

CITIES AND LOCAL GOVERNMENT DEVOLUTION BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Cities and Local Government Devolution Bill [HL] as brought from the House of Commons on 8 December 2015.
- 2 These Explanatory Notes have been prepared by the Department for Communities and Local Government, Department of Health, Home Office, Department for Transport and Department for Environment, Food & Rural Affairs 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.
- 3 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill as first printed for the Commons (Bill 64). They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 4 With one exception mentioned in paragraph 5 below, all Commons amendments were tabled in the name of the Secretary of State.
- 5 Commons Amendment 36 was tabled by Mr John Stevenson, and was supported by the Government. Commons Amendment 36 includes an amendment tabled in the name of the Secretary of State to Mr Stevenson's amendment (the Secretary of State's amendment providing for the sunset provision mentioned in paragraph 35 below).
- 6 In the following Commentary, an asterisk (*) appears in the heading of any paragraph that deals with a non-Government amendment.

Commentary on Commons amendments

Reports about local devolution

Commons Amendments to Clause 1: Devolution: annual reports

Commons Amendments 1, 2 and 4:

- 7 **Commons Amendment 1** would include in the reporting requirements contained in clause 1 of the Bill an additional requirement that the annual report on devolution should also include information relating to functions which had been conferred on a mayoral combined authority to be exercisable by a mayor for the area of the authority. This includes information on functions that a Minister of the Crown has retained the ability to exercise. **Commons Amendments 2 and 4** are consequential on Amendment 1, (a) preventing duplication in the reporting requirements contained in subsection (2)(c) of clause 1, and (b) providing definitions of "combined authority" and "Minister of the Crown".

Commons Amendment 3

- 8 **Commons Amendment 3** is consequential on leaving out clause 2 (Devolution statements). It would delete the reference to that clause from clause 1.

Commons Amendments to Clause 2: Devolution Statements

Commons Amendment 5

- 9 **Commons Amendment 5** would remove clause 2 from the Bill, which places an obligation for any Minister who has introduced a Bill in either House of Parliament to make and publish a written devolution statement before that Bill's Second Reading. The statement would be to the effect that in the Minister's view the provisions of the Bill are compatible with a principle in favour of devolution wherever appropriate.

Mayoral combined authorities

Commons Amendments to Clause 3: Power to provide for an elected mayor

Commons Amendment 6

- 10 **Commons Amendment 6** would remove the requirement that an order creating a mayor for the area of a combined authority cannot be a precondition of transferring the functions of a local authority or a public authority to that combined authority.

Commons Amendments 7, 8, 15, 18 and 30

- 11 **Commons Amendment 7** would amend the consent requirements under new section 107B of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act"), which apply in relation to orders under section 107A that allow the Secretary of State to provide for there to be a mayor for an existing combined authority's area. It would allow such an order to be made even when more than one constituent council (as opposed to just one) does not consent to a mayor; providing that at least two of the constituent councils (and the combined authority) do consent.
- 12 Commons Amendments 8, 15, 18 and 30 are consequential on Amendment 7. **Commons Amendment 8** would ensure that each non consenting constituent council would be removed from the combined authority's area. **Commons Amendments 15, 18, 30** would provide that, in circumstances where there are non-consenting constituent councils, their consent would not be required when transferring general functions and policing functions to the mayor or conferring a general power of competence on a combined authority.

Commons Amendments to Clause 5: Functions

Commons Amendments 10 and 11

- 13 **Commons Amendments 10 and 11** would allow a mayor to delegate his or her general functions, such as fire and rescue, to a committee appointed by the mayor or to the deputy PCC mayor. The mayor could only delegate a general function if authorised to do so in an order

made by the Secretary of State; the amendment would allow for the order to include provisions on the membership, chair, appointment process and voting powers of a committee.

Commons Amendment 12

- 14 **Commons Amendment 12** would provide that an order under section 107D of the 2009 Act, making provision for any function of a mayoral combined authority to be a function exercisable only by the mayor, may in certain circumstances be subject to conditions or limitations which would be specified in the order. For example, a condition could provide that a general function could only be exercisable by the mayor with the consent of the appropriate authorities (as already defined in the Bill). Subsection (2) of new section 107D provides that in Part 6 of the 2009 Act references to “general functions”, in relation to a mayor for the area of a combined authority, are to any functions exercisable only by the mayor other than PCC functions.

