Secondly, functions were imposed on the Board regarding research in relation to matters connected with the Board's functions. As the functions of the Board are now those of the Secretary of State, this is also redundant.

787. Section 4 concerned the appointment of committees to give the Board advice and assistance in relation to the mining industries. As the functions of the Board are now those of the Secretary of State, who has the benefit of the modern civil service and access to expert advice as needed, this provision is redundant.

788. Section 23 allowed the Board and any other government department to make arrangements for the exercise of each other's functions relating to mines and the mining industry. This is not needed in relation to the powers of the Secretary of State, because any Secretary of State can exercise the functions, and in relation to functions exercised by agencies, such as the Health and Safety Executive, it would not be appropriate for the Secretary of State to seek to exercise those functions.

789. Sections 18 and 22 concern the ability of the Board to hold inquiries and make schemes as to the drainage of mines. The powers have been very little used since 1920, and are considered not likely to be needed again, in view of the decline of the mining industries in the United Kingdom. Private arrangements can be made between neighbouring mine and land owners.

790. The repeals, like the 1920 Act, will form part of the law of England and Wales, Scotland and Northern Ireland. The amendments of the 1920 Act will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Mining Industry Act 1926 (c. 28)

791. *Paragraph 6* repeals section 20 of the Mining Industry Act 1926 which concerns the ability of a coal mining company to establish a profit sharing scheme, regardless of the provisions of the company's articles of association. This provision pre-dates the nationalisation and privatisation of the coal mining industry, and modern companies' legislation. Modern companies' legislation should apply to coal mining companies in the same way as it applies to any other company, and there is no need for any special provision. There is a saving provision however, as it would not be fair to undermine any existing profit sharing schemes which have been established under this power.

792. The repeal, like the 1926 Act, will form part of the law of England and Wales and Scotland. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Industry Act 1972 (c. 63) and Aircraft and Shipbuilding Industries Act 1977 (c. 3)

793. *Paragraphs 7 to 9* in Part 2 of this Schedule repeal redundant legislation related to the former nationalised aircraft and shipbuilding industries.

794. Paragraph 7 repeals a saving provision in Schedule 3 to the Industry Act 1972 that currently saves an order containing redundant provisions related to the dissolution of the Shipbuilding Industry Board. The repeal, like Schedule 3 to the 1972 Act, forms part of the law of England and Wales and Scotland.

795. Paragraph 8 repeals the Aircraft and Shipbuilding Industries Act 1977 and the repeal, like the Act, forms part of the law of England and Wales, Scotland and Northern Ireland. Since the abolition of British Shipbuilders in 2013, the remaining provisions of the Aircraft and Shipbuilding Industries Act 1977 contain only redundant provisions related to the historic vesting of assets in British Aerospace. Paragraph 9 makes minor amendments consequential on the repeal in paragraph 8.

796. Paragraphs 7 to 9 will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act

British Steel Act 1988 (c. 35)

797. *Paragraphs 11 and 12* in Part 2 of this Schedule repeal redundant legislation related to the iron and steel industry.

798. Paragraph 11(1) repeals section 6 of the British Steel Act 1988 and the repeal, like the section, forms part of the law of England and Wales and Scotland. Section 6 is a provision requiring the Secretary of State to set a target investment limit in relation to shares held by the government in the company previously called British Steel plc. The provision ceased to have practical effect when the company became a wholly owned private company. Paragraph 11(2) makes minor amendments consequential on the repeal in paragraph 11(1).

799. Paragraph 12 repeals paragraph 10 of Schedule 3 to the British Steel Act 1988 and the repeal, like the Schedule, forms part of the law of England and Wales, Scotland and Northern Ireland. Paragraph 10 of Schedule 3 to the 1988 Act is a saving provision that currently saves four sets of regulations related to redundant schemes for the payment of compensation to workers adversely affected by the denationalisation and renationalisation of the iron and steel industry.

800. The repeals of provisions in the British Steel Act 1988 made by paragraphs 11 and 12 will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

European Communities (Definition of Treaties) (International Railway Tariffs Agreements) Order 1980 (S.I. 1980/1094)

801. The European Communities (Definition of Treaties) (International Railway Tariffs Agreements) Order 1980 designates as EU Treaties, for the purposes of the European Communities Act 1972, seven agreements relating to the European Coal and Steel Community, which are no longer in force.

802. *Paragraph 13* revokes the 1980 Order. The effect of the revocation is that the agreements listed in the Schedule to the Order are no longer defined as EU Treaties for the purposes of section 1 of the European Communities Act 1972. As none of the agreements listed remain in force, paragraph 10 has the effect of revoking redundant legislation.

803. Paragraph 13 will form part of the law of England and Wales, Scotland and Northern Ireland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 3: Energy
Atomic Energy Act 1946 (c. 80)

804. *Paragraph 14* repeals sections 6 and 7 of the Atomic Energy Act 1946. Section 6 enabled the Secretary of State to carry out work on any land to discover whether minerals from which "prescribed substances" can be obtained are present and section 7 conferred the power compulsorily to acquire the exclusive right to work such minerals. "Prescribed substances", as defined, include uranium, plutonium and other substances prescribed by order

which can be used for the production or use of atomic energy or research. Exploration in the United Kingdom for uranium has occurred on a small number of occasions, returning sub-economic yields. It is unclear whether the provisions have ever been relied upon and the United Kingdom no longer needs to search for these substances as it has a steady supply from politically stable countries.

805. *Paragraph 15* makes minor amendments consequential on the repeals in paragraph 14.

806. The repeals and consequential amendments form part of the law of England and Wales and Scotland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Energy Act 1976 (c. 76)

807. Section 9 of the Energy Act 1976 requires the Secretary of State's consent for offshore natural gas to be subjected in Great Britain to any process of liquefaction which results in the production of liquid methane or ethane.

808. Section 9 of the Energy Act 1976 was introduced to control the possible export of natural gas from the gas fields being newly exploited offshore in the North Sea, given such exports could affect domestic energy supplies. Export was expected to be achieved by liquefaction of the natural gas in Great Britain. However, there has been no market demand for such exports. In consequence, no requests for consent for a permission under section 9 are recorded and the provision is no longer of practical use.

809. The repeal forms part of the law of England and Wales and Scotland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Nuclear Industry (Finance) Act 1977 (c. 7)

810. *Paragraph 18* repeals a redundant provision in the Nuclear Industry (Finance) Act 1977.

811. Section 3 enabled the Secretary of State to incur expenditure in the acquisition of shares or securities of the National Nuclear Corporation Limited. That company was involved in the construction of nuclear power stations and had been formed as part of an earlier restructuring of the nuclear industry. The power is no longer needed as all share purchases have been completed and the National Nuclear Corporation is no longer in existence.

812. The repeal forms part of the law of England and Wales, Scotland and Northern Ireland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Sustainable Energy Act 2003 (c. 30)

813. *Paragraph 19* repeals a redundant provision in the Sustainable Energy Act 2003, namely section 7. Section 7 contained a power for the Secretary of State to direct the Gas and Electricity Markets Authority to transfer monies raised by the Non-Fossil Fuel Obligation to the Consolidated Fund, up to a maximum of £60 million. It also imposed a duty on the Secretary of State to spend those monies for the purpose of promoting the use of renewable energy.

814. As the Secretary of State has directed the transfer of the maximum amount permitted under section 7, and has spent that amount on the promotion of the use of renewable energy, the section is now redundant, having served its purpose.

815. The repeal, like the provision, forms part of the law of England and Wales, and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Electricity and Gas (Energy Efficiency Obligations) Orders

816. *Paragraphs 20 and 21* of this Schedule revoke three orders which no longer have any operative effect. These three orders imposed an energy efficiency obligation on certain gas and electricity suppliers. The obligations imposed were known as the Energy Efficiency Commitment. The 2001 Order imposed a three year obligation commencing 1st April 2002. The 2003 Order made an amendment to the 2001 Order. The 2004 Order imposed a different three year obligation commencing 1st April 2005. The obligations in the 2001 Order and the 2004 Order have now expired and therefore all three of these orders are being revoked.

817. The revocations form part of the law of England and Wales and Scotland (as do the Orders that are to be revoked), and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 4: Transport
Road Traffic Act 1988 (c. 52)

818. *Paragraph 22(1)* repeals section 64A of the Road Traffic Act 1988. This repeal removes the offence of using an unregistered tractor or motor cycle on a public road without a valid EC Certificate of Conformity. The tractors and motor cycles covered by this offence are those that are subject to European legislation governing their construction. An EC Certificate of Conformity is a declaration by a manufacturer that the vehicle complies with the requirements of the approval (known as “type approval”) granted under that European legislation.

819. This repeal removes an offence which is covered by other legislation. Specifically, section 29 of the Vehicle Excise and Registration Act 1994 makes it an offence to use an unlicensed vehicle of any type on public roads, including vehicles that have not been registered for the first time. In addition, other legislation (the Tractor etc (EC Type-Approval) Regulations 2005 and the Motor Cycles Etc (EC Type Approval) Regulations 1999) makes it a requirement that the vehicles covered by section 64A have a valid EC Certificate of Conformity in order to be registered for the first time.

