INFRASTRUCTURE BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Commons Amendments to the Infrastructure Bill [HL], as brought from the House of Commons on 27th January 2015. They have been prepared by the Department for Transport in conjunction with the Department for Communities and Local Government, the Department for Environment, Food and Rural Affairs, the Land Registry, the Department of Energy and Climate Change, Her Majesty's Revenue and Customs, and Her Majesty's Treasury in order to assist the reader of the Bill and the Commons Amendments, and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.

2. These Notes, like the Commons Amendments themselves, refer to HL Bill 124, the Bill as first printed for the Commons.

3. These Notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons Amendments.

4. Except for Commons Amendment 21, the Commons Amendments were tabled in the name of the Rt Hon Patrick McLoughlin MP, Secretary of State for Transport, and the Rt Hon John Hayes MP, Minister of State for Transport. Commons Amendment 21 was tabled by Tom Greatrex, Caroline Flint and Geraint Davies.

COMMENTARY ON COMMONS AMENDMENTS

Commons Amendments to Part 1 – Strategic Highways Companies

Commons Amendment 1

5. Commons Amendment 1 would insert a new clause requiring the Secretary of State to direct a strategic highways company to prepare route strategies. The company must comply with such a direction and publish route strategies in such manner as it considers appropriate.

Currently, route strategies provide the evidence base for operational or investment decisions for the strategic road network and the amendment would ensure that this practice would continue.

Commons Amendment 2

6. This amendment would provide that the activities of the Office of Rail Regulation may include investigating, publishing reports or giving advice on the effect of directions and guidance under Part 1 of the Bill.

Commons Amendment 3

7. This amendment would place a duty on the Secretary of State to lay a report published by the Office of Rail Regulation under clause 9 before Parliament.

Commons Amendment 4

8. Commons Amendment 4 would insert a new section 15A into the Railways and Transport Safety Act 2003 which provides for the Secretary of State to change the name of the Office of Rail Regulation (ORR) by regulations. It would allow the Government to rename the ORR in order to reflect its new responsibilities in the road sector.

Commons amendment 5

9. Commons Amendment 5 would place a duty on the Secretary of State to prepare and publish reports periodically on the exercise by a strategic highways company of its functions.

Commons Amendment 6

10. Commons Amendments 6 would impose a duty on the Secretary of State to set a Cycling and Walking Investment Strategy for England, to review or replace the Strategy regularly – at least once every five years – and to report periodically to Parliament on progress towards meeting its objectives. It would be necessary for the Strategy to specify objectives and the financial resources to be made available by the Secretary of State for the purposes of achieving these objectives, and the period to which it relates. The Secretary of State would be required to consult when setting or varying a Strategy, and to bear in mind the desirability for certainty and stability in relation to the Strategy when considering a variation.

Commons Amendments to Part 3 – Environmental Control of Animal and Plant Species

Commons Amendment 7

11. Commons Amendment 7 would extend the definition of "owner", in relation to land, to individuals or bodies that may hold land which they legally are unable to dispose of ("inalienable land"). This would allow species control agreements and orders to be applicable to those who manage inalienable land rather than just freeholders or leaseholders.

Commons Amendment 8

12. Commons Amendment 8 would provide clarity to an owner that a species control agreement's requirements had been completed by that owner to the satisfaction of the environmental authority, and the agreement, therefore, would cease to have any further effect. The environmental authority would be obligated to provide an owner with a clear statement to that effect.

Commons Amendments 9 and 11

13. Commons Amendments 9 and 11 would clarify that, should doubt ever arise in a dispute or legal proceedings, the scientific name of a species listed in Parts 1A or 1B of Schedule 9 to the Wildlife and Countryside Act 1981 is determinative rather than its common name. This is consistent with the notes that already appear in Schedules to the 1981 Act, including Part 1 of Schedule 9.

Commons Amendment 10

14. Commons Amendment 10 would add the Eurasian beaver to Part 1B of Schedule 9 to the Wildlife and Countryside Act 1981. This would ensure that should the Eurasian beaver be considered to be ordinarily resident in the wild in Great Britain, licences for their release into the wild in England would continue to be required from the licensing authority, Natural England.

15. By placing the Eurasian beaver on Part 1B of Schedule 9, which lists native animals that are no longer normally present in the wild, it would mean that Eurasian beavers which are released under licence could not be subject to the species control provisions contained in the Infrastructure Bill. Those that are released unlawfully would remain in scope of the species control provisions. This amendment would apply to England only.