Commons Amendment 13

- 15 **Commons Amendment 13** would enable the Secretary of State to provide in an order under section 107D that any functions of a mayoral combined authority, discharged by another local authority or combined authority in accordance with arrangements under section 101(1)(b) of the Local Government Act 1972, can be treated as general functions exercisable by the mayor. A combined authority is prohibited from making arrangements for the discharge of a mayoral function by another authority, in accordance with section 101(1)(b) of the Local Government Act 1972, by virtue of Amendment 75. “Mayoral functions” are defined, in relation to a mayor, at new section 107F(7) as the mayor’s general functions and, if the mayor exercises PCC functions, the mayor’s PCC functions.

Commons Amendment 14

- 16 **Commons Amendment 14** would provide that when an order is made under section 107D of the 2009 Act, transferring existing mayoral combined authority functions so as to be a function exercisable only by the mayor, the mayor of the combined authority must consent.

Commons Amendment 16

- 17 **Commons Amendment 16** would enable the Secretary of State, by order, to make provision for the mayor for the area of a combined authority to enter into arrangements with another combined authority or with a local authority for the joint discharge of a general mayoral function and a function held by the other authority. Such an arrangement would be made by order under new section 107DA of the 2009 Act. Such orders may be made to reflect individual circumstances or may be generic. They may include provisions about the mayor acting in place of, or jointly with, the combined authority in any such arrangements, the membership of a joint committee including numbers of members, the appointment and the chairmanship of the joint committee and the voting powers of members. Such orders may also be used to disapply in such joint committees the political balance requirements for committees set out in sections 15 to 17 of, and Schedule 1 to, the Local Government and Housing Act 1989.

Commons Amendments 17

- 18 **Commons Amendment 17** would provide that an order providing for a mayor of an existing mayoral combined authority to exercise the functions of a police and crime commissioner (PCC) in relation to that area must have the consent of the mayor of the combined authority.

Combined authorities: additional functions

Commons Amendments to Clause 8: Other public authority functions

Commons Amendment 19

- 19 **Commons Amendment 19** would clarify that provision may be made for criminal liabilities of a public authority to be transferred to a combined authority when an order is made under new section 105A of the 2009 Act, in the same way that provision can be made for other liabilities of a public authority to be conferred on a combined authority, in an order made under that section.

Commons Amendment 20

- 20 **Commons Amendment 20** would allow reference to a document in an order under new section 105A of the 2009 Act to be construed as referring to that document as it may subsequently be amended from time to time, or replaced. This power to make ambulatory provision could, for example, be used in conjunction with powers under new section 105A of the 2009 Act to impose conditions on the exercise of a function conferred on a combined authority.
- 21 The amendment would also ensure that the effect of clause 19 (devolving health service functions) is clearly signposted in new section 105A, which is to be inserted in the 2009 Act by clause 8. Clause 19 imposes conditions or limitations in respect of transfers of functions relating to the health service to a local authority or combined authority under new section 105A of the 2009 Act or clause 17 of the Bill.

Commons Amendments 21 to 23

- 22 **Commons Amendments 21 and 22** would amend the consent procedures in new section 105B of the 2009 Act which the Secretary of State must follow when transferring a public authority function to a combined authority in the absence of a proposal being received from the appropriate authorities. The Bill currently states that, in the case of an existing combined authority, the combined authority must consent to such a transfer of functions. The amendments would add the additional requirement that each constituent council within the combined authority must also consent to the transfer.
- 23 The amendments would also allow a first order under section 105A in relation to a combined authority (if it is not a mayoral combined authority) to be made even though there are one or more constituent councils who do not consent to the transfer of functions to be made by the order, providing that there are at least two constituent councils that do consent (together with the combined authority). In these circumstances the Secretary of State must remove the non-consenting councils from the combined authority under a section 106 order.
- 24 The amendment would also include a provision that the consent requirements need not be met when a revocation order under new section 105A of the 2009 Act is made in relation only to health service functions. Revocation orders would be made in reliance on section 14 of the Interpretation Act 1978 (which implies a power to revoke an order, but subject to the same conditions and limitations as apply to the making of an order). New subsections (1E) and (1F), which this amendment would insert into section 105A, modify the application of that power, removing the consent requirement.
- 25 **Commons Amendment 23** would define “constituent council” for the section as a district council whose area is within the area for which the combined authority is, or is to be, established, or a county council the whole or part of whose area is in the established or proposed combined authority area.