820. As a consequence of the repeal of section 64A, *paragraph 22(2)* removes references to the offence from section 183(2) of the Road Traffic Act 1988 and from Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988.

821. The repeal and consequential amendments made in this Part of the Schedule form part of the law of England and Wales and Scotland and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 5: Environment
Farm and Garden Chemicals Act 1967 (c. 50)

822. *Paragraph 23* in Part 5 of this Schedule repeals the Farm and Garden Chemicals Act 1967, an Act which forms part of the law of England and Wales and Scotland. The repeal has the same extent. *Paragraph 24* makes amendments consequential on that repeal.

823. The 1967 Act and its associated regulations (the Farm and Garden Chemical Regulations 1971) imposed requirements on the labelling and marking of some pesticides (those listed in the Regulations) sold for use in Great Britain. In particular, they required the name of the pesticide active substance and any hazard symbol to appear on the product label. The 1967 Act's requirements were replaced initially by specific national legislation and more recently by EU legislation, currently Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market and its associated legislation. The 1967 Act is therefore now obsolete.

824. *Paragraphs 23 and 24* will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Merchant Shipping Act 1988 (c. 12)

825. *Paragraph 25* in Part 5 repeals the Merchant Shipping Act 1988. The 1988 Act forms part of the law of England and Wales, Scotland and (for certain purposes) Northern Ireland, as will the repeal of the 1988 Act.

826. The only operative provision of the 1988 Act still in force is section 37 (licensing of tidal works by harbour authorities), with other provisions remaining in place only to support that section. The effect of section 37 is to make provision for regulations to disapply the requirements of section 34 of the Coast Protection Act 1949 (c. 74) in particular circumstances. Section 34 was repealed (in England and Wales by the Marine and Coastal Access Act 2009 (c. 23) and in Scotland by the Marine (Scotland) Act 2010 (asp 5)). Consequently neither section 37, nor the provisions which support it, have any practical effect.

827. The repeal will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Statutory Water Companies Act 1991 (c.58)

828. *Paragraph 26* in Part 5 of this Schedule repeals the Statutory Water Companies Act 1991, an Act which forms part of the law of England and Wales only. *Paragraph 27* removes references to the Act and the term "statutory water company" from other Acts. The repeals and amendments relating to statutory water companies will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

829. Statutory water companies were private businesses with share capital that were incorporated under individual Acts of Parliament. Most dated from the middle of the 19th Century and included, for example, York Waterworks which provided water supply services to the city of York. Unlike the water authorities that were privatised in 1989, statutory water companies were never in the public sector and were not required to register as limited companies under the Companies Act 1985 because they were incorporated under local Acts. The Statutory Water Companies Act regulated how the statutory water companies could operate. For example, it restricted the rate of dividend payable to shareholders and the amount the company could borrow.

830. There are no longer any statutory water companies left as, since privatisation, they have either merged with other water companies or been taken over by other limited companies. This means the provisions of the Statutory Water Companies Act are now redundant and can be repealed.

Sea Fish (Conservation) Act 1992 (c. 60)

831. Section 10 of the Sea Fish (Conservation) Act 1992 required the Minister to report to Parliament with a review of the Act. The duty was to report within six months of 1st January 1997 after consulting those representing the interests of the fishing industry. On 20th March 1997, Lord Lucas answered a parliamentary question to explain that there was nothing of substance to report. He explained that the principal purpose of the Act had been to make

provision for the introduction of restrictions on time spent at sea but the policy was suspended because of a legal challenge and a decision was subsequently made not to pursue it.

832. *Paragraph 28* repeals section 10 as the period within which the duty to report was to be discharged expired several years ago.

833. The repeal of section 10 forms part of the law of England and Wales, Scotland and Northern Ireland. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 6: Animals and food

Agricultural Produce (Grading and Marking) Acts 1928 and 1931

834. The Agricultural Produce (Grading and Marking) Act 1928, as amended by the Agricultural Produce (Grading and Marking) Amendment Act 1931, enables regulations to be made prescribing grade designations and marks to indicate the quality of agricultural and fishery produce and contains provisions to do with the storage and marking of eggs.

835. The Acts have hardly been used during the last 70 years. They have been overtaken by more recent domestic legislation as well as European Union marketing legislation. The Acts are regarded as redundant and as serving no useful purpose. *Paragraph 29* in Part 6 of this Schedule repeals the 1928 and 1931 Acts. *Paragraph 30* makes consequential amendments of other Acts as a result of the repeal of the 1928 and 1931 Acts.

836. The 1928 and 1931 Acts form part of the law of England and Wales and Scotland and the repeal has the same extent. Paragraphs 29 and 30 will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Breeding of Dogs Act 1973 (c.60)

837. *Paragraph 31* of this Schedule repeals the requirement under the Breeding of Dogs Act 1973 for local authorities, when deciding whether to grant a dog breeding licence, to have regard to the need for securing that dog breeding records be kept in a prescribed form and to specify licence conditions to secure that objective. With the introduction of compulsory microchipping of all dogs from 6th April 2016 most of the information will be contained on the database relating to the microchip. Any information that is not held by the database and that the local authority (as enforcers of the 1973 Act) considers is relevant to the welfare of the dogs, can be added as a condition of the individual dog breeder's licence.

838. The 1973 Act extends to England and Wales and Scotland but the amendments to it will form part of the law of England and Wales only. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Animal Health Act 1981 (c. 22)

839. *Paragraph 33* in Part 6 of this Schedule repeals the whole of Part 2A (sections 36A to 36M) of the Animal Health Act 1981, an Act which forms part of the law of England and Wales. The repeal has the same extent. The enabling powers that were inserted by the Animal Health Act 2002 as Part 2A (Scrapie) of the Animal Health Act 1981 have never been exercised and are no longer required; the relevant provisions of the Animal Health Act 2002 are repealed by *paragraph 34*. There had been a concern about the risk that scrapie disease might mask other disease in sheep and therefore it was planned to introduce a compulsory programme for breeding resistance to scrapie in sheep. However following further scientific evidence the EU decided against introducing such compulsory breeding programmes.

840. *Paragraphs 33 and 34* will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Milk: cessation of production

841. *Paragraph 35* in Part 6 of this Schedule repeals the Milk (Cessation of Production) Act 1985. The Act forms part of the law of England and Wales, Scotland and (for certain purposes) Northern Ireland.

842. *Paragraph 36* in Part 6 of this Schedule revokes the Milk (Cessation of Production) (Northern Ireland) Order 1985. The Order forms part of the law of Northern Ireland only.

843. Council Regulation (EEC) No 857/84 established, with effect from 2nd April 1984, a system under which each producer of milk or milk products was allocated an individual "reference quantity". If a producer's production exceeded their reference quantity, there was provision for them to pay a levy. The reference quantity is commonly referred to as "milk quota".

844. Council Regulation (EEC) No 857/84 also allowed Member States to grant compensation to producers who undertook to discontinue milk production. Such cessation of production would involve surrender of the producer's milk quota.

845. The 1985 Act enables schemes to be made allowing the payment of compensation on the cessation of milk production and the surrender of milk quota. Such schemes could only apply to producers registered in respect of land in Great Britain. Such schemes were made under that Act in relation to England, Wales and Scotland.

846. The 1985 Act forms part of the law of Northern Ireland only for a highly specialised purpose; to allow the identification of which Parliamentary procedure (affirmative or negative resolution) would apply to any separate legislation on this topic applying only to Northern Ireland.

847. The 1985 Order was made under the provisions of Schedule 1 to the Northern Ireland Act 1974, as modified by section 6 of the 1985 Act. The 1974 Act was repealed by the Northern Ireland Act 1998. However, the 1998 Act provided that Orders made under the 1974 Act were to continue in force.

848. The 1985 Order enables schemes to be made allowing the payment of compensation on the cessation of milk production and the surrender of milk quota. Such schemes could only apply to producers registered in respect of land in a part of Northern Ireland. A scheme was made applying to such producers.

849. The schemes made in relation to England, Scotland and Northern Ireland were revoked with effect from 6th April 2007. They have not been replaced, and there is no intention to replace them. The underlying milk quota system itself (whose provisions are now contained in Council Regulation (EC) No 1234/2007) is intended to cease with effect from 31st March 2015.

850. The repeal of the 1985 Act forms part of the law of England and Wales and Northern Ireland only. The revocation of the 1985 Order forms part of the law of Northern Ireland only. The repeal and the revocation will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act. The Scottish Government has confirmed that it intends to enact legislation to repeal the 1985 Act in relation to Scotland, and will do so at a later date.