Commons Amendments to Part 4 – Planning, Land and Buildings

Commons Amendments 12, 25, 27, 37, 41 and 46

16. Commons Amendments 12, 25, 27, 37, 41 and 46 would make provision for Mayoral development orders. Commons Amendment 12 would introduce the new Schedule and would enable the Secretary of State by regulations to make consequential provision in connection with any provision made by that Schedule. Part 1 of the new Schedule would insert new sections 61DA to 61DE into the Town and Country Planning Act 1990 (the 1990 Act) to make provision for Mayoral development orders. Part 2 of the new Schedule would make consequential amendments to the 1990 Act.

17. New section 61DA of the 1990 Act would enable the Mayor of London (the Mayor) to make Mayoral development orders granting planning permission for specified development on a site or sites in Greater London. This would be subject to the power for a development order made by the Secretary of State under subsection (3) to specify an area or class of development in respect of which a Mayoral development order may not be made.

18. New section 61DB would make provision for conditions that may be attached to planning permission granted by a Mayoral development order. A condition may require the consent, agreement or approval to a specified matter to be given by the Mayor or a relevant local planning authority (i.e. local planning authority that has within it a site or part of a site that a Mayoral development order relates to, see subsection (8)). Subsection (4) would enable the Secretary of State to make provision by development order for such consent etc. to be sought from a specified person where it is not given within a specified period (i.e. a person and period specified in the development order). Under subsection (6), the Secretary of State may by development order provide for a person to apply for permission to develop land without complying with a condition of a Mayoral development order (provision may be similar to that made by section 73 of the 1990 Act, see subsection (7)).

19. New section 61DC would set out the procedures for preparing and making a Mayoral development order. Subsection (1) would enable the Secretary of State to set out much of the procedure in a development order, including provision about notice, publicity and inspection by the public, consultation, the making and consideration of representations. Subsections (3) to (5) provide that the Mayor may only make a Mayoral development order in response to an application by each relevant local planning authority, and may only consult on a proposed order and make the final order with the consent and approval of those authorities.

20. New section 61DD would make provision for the revision or revocation of a Mayoral development order by the Mayor or by the Secretary of State. This would include a power for the Secretary of State to make further provision by development order for the procedure for revising or revoking a Mayoral development order and about the steps the Secretary of State must take before revoking, or directing the Mayor to revise, an order. New section 61DE describes the effect of revision or revocation of an order on development that has been started but not completed. The general position would be that the development may be completed (see subsection (3)), but this would be subject to specific provision made by the Mayor or by the Secretary of State when revising or revoking the order.

Commons Amendment 13

21. Commons amendment 13 would insert new wording into subsection (11) of clause 28. Clause 28 makes amendments which will ensure future purchasers of land owned by the Homes and Community Agency, the Greater London Authority (or a company or body carrying out housing or regeneration functions on the Greater London Authority's behalf) or a Mayoral Development Corporation will be able to develop and use that land without being affected by easements and other rights and restrictions. This will allow purchasers of land from these bodies to achieve parity with buyers of land belonging to local authorities and other public bodies involved in regeneration and development (such as housing action trusts and urban development corporations). Clause 28 (11) provides for the amendments not to apply to land disposed of before commencement of the clause by any of the above bodies. Commons amendment 13 would make clear that the amendments are disapplied only in relation to land the freehold interest in which was disposed of before commencement. This

would mean the amendments in Clause 28 do apply to a land a leasehold interest in which was disposed of before commencement by the bodies to which clause 29 applies.

Commons Amendments 14, 28 and 36

22. Commons Amendments 14, 28 and 36 would amend the Greater London Authority Act 1999 (the 1999 Act). Section 30 of the 1999 Act (the general power of the authority) empowers the Greater London Authority to do anything which supports its three principal purposes of promoting economic development and wealth creation, promoting social development and improving the environment in Greater London. In the exercise of this general power, the Greater London Authority may carry on activities in the field of economic development and regeneration, which the London Development Agency and Homes and Communities Agency might previously have undertaken.

23. The Greater London Authority's general power is limited by section 31(1) of the 1999 Act (limits of the general power), which prohibits the Authority from incurring expenditure in doing anything that can be done by Transport for London, the Mayor's Office for Policing and Crime and the London Fire and Emergency Planning Authority.