Combined authorities: accountability etc

Commons Amendments to Clause 10: Funding of combined authorities

Commons Amendment 24 to 26

- 26 **Commons Amendment 25** would provide that the all constituent councils and the combined authority (where there is an existing combined authority) must consent before regulations can be made under section 74(8) of the Local Government Finance Act 1988, which enables a combined authority to levy in respect of functions other than transport functions. **Commons Amendment 24** would remove the existing consent requirements in section 74(10) as they are remodeled by Amendment 25. **Commons Amendment 26** is consequential on Amendments 24 and 25 and provides the definition of “constituent council” for the purposes of the subsections in which that term is used.

Commons Amendment 27

- 27 **Commons Amendment 27** would provide that regulations made under section 23(5) of the Local Government Act 2003 would require the consent of the combined authority, as well as the constituent authorities. This brings these consent provisions in line with the others in the Bill.

Commons Amendment 29

- 28 **Commons Amendment 29** would reduce the restrictions on funding for combined authorities by removing the requirement that the constituent councils can only meet the costs that relate to the combined authority’s exercise of functions relating to economic development and regeneration. The amendment would provide flexibility to enable the constituent councils of a combined authority, if they so wish, to make financial contributions for any function of the combined authority.

Combined authorities and EPBs: areas and procedure

Commons Amendments to Clause 15: Requirements in connection with establishment etc. of combined authority

Commons Amendments 9, 28, 31 to 33, 81 and 82

- 29 **Commons Amendment 31** would ensure that the consent of the constituent councils and the combined authority would be required to orders made under sections 104 and 105 of the 2009 Act. It would also provide that orders made under section 106 of the 2009 Act require the consent of the “relevant council”, the combined authority and the mayor (in the case of a mayoral combined authority).
- 30 The amendments made to section 106 would in particular provide that, in a local government area where there is more than one relevant council (i.e. if the area of district councils form part of the area of a county council), and it is proposed to add the area of one of those councils to an area of an existing combined authority, only one of the councils in the area must consent to the making of the order adding the area of the council to the area of combined authority. For

example, if the area of a district council forms part of the area of a county council, the district council could be added to the area of an existing combined authority without the consent of the county council and where a county council area includes the areas of district councils, the county council would be able to consent to join a combined authority without needing the consent of all of the district councils within its area. In the case of a mayoral combined authority the consent of the mayor is also required. In addition to these two consent requirements, before making an order the Secretary of State must (under section 113 of the 2009 Act, as amended by the Bill):

- a. consider that the making of the order is likely to improve the exercise of statutory functions in the area or areas to which the order relates; and
- b. have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.

The consultation requirements already stipulated in section 113 of the 2009 Act will continue to apply.

31 **Commons Amendments 9, 28, 32, 33, 81 and 82** are consequential on Amendment 31.

Combined authorities and local authorities: governance, constitution and functions etc

Commons Amendments to Clause 16: Governance arrangement etc of local authorities in England

Commons Amendments 34 to 39

- 32 **Commons Amendments 34, 35, 37 and 38** are technical amendments to make clear exactly the kinds of matters that regulations made under clause 16 of the Bill might include. Clause 16(1) provides that the Secretary of State may make regulations about the governance arrangements of local authorities, their constitution and membership and their structural and boundary arrangements.
- 33 **Commons Amendment 34** would provide that the Secretary of State may make provisions in regulations to amend electoral arrangements in relation to local authorities (whether these are as part of wider structural changes being made under powers under Part 1 of the Local Government and Public Involvement Health Act 2007 or the provisions for the review of electoral areas under Part 3 of the 2009 Act).
- 34 **Commons Amendment 35** would provide that when the Secretary of State makes regulations under clause 16(1) they may set out how any changes are to apply in particular cases, and would clarify that the range of issues that may be covered include those set out in sections 11(3) and 11(4) of the Local Government and Public Involvement in Health Act 2007.
- 35 * **Commons Amendment 36** would allow the Secretary of State, by regulations under clause 16, to fast track structural and boundary changes to non-unitary local authority areas with the consent of just one local authority within that area. Such regulations would be subject to affirmative Parliamentary procedure and the Secretary of State would have to lay a report in Parliament explaining what the regulations do, describing why they are made, and including details of any consultation taken into account, any representations considered, and any other

evidence or contextual information the Secretary of State considers appropriate. The amendment would include a sunset provision with the effect that the new subsections (3A) to (3C) would expire at the end of 31 March 2019 without affecting any regulations already made in reliance on subsection (3A).