Breeding and Sale of Dogs (Welfare) Act 1999 (c.11)

851. *Paragraph 37* of this Schedule repeals the offences in the Breeding and Sale of Dogs (Welfare) Act 1999 of a licensed dog breeder selling to a licensed pet shop or Scottish rearing establishment a dog without an identifying tag or badge and of a keeper of a licensed pet shop selling on without an identifying tag or badge a dog delivered with such a tag or badge.

852. With the introduction of compulsory microchipping of all dogs from 6th April 2016 most of the information will be contained on the database relating to the microchip.

853. Any information that is not held by the database and that the local authority (as enforcers of the 1973 Act) considers is relevant to the welfare of the dogs, can be added as a condition of the individual dog breeder's licence.

854. The 1999 Act extends to England and Wales and Scotland but the amendments to it will form part of the law of England and Wales only. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Coal and Other Mines (Horses) Order (S.I. 1956/1777)

855. *Paragraph 38* revokes the Coal and Other Mines (Horses) Order 1956 which sets out health and welfare rules for horses employed in mines. The powers under which the Order was made (section 190 of the Mines and Quarries Act 1954) have been repealed and it now has effect by virtue of the Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974 (S.I. 1974/2013), which were made under section 15 of the Health and Safety at Work etc. Act 1974.

856. The Order is considered no longer to be of practical use, since horses have not been used in mines in England and Wales for a considerable period of time. Any horses employed in mines would in any event be appropriately protected under modern animal welfare legislation of general application, namely the Animal Welfare Act 2006.

857. The 1956 Order forms part of the law of England and Wales and Scotland. However, the revocation forms part of the law of England and Wales only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 7: Education

858. The Royal Hospital School, an independent school located in Ipswich, is owned and operated by Greenwich Hospital to meet one of its charitable objectives. Greenwich Hospital is an ancient Crown charity providing charitable support including annuities, sheltered housing and education, to serving and retired personnel of the Royal Navy and Royal Marines and their dependents. Under the Greenwich Hospital Acts of 1865 to 1990, and through other legislation, the Secretary of State for Defence holds the charitable organisation's assets in trust for the Crown.

859. *Paragraph 39* revokes the Greenwich Hospital School (Regulations) (Amendment) Order 1948, which Order restricted admission to the Greenwich Hospital School (now the Royal Hospital School) to the sons of officers and men of the Royal Navy and of other seafarers. It is thought that an oversight led to a failure to revoke the Order when the Greenwich Hospital Act 1990, which made it lawful to admit pupils to the Royal Hospital School regardless of any seafaring connection or of gender, came into force. The enabling power under which the 1948 Order was made (section 20 of the Greenwich Hospital Act 1865) has been expressly retained by section 1 of the Greenwich Hospital Act 1990.

860. The 1948 Order forms part of the law of England and Wales but applies only to England. The revocation will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 8: Civil law

861. Parliamentary privilege protects freedom of speech in debates or other proceedings in Parliament. It does so by preventing the proceedings being impeached or questioned in any

court or place out of Parliament. Traditionally, the privilege could not be waived but section 13 of the Defamation Act 1996 allowed a person (whether a member of Parliament or not) to waive it for the purpose of defamation proceedings.

862. *Paragraph 40* repeals section 13 of the Defamation Act 1996. The removal of this provision means that a person is no longer able to waive this protection.

863. Joint Committees on Parliamentary Privilege in 1999 and 2013 both recommended that section 13 of the Defamation Act 1996 be repealed (see Reports of the Joint Committee on Parliamentary Privilege, Session 1998-99, HL Paper 43-1, HC 214-1 and Session 2013-14, HL Paper 30, HC 100).

864. The repeal forms part of the law of England and Wales, Scotland and Northern Ireland, and will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 9: Criminal law
Town Police Clauses Act 1847

865. *Paragraph 41* repeals 22 of the 25 remaining criminal offences in section 28 of the Town Police Clauses Act 1847. The offences relate to obstructions, annoyances or dangers in the street. The offences in question are either anachronistic or relate to behaviour which is covered by more recent legislation.

866. The paragraph forms part of the law of England and Wales only. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

Part 10: Housing
Housing Act 1988 (c.50)

867. Sections 56 to 58 of the Housing Act 1980 provided for a new form of tenancy known as the "assured tenancy". This new form of tenancy was short-lived, as these tenancies were replaced by assured tenancies under the Housing Act 1988.

868. Section 37(1) of the Housing Act 1988 provided that no assured tenancy under the Housing Act 1980 could be entered into on or after 15th January 1989. Under section 1(3) of the Housing Act 1988, any assured tenancy that existed on that date under the provisions of the Housing Act 1980, became an assured tenancy under the Housing Act 1988.

869. Sections 56 to 58 of the Housing Act 1980 were, therefore, repealed by the Housing Act 1988. However, there was a saving provision in paragraph 3 of Schedule 18 to the

Housing Act 1988 for those assured tenancies to which section 1(3) of the Housing Act 1988 did not apply.

870. Section 37(2) of the Housing Act 1988 provided that section 1(3) of that Act did not apply to an assured tenant under the Housing Act 1980 who, before 15th January 1989, had made an application to the court under section 24 of the Landlord and Tenant Act 1954, for the grant of a new tenancy, and who, on that date, was still waiting for the court's decision.

871. In any case where the court decided not to grant a new tenancy, the assured tenancy under the Housing Act 1980 would have ceased. In any case where the court did grant a new tenancy, section 37(2) of the Housing Act 1988 provided that the new tenancy would be an assured tenancy under the Housing Act 1988. This means that the saving provision in paragraph 3 of Schedule 18 to the Housing Act 1988 is no longer required (no relevant court decisions are still awaited).

872. *Paragraph 42* provides that the saving provision in paragraph 3 of Schedule 18 to the Housing Act 1988 ceases to have effect in relation to tenancies of dwelling-houses in England (and so will continue only for Wales).

873. The paragraph forms part of the law of England and Wales, but the changes will only affect England. It will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.

FINANCIAL EFFECTS

874. Certain of the provisions relating to rights of way could increase the administrative costs for local authorities and the Secretary of State. Clause 21 enables regulations to be made extending the functions of local authorities in recording rights of ways and clause 24 enables regulations to be made extending their functions in dealing with applications for public path orders. In either case, the Secretary of State may be involved in determining any disputes. However, taken as a whole, the rights of way provisions in the Bill (clauses 21 to 27 and Schedule 7) are expected to result in financial savings.

875. Clause 35 and Schedule 8 could result in greater sums being paid by the Secretary of State directly to Passenger Transport Executives (PTEs), as these provisions will facilitate the procurement by PTEs of a greater range of rail services. It is not, however, considered that there would be an overall increase in public expenditure because the new arrangements would also lead to a reduction in the role of the Secretary of State in procuring rail services directly.

PUBLIC SECTOR MANPOWER

876. It is not anticipated that the Bill will have a significant impact on wider public sector manpower.

IMPACT ASSESSMENT

877. The Deregulation Bill is legislating for multiple policy objectives and therefore brings forward a number of different measures. All of the policy proposals where costs and benefits have been identified have an individual Impact Assessment which discusses the options, rationale and costs and benefits in detail. Individual Impact Assessments are available online from departmental pages of www.gov.uk. Copies are also available in the Printed Paper Office.

EUROPEAN CONVENTION OF HUMAN RIGHTS

878. 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). The Rt Hon. Lord Wallace of Saltaire has made a statement saying that in his view the provisions of the Deregulation Bill are compatible with the Convention rights.

879. There are a number of provisions in the Bill which may give rise to European Convention of Human Rights ("ECHR") issues. The ECHR issues are summarised below. Each relevant provision of the Bill is discussed individually, since there are no common ECHR themes.

Clause 1: Health and safety at work: general duties of self-employed persons

880. This clause provides an exemption to the general duty in section 3(2) of the Health and Safety at Work etc. Act 1974 (the "HSWA"). This provision requires all self-employed persons to conduct their undertaking in such a way to ensure that they themselves and other persons (not being their employees) are not exposed to risks to their health and safety. Consideration has been given to whether this proposal engages ECHR Article 2(1) (right to life) in so far as removing some self-employed from the scope of this statutory protection could be seen as not adequately protecting those persons' right to life. The government is of the view that clause 1 remains compliant with Article 2(1) because there are other legislative duties in place to protect and promote health and safety, both in the HSWA and in secondary legislation. The exemption will only apply to self-employed persons who do not conduct their undertakings in prescribed high-risk sectors or activities. This is consistent with the approach adopted in other Member States, all of whom continue to comply with the ECHR.

Clauses 6 and 7: Requirements to wear safety helmets: exemptions for Sikhs

881. Section 11(1) of the Employment Act 1989 and Article 13(1) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 exempt turban-wearing Sikhs from any legal requirement to wear a safety helmet while on a construction site. The government proposes to extend the scope of section 11(1) and Article 13(1) so that turban-wearing Sikhs may benefit from this exemption in all workplaces within the United Kingdom, unless the Sikh individual is conducting high-hazard operational activities.