24. Commons Amendment 14 would amend section 31 of the 1999 Act to remove a prohibition against the Authority incurring expenditure on anything that can be done by Transport for London. This would enable the Greater London Authority to incur expenditure on transport for the purposes of housing or regeneration.

Commons Amendments to Part 5 – Energy

Commons Amendments 15, 16, 17, 18, 19, 20, 21, 29, 31, 32, 33 and 38

25. These Amendments concern the territorial extent and application of the right to use deep-level land. They would limit the territorial extent and application of the clauses to England and Wales.

26. Commons Amendment 18 amends the definition of "landward area" to further excludes land which is beneath waters adjacent to Scotland. The right of use is exercisable over a landward area, the meaning of which references the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014. Commons Amendment 18 refines the definition of "landward area" so that includes only land that is in England and Wales and land beneath waters, but excludes land beneath waters that are adjacent to Scotland.

27. Commons Amendment 20 concerns a new obligation for the Secretary of State to seek advice from the Committee on Climate Change on the likely impact on carbon budgets and the net carbon account of petroleum produced onshore in England and Wales. Following each reporting period, the Secretary of State must consider that advice, produce a report on his conclusions and lay that report before Parliament.

28. Commons Amendment 21 would provide that hydraulic fracturing activity cannot take place unless a number of conditions are satisfied.

Commons Amendments 22, 30, 39 and 47

29. Commons Amendments 22, 30, 39 and 47 concern the reimbursement of persons who have met expenses of making electrical connections. The Electricity Act 1989 ("the 1989 Act") provides a power in section 19 (Power to recover expenditure) for the Secretary of State to make regulations which allow for the sharing of costs among persons requiring electricity connections to a distribution network. The Secretary of State may enable or require electricity distributors to obtain so-called "second comer" payments from persons who benefit from an electricity connection paid for by a previous person (the "first comer") and for any payments received to be re-distributed to earlier contributors (such as the first comer).

30. The power in section 19(2) and (3) of the 1989 Act only applies to connections made by licensed distribution network operators. It therefore excludes independent connection providers (ICPs) which now compete with distribution network operators (DNOs) and independent distribution network operators (IDNOs) in the connections market. This can put ICPs at a disadvantage since a customer may be deterred from contracting with them to provide a connection, on the basis that they would not be able to recover a proportion of the cost from later connectees (i.e. the "second comer").

31. The provision on reimbursement of persons who have met expenses of making electrical connections in the new clause which would be inserted by the Commons Amendment 22 replaces the power at section 19(2) and (3) of the 1989 Act with a broader power to allow or require the recovery of second comer payments regardless of whether a DNO, IDNO or ICP made the first or second connection. It also amends the power at section 23 (Determination of disputes) of the Gas and Electricity Markets Authority ("GEMA") to determine disputes relating to connections and makes consequential amendments to sections 16 (Duty to connect on request) and 16A (Procedure for requiring a connection) of the 1989 Act.

32. The power allows the Secretary of State to provide for various matters in the regulations, which include placing a requirement on electricity distributors to seek and allocate payments from second comer. It also allows for distributors to estimate the cost of connections which they did not themselves make by reference to what it would have cost them and changes in prices since the connection was made.

33. In the new clause which would be inserted by Commons Amendment 22, *subsections (1), (2) and (3)* amend section 19 of the 1989 Act by removing subsections (2) and (3) and replacing them with new Schedule 5B. *Subsections (4) and (5)* make consequential amendments to sections 16 and 16A of the 1989 Act. *Subsection (6)* amends section 23 of the 1989 Act by inserting a new subsection to enable GEMA to determine disputes relating to the exercise of the reimbursement powers set out in Schedule 5B. It also makes consequential amendments to the remainder of section 23.

34. In Schedule 5B, *Paragraph 1* confers a power on the Secretary of State to make regulations enabling electricity distributors to exercise the reimbursement powers where conditions A to D as set out are met. Condition A is met where an electricity connection (the "first connection") is made between premises and a distribution system or between two distribution systems. Condition B is met if a payment has been made towards the cost of the first connection by the person who required the connection or caused it to be made. Conditions C and D are met where a second connection is made using electric line or plant provided for the first connection within a period prescribed in the regulations.

35. *Paragraph 1(6)* defines "first connection expenses" as those reasonably incurred by a person in providing electric line or plant to make the connection (including the capitalised value of maintaining it). *Paragraph 1(7)* makes clear that it does not matter whether the first connection or second connection is made by an electricity distributor or a person of another description, thereby bringing ICPs within the scope of the power.