- 36 **Commons Amendment 37** would clarify that the power to make regulations under clause 16 of the Bill includes the power to make different provision for different purposes.
- 37 **Commons Amendment 38** would provide that the power to make regulations under clause 16 of the Bill includes a power to make incidental, supplementary and consequential provision.
- 38 **Commons Amendment 39** would enable provision that can be made under clause 16 to include provision of a kind provided for in section 15 of the Local Government and Public Involvement in Health Act 2007 (transfer of functions, property etc.), which specifies that particular incidental, consequential, transitory or supplemental provisions may be made under sections 13 and 14 of that Act.

Commons Amendments to Clause 17: Power to transfer etc. public authority functions to certain local authorities

Commons Amendment 40

- 39 **Commons Amendment 40** would clarify that provision may be made for criminal liabilities of a public authority to be transferred to a local authority when regulations are made under clause 17 transferring the functions of a public body to a local authority, in the same way that provision may be made for the transfer of other liabilities.

Commons Amendment 41

- 40 **Commons Amendment 41** would allow reference to a document in regulations under clause 17 to be construed as referring to that document as it may subsequently be amended from time to time, or replaced. This power to make ambulatory provision could, for example, be used in conjunction with powers under clause 17 to impose conditions on the exercise of a function conferred on a local authority.
- 41 **Commons Amendment 41** would also add a technical provision to ensure that the effect of clause 19 (devolving health service functions) is clearly signposted in clause 17. Clause 19 imposes conditions or limitations in respect of transfers in relation to the health service made by regulations under clause 17 (and section 105A of the 2009 Act).

Commons Amendments to Clause 18: Section 17: procedure etc.

Commons Amendments 42 and 43

- 42 **Commons Amendments 42 and 43** would clarify the consent requirement for regulations transferring public authority functions to certain local authorities under clause 17, by making it clearer that it is the authority by whom such a function becomes exercisable that is required to consent, and that it is in relation to that authority's area that the Secretary of State must consider whether the making of such regulations is likely to improve the exercise of statutory functions.

Commons Amendment 44

- 43 **Commons Amendment 44** is a minor and technical amendment that would provide that the power to make regulations under clause 17, transferring public authority functions, includes a power to make incidental, supplementary and consequential provisions.

Commons Amendment 45

- 44 **Commons Amendment 45** would insert subsections (2A) and (2B) into clause 18 and remove the requirement for local authority consent to regulations revoking a transfer of functions to that local authority where the revocation relates only to health service functions. Incidental, supplementary, consequential, transitional, transitory or saving provisions may be included in the revoking regulations. Such revocation regulations would be made in reliance on section 14 of the Interpretation Act 1978 and this amendment would modify the application of that power to remove the consent requirement.

Commons Amendments to Clause 19: Devolving health service functions

Commons Amendment 46

- 45 **Commons Amendment 46** would amend the text of clause 19 to make it clear that the limitations set out in the clause apply to the exercise of powers to transfer the functions of a public authority to a local authority by regulations under clause 17 or to a combined authority under an order under section 105A of the 2009 Act.
- 46 The amendment also amends paragraph (a) to subsection (1) to provide that certain “core duties” of the Secretary of State, defined later in clause 19, may not be transferred under either clause 17 or section 105A of the 2009 Act.

Commons Amendment 47

- 47 **Commons Amendment 47** would omit the term “supervisory” from the wording of paragraph (b) in clause 19.

Commons Amendments 48

- 48 **Commons Amendment 48** would replace the limitation in clause 19(c) with a requirement that a transfer of functions relating to the health service to a local or combined authority, either by regulations under clause 17 or an order under section 105A of the 2009 Act, must make provisions about the standards and duties to be placed on that authority having regard to certain standards and obligations placed on the authority responsible for the functions being transferred.

Commons Amendment 49

- 49 **Commons Amendment 49** would insert text in paragraph (c) of clause 19 to require that the specified standards and duties to which regard must be had are those that apply in relation to the authority whose functions are the subject of the transfer.

Commons Amendment 50

- 50 **Commons Amendment 50** would insert subsections (2) to (9) into clause 19 to make provisions explaining or defining some of the particular terms used in the original drafting of the clause and the revised wording.
- 51 Subsection (2) defines the Secretary of State's "core duties in relation to the health service" by reference to the National Health Service Act 2006.