882. Article 9 is a qualified right and, as such, the freedom to manifest one's religion may be subject to limitations if those limitations are prescribed by law, are necessary and proportionate, and pursue a legitimate aim. The legal requirement to wear personal protective equipment at work (including safety helmets) exists in the interests of public safety and health. This is a specified legitimate aim under the ECHR and so the existing legal requirements placed upon all other ethnic and religious groups to wear safety helmets at work remain compliant with Article 9.

883. Article 14 is a limited right and must be pleaded alongside another substantive right in the ECHR; however it is not necessary to establish an actual violation of another Article in order for the applicant to succeed on the grounds of discrimination alone. Therefore, notwithstanding the arguments made above in respect of compliance with Article 9, the government considers it appropriate to also give some consideration to Article 14. Although other ethnic or religious groups may claim to suffer discrimination on the basis that these clauses makes special provision only for Sikhs, it can be argued that these other groups are not in an analogous position to Sikhism. All practising Sikhs (men and women) are forbidden to cut their hair and the wearing of the Turban is obligatory for baptised Sikh men. Sikhism dictates as an absolute that nothing should be worn either over or underneath the Turban. The government does not consider that other ethnic or religious groups are subject to religious requirements of the same nature.

884. For these reasons, the government considers that existing legislation and the amendments proposed by these clauses remain compliant with Article 9 and Article 14 of the ECHR.

Clause 10: Private hire vehicles: circumstances in which driver's licence required

885. The purpose of clause 10 is to amend section 46 of the Local Government (Miscellaneous Provisions) Act 1976 to enable unlicensed persons to drive private hire vehicles ('PHVs' – minicabs) when they are not being used as PHVs. Subsection (4) of clause 10 relates to prosecutions for the offence of "acting as a driver of any vehicle when it is in use as a private hire vehicle without having a current licence". It introduces a reverse burden of proof such that, if the prosecution proves (i) that the vehicle was a PHV; (ii) that the vehicle was being used on a road; (iii) it was being driven by a person who did not have a valid PHV driver's licence; and (iv) there was a passenger being carried in the vehicle at the time, then it falls to the defendant to prove that the vehicle was not in fact being used as a PHV.

886. The rationale for subsection (4) and the reverse burden of proof is as follows. It is recognised that moving from the current situation, where a licensed PHV can only ever be driven by a licensed PHV driver, to allowing "off duty" use of PHVs by unlicensed drivers, will generate concerns that unlicensed drivers will be tempted to work illegally as PHV drivers. It will remain illegal for an unlicensed driver to knowingly act as the driver of a PHV when it is in use as a PHV (i.e. when it is "on duty"). However, concerns have been raised about enforcement of the offence once non-PHV licence holders are no longer prohibited from using the vehicles.

887. The reverse burden of proof in subsection (4) engages Article 6(2), which requires that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. For the reasons set out below the government considers that while Article 6(2) is engaged, there is no interference with this Article.

888. Article 6(2) does not prohibit the creation of a reverse burden of proof, instead, the courts have established principles which must be carefully considered against the circumstances of any individual provision. In short, reverse burdens of proof must only be used "within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence" (Salabiaku v France[2]), and they must not be "arbitrary": the Court has said "the substance and effect of any presumption adverse to a defendant must be examined, and must be reasonable. Relevant to any judgment on reasonableness or proportionality will be the opportunity given to the defendant to rebut the presumption, maintenance of the rights of the defence, flexibility in application of the presumption, retention by the court of a power to assess the evidence, the importance of what is at stake and the difficulty which a prosecutor may face in the absence of a presumption" (Sheldrake v DPP[3]).

889. Subsection (4) takes into account the rights of the defendant and is not arbitrary. The reverse burden only applies in a situation where there is a passenger being carried in the vehicle and it has the effect of transferring the onus to the defendant to establish why there was a passenger in the vehicle at the relevant time. Ultimately they must show that the vehicle was not hired (but was being used for non-work purposes). In cases where the defendant is using the vehicle legitimately for purposes other than that of a PHV, it should be straightforward for the defendant to produce evidence as to who the passenger was (in these circumstances the passenger is likely to be an acquaintance of the driver), and what the reason for the journey was (e.g. by way of witness statement from the passenger). However, without the reverse burden of proof, in situations where the vehicle is being used illegally by an unlicensed driver, it may well be difficult for an enforcement authority to obtain enough evidence to prove that the vehicle was actually hired. The government takes the view that in such situations it is reasonable for the defendant to take on the burden of proof.

[2] Salabiaku v France (1988) 13 EHRR 379 (at para. 28).
[3] Sheldrake v DPP [2004] UKHL 43; [2005] 1 AC 264 (HL), by Lord Bingham of Cornhill at para 21.

890. Where a driver is prosecuted for an alleged breach of the licensing requirement and there is no passenger in the vehicle at the time, the burden of proof that the vehicle was in use as a PHV will remain with the prosecution. The government takes the view that in such a situation, it should be for the prosecution to establish that the vehicle was "immediately available to an operator to carry out a booking" as the defendant would be placed in an unfair position if the burden of proof was placed upon him in relation to this wider offence.

891. It should also be noted that, in order to successfully prosecute the offence, it will be necessary for the prosecution to prove that the defendant acted "knowingly". In practice, this will limit the practical effect of the reverse burden of proof as the prosecution cannot rely on the reverse burden alone and still must prove that the defendant acting knowingly.

Clause 14 and Schedule 4: Agricultural Holdings Act 1986: resolution of disputes by third party determination

892. The Agricultural Holdings Act 1986 (the "1986 Act") applies to agricultural holdings entered into before 1st September 1995 and to certain tenancies granted after that date. The 1986 Act governs the landlord and tenant relationship and provides security of tenure for the tenant, deals with succession rights, regulates the terms of the tenancy and provides for compensation for the tenant or landlord in certain circumstances.

893. Under the 1986 Act where the landlord and tenant have a matter in dispute, the Act refers disputes to the First-Tier Tribunal in England or the Agricultural Land Tribunal in Wales, arbitration or the courts. Most disputes, particularly those governed by practical agricultural considerations, are compulsorily referable to arbitration by one party under the 1986 Act.

894. Clause 14 and Schedule 4 will amend the 1986 Act to allow tenants and landlords of agricultural tenancies, for disputes that are compulsorily referable to arbitration other than terminations of tenancy, the option to jointly appoint a third party to determine their dispute.

895. The landlord and tenant will be able to choose the third party best suited to determine their dispute (for example: a local land surveyor, a structural engineer, a third party with expertise of the fruit trade), agree their own timeframes and process and will not be limited by the time limits applicable to arbitration under the 1986 Act.

896. The disputes that could fall to be determined by a jointly appointed third party are likely to include rent reviews, consent for improvements, notices to do work, compensation and game damage. Disputes over a notice to quit a tenancy will not be determined by this process.

Right to a fair hearing (Article 6)

897. Disputes in these circumstances will concern landlord and tenant liability rights provided for under the 1986 Act which are personal, private or economic in nature and hence a civil right for the purposes of Article 6(1) of the ECHR.

898. The protection of property under Article 1 of the First Protocol to the ECHR is a right for the purposes of Article 6(1).

899. The determination by a third party of a dispute referred by an agricultural landlord and their tenant will be decisive for the right in question.

900. The government considers that Article 6(1) applies.

901. It is the government's view that the clause and Schedule are compatible with Article 6 because the amendments of the 1986 Act will not impair the existing rights of access the landlord or tenant have to tribunals, arbitration or the courts but builds on those rights giving the parties the opportunity to agree to an alternative to arbitration for disputes other than notices to quit a tenancy.

902. The government considers that the clause and Schedule will not interfere with Article 6 as they are not restricting access to court but allowing the parties to a private dispute to agree to a further method of resolving that dispute.

903. In light of the above the government believes that the clause and Schedule are compatible with Article 6.

Protection of property (Article 1 of the First Protocol)

904. The amendments of the 1986 Act will not deprive the parties of their possessions as they will not apply to the determination of a dispute over a notice to quit a tenancy.

905. The government is not interfering with the use of property but is allowing an additional, alternative means for resolving disputes to that of arbitration.

906. If Article 1 of the First Protocol is engaged by these amendments it would only be on the basis of control of use of property because the third party will determine the rights of the landlord and the tenant arising from their dispute.

907. In the government's view the clause and Schedule strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the parties' property rights. Any interference with the parties' property rights would be proportionate to the legitimate aim pursued.

908. Therefore, the government believes that the clause and Schedule are compatible with Article 1 of the First Protocol.