36. *Paragraph 2(1)* defines the reimbursement powers as the power to require a reimbursement payment from a person who requires or otherwise causes a second connection to be made and the power to apply such a payment to reimburse anyone who was required to contribute to the cost of the first connection. *Paragraph 2(2)* sets out that a reimbursement payment is a payment towards the cost of a first connection of an amount which is reasonable in all the circumstances.

37. *Paragraph 3(1)* imposes a duty on the Secretary of State to consult GEMA before making regulations under this Schedule. *Paragraph 3(2)* allows regulations requiring relevant electricity distributors to exercise a reimbursement power and thus collect and allocate reimbursement payments. *Paragraph 3(3)* allows a relevant electricity distributor to estimate the cost of a first connection in situations where the electricity distributor did not make that connection. This situation arises where an ICP makes the first connection to a distribution network on behalf of its client. *Paragraph 3(4)* ensures that an ICP (or other person who has made a connection in respect of which a reimbursement payment is due) may not be required to share its cost information with a relevant electricity distributor. *Paragraph 3(5)* allows a relevant electricity distributor to estimate the costs of the ICP (or other person who has made a connection in respect of which a reimbursement payment is due) by reference to its own costing methodology and changes in prices.

38. *Paragraph 4(1) and (2)* defines the terms "first connection", "first connection expenses", "payment in respect of first connection expenses", "reimbursement payment" and "reimbursement powers" by reference to the paragraphs of the Schedule where they appear. It also defines "relevant electricity distributor" as the distributor who operates the distribution system into which a new connection is made.

Commons Amendments to after Part 5 – Public Works Loan Commissioners

Commons Amendments 23, 34, 40 and 48

39. Commons Amendments 23, 34, 40 and 48 would make provision to amend the Public Bodies Act 2011 (PBA) to enable the Government, should it choose to do so, to abolish the Board of Public Works Loan Commissioners (PWLB) and transfer its functions to another body through the process set out in the PBA.

40. The PWLB is a statutory body which dates back to the Public Works Loan Act 1875 and issues central government's loans mainly to local authorities in England, Scotland and Wales. It comprises twelve loan commissioners, with day to day operations carried out by the Debt Management Office which is an executive agency of HM Treasury.

41. The new clause would include the PWLB in Schedule 1 to the PBA and would allow the Government to make an order under the PBA, following a statutory consultation in the future as required under the PBA, which would abolish the PWLB and transfer its functions to another body. This would be subject to the affirmative resolution procedure set out in the PBA.

Commons Amendments to Part 6 – General Provisions

Commons Amendment 24

42. Commons Amendment 24 would provide that the negative procedure applies to regulations under clause 17(1)(b) where transitional or transitory provision or savings which modify the application of an Act are made in respect of Part 1. The amendment maintains the position that provisions in regulations which modify primary legislation when making consequential, supplementary and incidental provision in connection with Part 1 would be subject to the affirmative procedure.

Commons Amendment 26

43. This amendment would provide for the new clause relating to Cycling and Walking Investment Strategies, which it is intended will form a new part after Part 1, to extend to England and Wales only.

Commons Amendment 35

44. This amendment would provide for the new clause relating to Cycling and Walking Investment Strategies, which it is intended will form a new part after Part 1, to come into force by regulations.

Commons Amendment 42

45. Commons Amendment 42 would remove the standard words which were added to the Bill before it left the House of Lords for the purpose of recognising and maintaining the privileges of the House of Commons in respect of financial matters.

Commons Amendments to the Schedules

Commons Amendment 43

46. Commons Amendment 43 would cause the administrative records of a strategic highways company to be public records for the purposes of the Public Records Act 1958, and would cause the company to have duties under that Act in relation to the preservation of those records.

Commons amendment 44

47. Commons Amendment 44 would require a transfer scheme to provide for the transfer to the transferee of all of the transferor's rights and liabilities relating a person's contract of employment, where the person becomes employed by the transferee as a result of the scheme.

Commons amendment 45

48. Commons Amendment 45 would provide that, where a transferred employee claims constructive dismissal as a result of a substantial detrimental change made to the employee's working conditions, no damages are repayable in respect of any unpaid wages relating to a notice period which the employee has not worked. New sub-paragraph (3A) together with existing paragraph 9(3) of Schedule 3 are intended to reflect regulation 4(9) and (10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

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