- 52 Subsections (3) and (4) clarify the definition for “regulatory functions” and that the functions of special health authorities exercised at the direction of the Secretary of State are not to be regarded as “vested” in those special health authorities. Particular provision is made in respect of the functions of the NHS Commissioning Board under the National Health Service Act 2006 to provide what is and is not within scope of the transfer powers in section 105A of the 2009 Act and clause 17. It also makes further amendments to clause 19 in respect of the functions of the NHS Commissioning Board that may not be transferred. The amendment provides that none of the functions of the Board under Chapter A2 of Part 2 of the National Health Service Act 2006 may be transferred to local or combined authorities under clause 17 of the Bill or section 105A of the 2009 Act. In particular, these include functions relating to the establishment of clinical commissioning groups and associated constitutional and institutional arrangements.
- 53 Subsection (5) clarifies the definition of “national service standards”. These are the standards to which regard must be had in imposing standards and duties on a transferee in any future transfer order that may be made in respect of health functions under section 105A of the 2009 Act, or clause 17 of the Bill.
- 54 Subsection (6) provides definitions for “national information obligations” and “national accountability obligations” to which regard must also be had when making provision for standards and duties to be imposed on a transferee authority, and subsection (7) explains what “transfer” means in subsection (1) of the clause.
- 55 Subsection (8) ensures that none of the restrictions in clause 19 can prevent a transfer order from imposing on a combined authority or local authority transferee duties and obligations to have regard to, promote or secure, the matters set out in the duties set out in sections 1 to 1F in the National Health Service Act 2006.
- 56 Subsection (9) provides that the “health service” in clause 19 has the same definition as that given in the National Health Service Act 2006, which is, essentially, the comprehensive health service designed to secure improvement in the physical and mental health of the people of England, and in the prevention, diagnosis and treatment of physical and mental illness.

Commons Amendment 51: Amendments of the National Health Service Act 2006

Commons Amendment 51

- 57 **Commons Amendment 51** would insert a new clause into the Bill, which in turn would introduce a new Schedule to the Bill (see Commons Amendment 74).

Commons Amendments to Clause 20: Governance arrangements for local government: entitlement to vote

Commons Amendment 52

- 58 **Commons Amendment 52** would remove clause 20 of the Bill which amends the Representation of the People Act 1983, reducing the minimum voting age for local government electors in England and Wales from 18 to 16.

Sub-national transport bodies

Commons Amendment 53: Sub-national transport bodies

Commons Amendment 53

- 59 **Commons Amendment 53** would insert a new Part 5A into the Local Transport Act 2008 establishing Sub-national Transport Bodies (STBs), which will operate at a sub-national level on transport matters with the aim of furthering economic growth in their area.
- 60 The clause sets out provisions which enable proposals put forward by STBs to be tailored to the individual needs of the area. Functions of the STB will be defined within the regulations made to establish the STB or subsequently under regulations under the new Part 5A.

Section 102E: power to establish STBs

- 61 This section allows the Secretary of State to make regulations to establish an STB as a body corporate for any area in England outside Greater London and requires the regulations to specify the name and area of the STB. *Subsection (4)* provides that the area of an STB must consist of the whole of the area of two or more relevant authorities. *Subsection (5)* defines a “relevant authority”.

Section 102F: requirements for regulations under section 102E

- 62 This section sets out that regulations can only be made if the Secretary of State considers that establishing an STB would facilitate the development and implementation of transport strategies for the area and that the effect of those strategies would be to promote economic growth in that area. *Subsection (2)* defines “transport strategies”.
- 63 *Subsection (3)* provides that regulations establishing an STB may be made only if the constituent authorities, of the proposed STB, have submitted a proposal to the Secretary of State and consent to the regulations being made. “Constituent authorities” of an STB means every relevant authority whose area is within the area, or proposed area, of the STB (*subsection (4)*).
- 64 Before making a proposal the constituent authorities must consult each “appropriate authority” that is not a constituent authority and whom the constituent authorities consider appropriate (*subsection (5)*). The Secretary of State may also require the constituent authorities to consult any other persons (not already consulted) whom the Secretary of State considers should be consulted in connection with the proposal (*subsection (6)*). An “appropriate authority” is defined in *subsection (7)*.