Clause 16: Suppliers of fuels and fireplaces

909. Clause 16 will amend sections 20 and 21 of the Clean Air Act 1993 ("the CAA") to enable the Secretary of State to specify authorised fuels and exempted classes of fireplaces in administrative lists rather than in statutory instruments. Consideration has been given as to whether this proposal engages Article 7 (no punishment without law) given that the specification of a fuel or class of fireplace in one of these administrative lists can have a bearing on whether that product can be lawfully used and/or, in the case of a fuel, sold or acquired for certain uses in a smoke control area in accordance with sections 20 and 23 of the CAA. The government is of the view that the clause is compliant with Article 7. The clause does not create retrospective criminal offences nor does it give the Secretary of State the power to do so. Sections 20 and 23 of the CAA will continue to set out the essential elements of the relevant offences. The Secretary of State will be under a statutory duty to publish the new administrative lists and any subsequent revisions. The exercise of this power will be subject to judicial review. The specification of authorised fuels and exempted fireplaces in administrative lists can be carried out in a way that is compatible with the rights guaranteed by Article 7. The Government intends to publish and maintain the lists in a way that will ensure that the requirements of legal certainty and accessibility continue to be met.

Clause 20 and Schedule 6, Part 4: Insolvency law – disqualification of unfit directors of insolvent companies

910. The amendments made by Part 4 of Schedule 6 permit the Secretary of State and the official receiver to request information that they deem relevant to a person's conduct as a director of a company directly from third parties, including directors. Information received under this power may result in an application for a disqualification order and be used in subsequent proceedings against directors. The requirement for any person, including a director, to provide information that may result in an order for that director's disqualification as a director arguably engages Article 6 (right to a fair trial) as it may infringe the implicit right against self-incrimination. The government considers that these amendments are compatible with Article 6 because the right against self-incrimination only exists in criminal proceedings. Disqualification proceedings cannot be so categorised. Further, similar legislative provisions already exist authorising public bodies to compel persons to provide information, the use of which is prohibited in criminal proceedings. These provisions have not been successfully challenged.

Clause 20 and Schedule 6, Part 6: Authorisation of insolvency practitioners – repeal of provision for authorisation to be granted by competent authority

911. The effect of paragraph 23 of Schedule 6 is that insolvency practitioners authorised by the Secretary of State will not be able to continue to act as insolvency practitioners after a transitional period of one year after the repeals in paragraph 21 of that Schedule take effect, unless they have secured alternative authorisation from one of the professional bodies recognised for that purpose by the Secretary of State. Article 1 of Protocol 1 of the ECHR

(protection of property) is engaged because the loss of a person's authorisation as an insolvency practitioner will lead to the loss of a possession, which is the economic value of marketable goodwill in that person's business.

912. However, in the government's view, the interference with Article 1 of Protocol 1 is in the public interest. It will improve the overall regulation of insolvency practitioners and public confidence in the arrangements for their authorisation in that it will remove the perceived conflict of interest between the Secretary of State's role as the oversight regulator of the insolvency practitioner profession and his role as a direct authoriser of insolvency practitioners. The government also considers that the interference is proportionate and strikes a fair balance. In particular, insolvency practitioners who are authorised by the Secretary of State will not have their authorisation removed immediately once the repeals take effect. Their authorisation will continue for one year after the commencement of the repeals and they may use that period to seek alternative authorisation from one of the recognised professional bodies. Five out of seven recognised professional bodies have indicated that they would be happy to authorise those authorised by the Secretary of State. The authorisation requirements of the recognised professional bodies are broadly the same as each other and the same as those of the Secretary of State.

913. For these reasons the government considers that the proposed amendments are compatible with the ECHR.

Clause 22: Unrecorded rights of way: protection from extinguishment

914. This provision confers a power on the Secretary of State to "designate" certain public rights of way which have been extinguished by section 53 of the Countryside and Rights of Way Act 2000 to be reinstated. Since designation will have the effect of reinstating a public right of way over private land, Article 1 of Protocol 1 of the ECHR (protection of property) arguably applies. The government considers the provisions to be compatible for the following reasons. A designated public right of way will very likely be one that has existed over the land for a long period and only been extinguished for a relatively short period: there would be very unlikely to be any "individual and excessive burden" on the private landowner. There is a strong public interest in providing an adequate network of public rights of way. The powers are capable of being exercised compatibly with the ECHR and procedural safeguards may be put in place in any regulations made by the Secretary of State.

Clause 27, Schedule 7 and clause 23: Public rights of way: procedure

915. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are arguably engaged by the new 'preliminary assessment' procedure. The effect of section 53 of the Countryside and Rights of Way Act 2000 (the "CRWA") is that unrecorded public rights of way will be extinguished immediately after 1st January 2026. An application to add a public right of way based only on documentary evidence of the pre-1949 existence of the right ("pre-1949 right") may be rejected following "preliminary assessment". This will have a bearing on the future existence of such a right as section 53 of the CRWA provides that unrecorded public rights of way will be extinguished immediately after 1st January 2026.

The solution to this problem can be found in clause 23 of the Bill. This clause amends the CRWA to provide that where, immediately before the commencement of section 53 of that Act, the exercise of an unrecorded pre-1949 right is reasonably necessary to enable a person with an interest in land to obtain access to the land, the public right of way should become a private right of way for the benefit of the land. The government's view is that the new procedure is compatible with the ECHR.

Clause 31: Tenancy deposits

916. This clause inserts 4 new sections into the tenancy deposit protection provisions contained in the Housing Act 2004 ("the 2004 Act"): sections 215A to 215D. The purpose of these new provisions is to deal with certain issues, relating to the application of the tenancy deposit protection legislation in that Act, which have arisen as a result of the Court of Appeal's decision in the case of *Superstrike* v *Rodrigues* 2013[4]. The provisions apply retrospectively (see new section 215D).

917. The government considers that it could be argued that the new sections engage three convention rights: Article 6, Article 1 of Protocol 1 and Art 8.

918. The provisions are aimed broadly at restoring the original intention of the legislation as communicated by the government when the legislation was brought into force in 2007 and are necessary to protect the rights and interests of landlords who, through no fault of their own, now face the risk of substantial financial penalties and delays in possession proceedings because of the retrospective application of the Court of Appeal's decision in *Superstrike*.

919. The provisions take into account that the ECtHR appears to regard it as being more serious, and harder to justify, interfering retrospectively so as to overturn a final judgment in a party's favour than when claims are simply in existence or being pursued: see *Tarbuk*[5] at para 54. The provisions therefore ensure that proceedings that have been finally decided or settled by agreement between the parties cannot be re-opened (see new section 215D(2)). Furthermore, where proceedings are in train at the time of commencement, tenants will not be hit with legal costs as a result of the government's intervention (see new section 215D(5)).

920. In developing its proposals the government has also taken into account that it is in the interests of tenants of *Superstrike*-type landlords (where the tenancy is still in existence on commencement) to now have their deposits protected and to give those landlords who haven't already protected deposits the opportunity to do so. This will be achieved by the provision in new section 215A(3) which gives these landlords a period of up to 90 days in which to protect deposits. The government is of the view that the provision will ensure that the legislation strikes a fair balance between the rights of landlords on the one hand and the rights of tenants on the other and is therefore a proportionate way of achieving the legitimate aim of protecting landlords from unfair penalties. The government intends to work closely with landlord bodies

[4] [2013] EWCA Civ 669
[5] *Tarbuk* v *Croatia* [2012] ECHR 31360/10

and the tenancy deposit protection schemes to ensure that landlords in this position are aware of this requirement.

Clause 35 and Schedule 8: Removal of restrictions on provision of passenger rail services

921. The government has considered whether these provisions are compatible with Convention rights and concluded they engage Article 1 of the First Protocol (protection of property), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life). However, the government's view is that these provisions are compatible with these Convention rights for the reasons outlined below.

Compulsory Purchase

922. Article 1 of the First Protocol would be engaged as section 10(3) and (4) of the Transport Act 1968 makes provision to enable the compulsory purchase of land which a Passenger Transport Executive ("PTE") requires for the purposes of its business. A PTE is a statutory corporation established under the Transport Act 1968 with functions and duties in relation to the provision of public transport within a large metropolitan area other than London, and accountable to the local transport authority. Clause 35, by removing the 25 mile limit, would increase the potential scope of a PTE's business, and so it follows the potential scope of the compulsory purchase powers would increase. But any such purchase would be subject to statutory compulsory purchase procedures, rights of legal challenge and rights to compensation. They should ensure any compulsory purchase would only be authorised in the public interest and be subject to due process of law and thus compatible with the provisions in Article 1.

Protection of railway assets

923. Article 1 of the First Protocol would be engaged as Schedule 8 would enable the Secretary of State, in a section 24 de-designation order, to make similar provision for the protection of railway assets used for de-designated rail services as is set out in sections 27(3) and (5) to (7) and 31 of the Railways Act 1993 for franchised passenger rail services. Such provisions may engage Article 1 because they would restrict the right of a passenger rail operator to dispose of his property as and when he saw fit. They would also deprive an operator of security of tenure of railway premises as against the owner. However, an operator would be engaged by entry into a freely negotiated commercial contract with a procuring organisation (operator agreement), in the knowledge of such restrictions. The restrictions would be in the public interest, and subject to conditions provided for by law. Accordingly the government is satisfied these provisions are compatible with Article 1.

Enforcement of operator agreements

924. Article 1 of the First Protocol would be engaged as Schedule 8 would enable the Secretary of State, in a section 24 de-designation order, to make similar provision for the enforcement of a passenger rail operator agreement as applies to franchise agreements with the Secretary of State (in sections 55 to 58 of the Railways Act 1993).

925. Such provisions would engage Article 1 because, where an operator was in breach of an operator agreement, they would allow the procuring organisation to (a) make an order requiring the operator to take steps to comply with it, in default of which a civil penalty would be payable, or (b) impose a civil penalty. In so far as such steps would involve requiring an operator's property to be deployed in a certain way, or in so far as an operator would have to pay monies to the procuring organisation, there would be an interference with the operator's peaceful enjoyment of its property, or a deprivation of its property.

926. However, by entry into the freely negotiated operator agreement the operator would accept that the agreement may be enforced in such ways. The restrictions would be in the public interest to ensure compliance with the contractual duties to provide the public transport services, and would be subject to conditions provided for by law. Accordingly, the government is satisfied these proposals would be compatible with Article 1.

Transfer schemes

927. Schedule 8 would engage Article 1 because it would enable the Secretary of State to empower, by a section 24 order, a PTE or local transport authority to make a scheme which would have the effect of transferring property, rights and liabilities held by a passenger rail operator and vesting them in a PTE or local transport authority (or company owned by them) or another successor operator when the passenger rail operator agreement ended. Such a transfer scheme would ensure that assets, rights and liabilities needed for railway operations could be used by a successor operator enabling the successor to take over the rail operation as a going concern, ensuring continuity of passenger rail services. It would require payment of such consideration for the transfer as would be specified in, or determined in accordance with, the operator agreement.

928. An operator would be appointed by entry into a freely negotiated operator agreement with the PTE or local transport authority, or company owned by them, in the knowledge that the transfer scheme power existed to secure service continuity at the end of the agreement. The transfer scheme would be in the public interest, and subject to conditions provided for by law. PTEs and local transport authorities are public authorities subject to the Human Rights Act 1998, and to the supervision of the High Court through judicial review. Accordingly the government is satisfied these proposals would be compatible with Article 1.

Determination of civil rights or criminal charges

929. Article 6 (right to a fair trial) would be engaged in relation to any legal challenge by a land owner to any compulsory purchase of land under section 10(3) of the Transport Act 1968. However, the proposals would be compliant with Article 6 because the availability of statutory challenge under the Acquisition of Land Act 1981 (or in Scotland the Acquisition of Land Act (Authorisation Procedure) (Scotland) Act 1947) would enable the civil rights and obligations of the land owner to be determined by a fair and public hearing, within a reasonable time, by an independent and impartial tribunal established by law, directly subject to the Human Rights Act 1998, with judgement being pronounced publically.

930. Article 6 would be engaged in relation to any legal challenge by an operator to an enforcement order, or the imposition of a penalty, where a section 24 Railways Act 1993 Order has applied equivalent enforcement provisions to those in sections 55 to 57F of the Railways Act 1993. These provisions would allow for an operator to make representations and objections, and to challenge the enforcement action in the High Court for exceeding vires or for being in breach of procedural requirements. Such provisions would be compliant with Article 6 because they would enable the civil rights and obligations of the operator to be determined by a fair and public hearing in the High Court, which is directly subject to the Human Rights Act.

931. Article 6 would be engaged should a section 24 Railways Act 1993 Order apply equivalent provision to that of section 58 of the Railways Act 1993 (power to require production of documents or information where it appears a passenger service operator is in breach of his operator agreement). Failure to comply without reasonable excuse, or to alter or destroy a document, is an offence subject to a fine. However, the government is satisfied these provisions would be compliant with Article 6 because the determination of any such criminal charge against a person would be made by a Magistrates' Court if a summary offence, or the Crown Court if an indictable offence, and both are directly subject to the Human Rights Act.

932. Article 6 would be engaged on three counts should a section 24 Railways Act 1993 Order empower a PTE or local transport authority to make a transfer scheme equivalent to that authorised under section 12 of, and Schedule 2 to, the Railways Act 2005 as follows:-

- Paragraph 4 of Schedule 2 to the Railways Act 2005 would enable a scheme to require a transferor or transferee to enter into an agreement with another person to give effect to the scheme, in default of which the other person would have the right to seek relief in civil proceedings for an injunction, or other appropriate remedy.

- Paragraph 11 of Schedule 2 to the Railways Act 2005 empowers a scheme maker to require, by notice, a transferor and transferee under a proposed scheme to provide information necessary to enable the scheme to be made. If a notice is not complied with the High Court in England and Wales, or the Court of Session in Scotland, may make such order as it thinks fit for requiring the failure to be made good. This may include requiring all the costs and expenses of the application to be paid.

- Under paragraph 11 of Schedule 2 to the Railways Act 2005, it is an offence for a person, who has been so required to produce a document, to intentionally alter, suppress or destroy it. This offence is subject, on summary conviction, to a fine not exceeding the statutory maximum, or on conviction on indictment to an unlimited fine.

933. However, the government is satisfied that, should a transfer scheme apply equivalent provisions to those described above under section 12 of, and Schedule 2 to, the Railways Act 2005, those provisions would be compliant with Article 6 because the determination of the civil rights of the person enforced against would be made by a civil court of law, and the

determination of any such criminal charge against him would be made by the Magistrates' Court if a summary offence, or by the Crown Court if an indictable offence. In all cases the courts in question are directly subject to the Human Rights Act.

Respect for private and family life

934. Article 8 of the ECHR (right to respect for private and family life) would be engaged if a home was compulsory purchased under 10(3) of the Transport Act 1968. However, any proposed interference with this right would be subject to compliance with the law of compulsory purchase and compensation and would have to be necessary in a democratic society in the interests of the economic well-being of the country. Under the statutory compulsory purchase procedures the relevant PTE would have to justify the case for purchasing the property and a PTE, as a public body, is subject to the Human Rights Act 1998. Accordingly the government is satisfied the provisions are compatible with Article 6.

Clause 37 and Schedule 10: Reduction of burdens relating to enforcement of transport legislation

935. This clause amends the law to enable more effective action to be taken against drink and drug drivers, thus improving road safety. These changes are to repeal the statutory option to replace a positive breath specimen with a blood or urine sample, and to extend the role of registered healthcare professional (mainly nurses).

Repeal of a statutory option to replace a positive breath specimen with a blood or urine sample in certain cases

936. In the government's view, it may be argued that Article 6 (right to a fair trial) and presumption of innocence) is engaged because certain drivers are more likely to be unfairly convicted of drink driving. However, the government considers that there is no interference with Article 6 because the testing equipment is now much more accurate than it was when this option was introduced. Any interference would be justified by the aim of preventing injury by unfit drivers.

Extension of role of healthcare professionals

937. This measure provides that registered healthcare professionals will henceforth be able to give an opinion on whether a driver's condition may be due to a drug. In the government's view, it may be argued that this could engage Article 8 (right to respect for private and family life) because concerns were raised during public consultation that such professionals do not have sufficient expertise to form a judgement. If a driver's condition is incorrectly assessed to be drug related, this could lead to an unnecessary arrest and evidential blood test – an invasive procedure that interferes with a person's physical integrity (hence engaging Article 8). However, the government considers that, if there is any interference, it is justified by the legitimate aim of improving enforcement against drug drivers, and no more than necessary to meet the relevant social need.

Clause 39: Removal of restriction of investigation of tramway accidents in Scotland by RAIB

938. The clause will remove the restriction contained in section 14(2) of the Railways and Transport Safety Act 2003 that prevents the Rail Accident Investigation Branch (RAIB) from investigating tramway accidents in Scotland.

939. The government considers that the effect of this clause in conjunction with the provisions of the Railways (Accident Investigation and Reporting) Regulations 2005 could engage Article 8 (right to respect for a private and family life or home), Article 1 of the First Protocol (right of peaceful enjoyment of possessions) or Article 6 (right to fair trial). The government considers that in relation to any interference with the rights protected by Article 8 or Article 1 of the First Protocol is justified for the reasons set out below. The government considers there is no interference with the right protected by Article 6.

940. The RAIB inspectors' powers to conduct an investigation into a railway or tramway accident or incident are set out in section 8 of the Railways and Transport Safety Act 2003. Their powers to enter land are provided for in section 8(1) and are only for the purposes of conducting an investigation by virtue of section 7. The exercise of this power to enter land could interfere with the rights protected by Article 8 or Article 1 of the First Protocol. However, even if these rights were interfered with, the government considers such interference justified on the grounds that this statutory power is necessary to ensure public safety on the tramway systems operating in Scotland. Further, section 8(1) is drafted to prescribe the circumstances in which RAIB inspectors can enter land which will provide protection to such individuals.