Section 102G: constitution of STBs

- 65 This section allows the Secretary of State to make regulations to provide for the STB’s membership, voting, executive arrangements of the STB (as defined in *subsection (6)*) and the functions of the executive body of the STB. *Subsection (3)* sets out that members of an STB must be appointed by the STB’s constituent authorities and that those members must come from the elected members (as defined in *subsection (10)*) of the constituent authorities.
- 66 *Subsection (4)* sets out that where an STB chooses a member who is not an elected member of a constituent authority, they can only be a co-opted member and non-voting member of an STB.
- 67 *Subsection (7)* provides for regulations to be made concerning the executive functions of an STB executive body. Those regulations may include provisions for setting up, dissolving or merging an STB, conferring functions on or removing functions from an executive body of an STB or transferring functions to and from the STB and STB executive body.

68 *Subsection (8)* sets out that regulations may authorise an STB to delegate any of its functions, subject to conditions or limitations, to one or more of its constituent authorities. *Subsection (9)* stipulates that regulations in this section may not provide for a budget of an STB to be agreed other than by the STB.

Section 102H: General functions

- 69 This section allows the Secretary of State to make regulations to provide for an STB to have any of these functions for its area: (a) to prepare a transport strategy for the STB area; (b) to provide advice to the Secretary of State on the exercise of transport functions in the STB area; (c) to co-ordinate the carrying out of functions in the STB area that are exercisable by different constituent authorities with a view to improving the effectiveness and efficiency in those functions being carried out; (d) if the STB considers that a transport function in relation to its area would be more effectively and efficiently carried out by the STB, they may make proposals to the Secretary of State for the transfer of that function to the STB; and (e) to make other proposals to the Secretary of State about the future role and functions of the STB.
- 70 *Subsection (2)* provides that the Secretary of State may make regulations to provide for an STB to have other functions as described in the regulations.
- 71 *Subsection (3)* provides that regulations can only be made for functions to be exercised in relation to the area of the STB that (a) relate to transport; (b) the Secretary of State considers can be appropriately exercised by the STB; and (c) are not already exercisable in relation to that area by a local authority or a public authority, except where functions have been transferred under 102J or 102K.
- 72 *Subsection (4)* provides that regulations may make further provision on how the STB is to carry out functions. *Subsection (5)* sets out that regulations made in relation to an existing STB may only be made with the consent of the STB. *Subsection (6)* provides that nothing in the section limits the power of the Secretary of State to confer other functions on an STB.

Section 102I: Transport strategy of an STB

- 73 This section describes the transport strategy of an STB as a document containing the STB's proposals for the promotion and encouragement of sustainable, safe, integrated, efficient and economic transport facilities and services to, from and within the STB area. The STB may include in its transport strategy any other proposals that relate to transport to, from or within its area (*subsection (3)*). The STB must publish its transport strategy or revised transport strategy (*subsections (4) and (5)*); and in preparing or revising its transport strategy an STB must carry out a public consultation, and in doing so must consult any of the listed persons as the STB considers appropriate (*subsections (6) and (7)*).
- 74 In preparing or revising its transport strategy, an STB must have regard to (a) the promotion of economic growth; (b) the social and environmental impacts in connection with implementation of the proposals contained in the strategy; (c) any current transport related national policy published by or on behalf of Her Majesty's Government; and (d) the results of the public consultation carried out (*subsection 8*).
- 75 The constituent authorities of an STB must exercise transport functions with the aim of securing the implementation of the proposals contained in the STB's transport strategy.

Section 102J: exercise of local transport functions

- 76 The power in this section permits the Secretary of State, by regulations, to provide for functions exercised by a local authority in an area that is, or is to become, an STB area to be exercised by the STB.
- 77 *Subsection (2)* sets out that regulations may be made (a) only in relation to transport functions

and (b) only if the Secretary of State considers that it is appropriate for the STB to exercise the function. The transferred functions may be different between STBs, reflecting the local context.

- 78 *Subsection (3)* sets out that regulations may be made regarding functions that relate both to transport and to other matters but can be transferred only so far as the function is exercisable in relation to transport.
- 79 *Subsection (4)* provides for the function to be exercised by the STB generally or subject to conditions or limitations as specified. *Subsection (5)* sets out that regulations may also provide for the function to be exercised by the STB instead of the local authority or for the function to be exercised by the STB concurrently with the local authority. *Subsection (6)* provides that regulations may be made only with the consent of the local authority concerned and, where regulations are made in relation to an existing STB, the STB.