941. To assist RAIB in working to improve safety on tramway systems operating in Scotland, it is important that people feel they can talk freely to RAIB inspectors, without fear that what they say might be used against them in another way (such as legal proceedings). Regulation 10(2) of the 2005 Regulations sets out that statements obtained by RAIB inspectors shall not be disclosed to a third party (such as a prosecutor) unless there is a court order or the person making that statement consents to its release. This will ensure that persons making statements to RAIB inspectors in relation to the investigation of Scottish tramway accidents will have continued protection already afforded by Article 6.

Clause 40: Removal of duty to order re-hearing of marine accident investigations

942. This measure removes the Secretary of State's duty to re-open a formal investigation into a marine shipping accident in circumstances where new and important evidence has been discovered. In the government's view this proposal engages Article 6 (right to a fair trial) because a formal investigation could result in ship's officers being prevented from practising their trade or profession. However, in the government's view the existence of other avenues of challenge ensures that the amendment does not reduce the current protection for officers.

Clause 43 and Schedule 11: Household waste

943. Clause 43 repeals the criminal offence in the Environmental Protection Act 1990 for failure to comply with a requirement contained in a notice served under the Act relating to the presentation of household waste for collection. It also repeals the provisions of that Act allowing a fixed penalty to be offered as an alternative to prosecution in such cases, replacing them with new provisions allowing the imposition of a fixed penalty for non-compliance with such notices which, if not paid, will be enforceable as a civil debt. The clause limits the cases in which the new fixed penalty can be imposed to where the non-compliance causes a nuisance or is detrimental to any amenity of the locality (or is likely to have that effect), and then only after a written warning has first been given and there has been continued or repeated non-compliance thereafter. Clause 43 provides that an appeal against the imposition of a fixed penalty may be made to the First-tier Tribunal.

944. This clause engages Article 6(1) (right to a fair trial), as the imposition of a fixed penalty under the EPA 1990 will constitute the determination of a civil right or obligation. In a case where an administrative penalty is imposed the state must provide the opportunity to challenge such a decision before a court with full jurisdiction (*Albert and Le Compte v Belgium*). In this case, the provision of an appeal to the First-tier Tribunal, an independent statutory tribunal with power to hear representations and, where appropriate, evidence, will satisfy this requirement. Accordingly, the government considers that these provisions of clause 43 are compatible with Article 6(1).

945. Schedule 11 amends the London Local Authorities Act 2007, which contains a similar scheme of penalty notices for failing to comply with regulations relating to household waste (although no criminal sanction is attached). The amendments to the existing penalty notice regime will limit the availability of that sanction to bring it more into line with the new approach under the EPA 1990 (e.g. to add the new "threshold" and warning requirements). Existing appeals provisions under the 2007 Act are not being amended. As these amendments simply restrict the availability of a pre-existing penalty notice system, the government is of the view that these provisions of the Schedule do not engage Article 6 in this context.

Clause 45: Management of child trust funds: looked after children

946. This clause amends the Child Trust Funds Act 2004 to enable (through regulatory powers) a person other than the Official Solicitor (England and Wales and Northern Ireland) or the Accountant of Court (Scotland) to be appointed by the Treasury or the Secretary of State to manage child trust fund accounts of looked after children. It also enables (through regulatory powers) a requirement to be imposed on local authorities to pass certain information they hold about looked after children to that person.

947. The data-sharing aspect of this clause engages Article 8 (right to respect for family and private life.) This is because the passing of personal data about a child to a third person constitutes an interference with Article 8. However, the government's view is that, for the reasons set out below, any such interference is justified.

948. The government's view is that the measure pursues a legitimate aim in that it would allow for the appointment of a person or body (for example a charity) which would manage accounts, and may also, subject to agreement with the appointing body, undertake additional activities in relation to these accounts, such as fund raising or financial education with child trust fund holders.

949. The bodies passing information to the appointed person will be subject to the Human Rights Act and will therefore have ECHR obligations in respect of the extent of the disclosure. The appointee would also be subject to the provisions of the Data Protection Act. The measure is proportionate because only the information required to perform the management functions of the appointee would be disclosed to it.

Clause 52: Sale of alcohol: community events etc and ancillary business sales

950. The Licensing Act 2003 introduced a regime for regulating the supply of alcohol, the provision of certain forms of entertainment and the provision of late night refreshment ("the licensable activities"). Persons who use premises to carry on licensable activities must obtain an authorisation for that purpose; the authorisations comprise a premises licence, club premises certificate or temporary event notice. The licensing regime, therefore, interferes with the rights of premises owners and users to supply alcohol or late night refreshment from those premises, and with the owners of those goods to sell them. By the same token, the regulation of the provision of entertainment curtails the freedom of premises owners and users as to what activities they can carry on at those premises, and correspondingly their freedom of expression. The licensing regime, therefore, engages Article 1 of Protocol 1 and Article 10.

951. It was held in *Tre Traktorer Aktiebolag* –v- *Sweden* (1989) 13 EHRR that an alcohol licence is a possession. However, it was held in *Gudmunsson* –v- *Iceland* (1996) 21 EHRR that a licence is not protected by Article 1 of Protocol 1 if the licence holder does not have a reasonable and legitimate expectation to continue the activities authorised by the licence if the conditions attached to the licence are no longer fulfilled or if the licence is revocable in accordance with provisions which were in force when the licence was granted.

952. The Licensing Act 2003 confers on licensing authorities the power to regulate licensable activities, and they are responsible for administering the various processes by which authorisations are granted, rejected, varied, or revoked. Licensing authorities are under a duty to exercise these functions with a view to promoting the statutory licensing objectives, namely the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. Premises licences and club premises certificates are, therefore, subject to review and there is no expectation of their continued duration. Licences and certificates are granted subject to any conditions which are considered to be necessary to promote one or more of the objectives.

953. In view of the potential effects of alcohol on individual health and safety and on public order, there is a cogent public interest in regulating the supply of alcohol. Similarly, the potential effects of noise nuisance or disorder associated with the provision of certain forms

of entertainment imports a public interest in regulating those activities. The government considers that the licensing regime is proportionate and does not breach Article 1 of Protocol 1 or Article 10, but the exercise of this right is subject to such conditions or restrictions as are necessary in the interests of public safety, disorder or the rights of others. In view of the potential effects of noise nuisance caused by these activities (in particular, the impact this has on the Article 8 rights of other persons), or disorder associated with the provision of certain forms of entertainment, there is a public interest in regulating those activities on the basis of the objectives in the Act. The government considers, therefore, that the licensing regime is proportionate and does not breach Article 1 of Protocol 1 or Article 10.

954. The regulation by licensing authorities of the exercise of rights of premises owners and users must be compatible with Article 6. The processes under the Licensing Act 2003 contain a number of safeguards, in relation to both the rights of holders of authorisations and the rights of other persons (for example, the Article 8 rights of persons who might be adversely affected by the carrying on of licensable activities at adjoining premises).

Amendments to Licensing Act 2003

955. The Bill makes various amendments to the Licensing Act 2003. The government considers that none of these materially impacts on the regime established by that Act to the extent that its compliance with the Convention rights is altered. However, one of the amendments does increase the scope for interference by licensing authorities in the activities of the holders of authorisations, and this is described below.

Sale of alcohol: community events etc. and ancillary business sale

956. Clause 52 amends the Licensing Act 2003 by introducing a new form of authorisation. This authorisation (called a "Part 5A notice") will enable two categories of person to carry on the licensable activity of the sale by retail of alcohol at premises to which the notice relates for a period of three years from the date the notice takes effect. The first category are those who run charities and other bodies that do not trade for profit to sell alcohol at community premises[6] at which no more than 300 persons may attend for a limited period each day. The second category are those who run businesses of a specified description (for example, those who provide small bed and breakfast accommodation) at which the sale of alcohol is ancillary to the provision of goods or services by that business. Both categories will be subject to a number of other prescribed conditions (for example, the quantity of alcohol which may be sold to a person on each day), which will be prescribed in regulations subject to the affirmative resolution procedure.

957. The person who intends to use this authorisation must send the notice to the licensing authority at least 10 working days before it is intended to take effect. The user (or licensing authority, in cases where the notice is given electronically) also gives the notice to the police

[6] This expression is defined in section 193 of the Licensing Act 2003.

and environmental health authority for the area in which the premises to which the notice relates is situated. The police or environmental health authority may object to the notice on the basis that the proposed activity would undermine any of the licensing objectives. If so, they must send an objection notice to the licensing authority which may on the basis of this objection give a counter notice to the person who gave the Part 5A notice. A licensing authority may also give a counter notice if it considers that the carrying on of the proposed activities in accordance with the notice would undermine the statutory licensing objectives. The counter notice has the consequence that the Part 5A notice does not take effect. The police or environmental health authority may also object after the notice has taken effect (but only in relation to new matters or matters about which they could not reasonably have been aware before the notice took effect). This enables the licensing authority to determine whether to give a counter notice to the user of the Part 5A notice with the consequence that the notice ceases to have effect.

958. In any case in which the licensing authority does give a counter notice, which either prevents the Part 5A from taking effect or results in it ceasing to have effect, there is no hearing and the user has no prescribed right of appeal. However, a licensing authority's decision to give a counter notice remains subject to judicial review. The availability of the Part 5A notice, by virtue of a light touch process, will enable persons to make sales of alcohol for a period of three years in circumstances in which they would previously have been unable to do so without first having to make an application for the grant of a premises licence. The introduction of this new form of readily available authorisation to persons who traditionally present a low risk of undermining the licensing objectives, therefore, represents a relaxation of the more stringent regulation which accompanies the obtaining and maintenance of a premises licence.

959. In relation to the rights of premises users (for example, under Article 1 of Protocol 1), this provision is an enhancing measure. However, the government recognises that a combination of the activity authorised by the notice and the period for which it has effect may adversely affect the rights of others (e.g. the Article 8 rights of occupiers of adjoining premises). Bearing in mind that premises users may alternatively apply for the grant of a premises licence, or use temporary events notices, and thereby avail themselves of the safeguards which accompany that process, the government considers that the process in accordance with which the Part 5A notice is either prevented from taking effect or ceases to have effect fairly balances the rights of premises users and those who may be adversely affected by their activities, and is compatible with the ECHR.

Clause 58: Exhibition of films in community premises

960. The clause may engage Article 8 (right to respect for family and private life) because some persons may be adversely affected by deregulated film exhibitions, for example by increased noise in the vicinity of community premises. However, the right to respect for private life is not absolute and interference with the right to respect for private life will be lawful if it is in accordance with law and necessary and proportionate to the legitimate aim of lifting unnecessary burdens on business

961. In this case community film exhibitions have been identified as low risk activities and their limited deregulation will remove burdens from community groups in particular, so as to bolster creativity, community participation and volunteering opportunities. This will facilitate the growth of the arts and creative economy, which forms a significant part of the United Kingdom economy.

962. Other existing licensing requirements will continue to apply to deregulated exhibitions (where there is the sale and supply of alcohol) and existing legal protections provide further safeguards against an adverse impact of the deregulation measures (e.g. as regards noise, the Environmental Protection Act 1990). The clause limits the potential adverse impact of the deregulation by requiring the relevant film to be exhibited between 8:00 am and 11:00 pm on the same day and for the audience to not exceed 500.

963. In the view of the government, the provision therefore strikes a fair balance between the public interest in the growth of the creative economy, community participation and volunteering opportunities and public safety and order and does not breach Article 8 rights.

Clauses 62, 63 and 64: criminal procedure – written witness statements, written guilty pleas, powers to make Criminal Procedure Rules

964. The ECHR implications of each of these provisions is summarised below.

Admissibility of written witness statements (clause 62)

965. This clause would enable the Criminal Procedure Rule Committee to make rules about the admissibility of written statements as evidence in criminal proceedings. Article 6 (right to a fair trial) is engaged, but this clause does not alter the fact that such written evidence is only permissible if the defendant does not object, which is clearly Article 6 compatible. Article 6 is also engaged by the omission of the requirement on the face of the legislation for the parts of the written statement admitted either to be read aloud at the hearing or for an oral account to be given. However, these are not always necessary to ensure Article 6 compatibility, and in any case the Criminal Procedure Rules may now deal with these issues and they are required to be compatible with Convention rights.

Written Guilty Pleas (clause 63)

966. Section 12 of the Magistrates' Courts Act 1980 allows a defendant to plead guilty by written notice, without attending the magistrates' court by which he or she is due to be tried. The clause would provide that Criminal Procedure Rules may dispense with certain requirements in section 12 for matters to be read aloud in court before that court may accept the guilty plea. Article 6 is engaged as it sets out when a defendant can be tried in his or her absence, but Strasbourg case law is clear that a defendant may waive his or her right to be present (*Poitrimol v France).* This clause is therefore clearly compatible.

Production orders and warrants (clause 64)

967. This clause allows the Criminal Procedure Rules to make provision for specified situations, primarily relating to production orders and warrants. As this relates to search and

seizure of individual property, Article 8 (right to respect for family and private life) and Article 1 of Protocol 1 (protection of property) may be engaged, as may Article 10 (freedom of expression) depending on the material. To the extent that there is any interference with these rights, the government is confident that it can be justified as being in the public interest, in particular for the prevention of disorder and crime.

Clause 67: HMRC disclosure in personal injury cases

968. The clause provides for information provided in confidence by a deceased taxpayer to HMRC to be disclosed to certain persons entitled to claim compensation for personal injury to the deceased prior to his death, for bereavement, and in relation to their dependency on the deceased. The information sought is often critical to being able to establish that entitlement.

969. The convention right raised is the right to privacy – Article 8. The deceased provided information in confidence to HMRC for one purpose (taxation), and following his death his personal representatives or family wish to obtain it in order to use it to make a claim against a third party.

970. It is doubtful whether the deceased's right to privacy survives his death[7] as a matter of human rights law. To that extent, Article 8 may not be engaged at all in relation to the deceased. If it is, Article 8 is a qualified right, and interference can be justified by reference to the rights of others.

971. In this regard, clearly the "getting in" of the estate (by the personal representatives, in relation to civil claims the deceased would have had against the person who injured him) is a vindication of the rights of those entitled to inherit the estate. Equally, family members and others with a claim to compensation for their loss of dependency on the deceased have a right against the tortfeasor. Indeed these claims would qualify as "property" for Article 1 Protocol 1 purposes. Obtaining this information for the purposes of pursuing these claims is clearly an important protection for those rights, since this is often key evidence in claims being reliable, comprehensive and independent, and frequently not available from any other source (particularly because a key witness, the deceased, is dead). The information is to be provided for a specific use – for making, or settling, such claims. Therefore if there is an interference at all, it is in accordance with the law, justified and proportionate.

[7] In Editions Plon v France (2006) 42 EHRR 36 at §34 it was suggested that in certain circumstances the right to confidentiality/ privacy can transfer to the deceased's family. In the course of assessing French laws protecting privacy rights as a "legitimate aim" in the context of allegations of A.10 breach, the Court indicated that decisions of a French court that privacy rights could transfer from the deceased in this way were not "unreasonable or arbitrary". However, the Court was not asked to directly decide the question of whether privacy rights under the Convention survive death in any way. The position under the English law of confidence is unclear, with some suggestion that confidentiality can survive death in some circumstances.

Clause 68 and Schedule 18: Poisons and Explosive Precursors

972. The government recognises that the amendments to the Poisons Act 1972 may engage a number of Articles under the ECHR. The introduction of a common licensing regime, reporting requirements, new offences and application of PACE powers to summary only offences impact on Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (right to peaceful enjoyment of possessions). The government are satisfied that the amendments are both necessary and proportionate to achieve the stated policy objectives, striking a reasonable balance between the rights of the individual and the public interest in imposing restrictions on regulated and reportable substances. Furthermore, the government consider that there are sufficient safeguards in place to ensure that the provisions can be exercised in a way which is compatible with the ECHR.

Clause 69: London street trading appeals: removal of role of Secretary of State in appeals

973. This clause has the effect of transferring the function of determining certain London street trading appeals (under section 30(11) of the Local London Authorities Act 1990 and section 19(1) of the City of Westminster Act 1999) away from the Secretary of State to the Magistrates' Court. In the government's view even if the decisions which can be appealed under s.30(11) of the Local London Authorities Act 1990 or s.19(1) of the City of Westminster Act 1999 do constitute "civil rights" for the purposes of Article 6(1) (right to a fair trial), on the basis that, although they are decisions of general application rather than decisions which relate specifically to an individual (such as the termination of an individual's licence), they nevertheless affect the right of individuals to engage in a commercial activity, the effect of the transfer is to ensure that such rights will be determined by a body (the Magistrates' Court) which complies with the requirements of Article 6(1). Hence, even if Article 6 is engaged, its requirements will be met.

Clause 82 and Schedule 20, paragraph 38 - legislation no longer of practical use – revocation of Coal and Other Mines (Horses) Order

974. It is realistically possible that the revocation of the Coal and Other Mines (Horses) Order (by paragraph 38 of Schedule 20 to the Bill) would lead to greater restriction on the possible use of horses in mines. The government considers that this engages Article 1 of Protocol 1 (protection of property) since horses constitutes property and there may be additional restriction of the use of that property. However, the government considers that this is compliant with Article 1 of Protocol 1, since it is justifiable in the interests of animal welfare, and it is proportionate in bringing the law that applies to horses in mines into line with the law as it applies to other working horses.

COMMENCEMENT DATES

975. Clause 90 makes provision about the coming into force of the provisions of the Bill. The commentary on individual clauses and Schedules includes an explanation of the effect of clause 90.

DEREGULATION BILL

EXPLANATORY NOTES

These notes refer to the Deregulation Bill
as brought from the House of Commons on 24th June 2014
[HL Bill 33]

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