Section 102K: other public authority functions

- 80 This section permits the Secretary of State, by regulations, to provide for functions carried out by a public authority in relation to an STB area, to be carried out by the STB. Regulations under *subsection (2)*, may be made (a) only in relation to functions that relate to transport, and (b) only if the Secretary of State considers them appropriate for exercise by the STB (*subsection (2)*).
- 81 *Subsection (3)* sets out that regulations may be made with regard to a function that relates both to transport and to other matters, but may be transferred only so far as the function is carried out in relation to transport.
- 82 *Subsection (4)* provides that regulations may provide for a function to be carried out by the STB either generally or subject to conditions or limitations specified.
- 83 *Subsection (5)* sets out that regulations may make provision for the transferred function to be exercised (a) solely by the STB instead of the public authority or (b) jointly by the STB with the public authority. If the STB already exists, its consent is required before the Secretary of State makes any regulations under this section (*subsection (6)*).

Section 102L: funding

- 84 This section allows the Secretary of State to pay grants to the STB to cover expenditure incurred in carrying out its functions and such grants may be subject to any conditions that the Secretary of State thinks appropriate. *Subsection (3)* allows the Secretary of State to make regulations that allow constituent authorities of an STB to contribute to its costs and to make regulations about the basis on which the amount payable by each constituent authority is to be determined.

Section 102M: general powers

- 85 This section provides that an STB may do (a) anything it considers appropriate to carry out any of its functions and, as with local authority functions, this would vary from STB to STB. An STB may also do anything (b) it considers appropriate for purposes related to its functions or (c) anything it considers to be connected with any of its functions. An STB also may do, for a commercial purpose, anything it may do under paragraphs (a) to (c) but for non-commercial purposes.
- 86 Power conferred on an STB by *subsection (1)* is in addition to other powers of the STB (*subsection (3)*). Where an STB has an executive body, the STB may delegate to that body its function of taking action but not the function of determining what action to take (*subsection (4)*).

Section 102N: boundaries of power under section 102M

- 87 This section does not allow an STB to do anything where there is a post-commencement limitation expressed to apply a) to its powers conferred by section 102M(1); (b) to all its powers; (c) to all its powers but with exceptions that do not include its power under section 102M(1).

This section sets out that an STB is not authorised to borrow money (*subsection (2)*) or to charge a person for anything it does otherwise than for a commercial purpose; but with certain exceptions (*subsection (3)*). An STB is also not authorised to do things for a commercial purpose regarding a person, if a statutory provision requires the STB to do those things (*subsection (4)*). The effect here is to ensure that an STB does not transfer functions to a commercial operator.

- 88 Where an STB does things for a commercial purpose it must do them through a company or a registered society (*subsection (5)*).

Section 102O: power to make provision supplemental to section 102M

- 89 This section allows the Secretary of State by regulations to make provisions preventing an STB from doing anything under the general powers section that is specified or described in the regulations.
- 90 Under *subsection (2)* the Secretary of State may, by regulations, provide for the exercise by STBs of the powers (as provided in the general powers section) to be subject to conditions, whether generally or in relation to doing anything specified or described in regulations. *Subsection (3)* provides that before making such regulations the Secretary of State must consult representatives of the STBs, local government and any other person the Secretary of State considers appropriate.
- 91 Under *subsection (4)* the Secretary of State is not required to consult where the regulations are made only for the purpose of amending earlier regulations, for example to extend earlier regulations, or any provision of the earlier regulations or so that the earlier regulations or any provision in the earlier regulations, cease to apply to an STB.

Section 102P: power of direction

- 92 This section allows the Secretary of State by regulations to give an STB power to give directions to a constituent authority about the exercise of transport functions by the authority. This direction will only be possible if it is relevant to the implementation of the STB's transport strategy.
- 93 *Subsection (3)* provides that regulations giving a power to direct may include provision (a) for the power to be given generally or subject to conditions or limitations; (b) for the power to apply to all transport functions or only to those functions specified or described in the regulations; (c) about the manner in which the directions are to be given; and (d) about the consequences if there is a contravention of a direction given.
- 94 *Subsection (4)* provides that regulations made about the consequences of contravention may include provisions enabling the STB to take any steps it considers appropriate to reverse or modify the effect of a constituent authority exercising a transport function in contravention of the direction and to recover any reasonable expenses incurred in taking those steps as a civil debt from the local authority.

Section 102Q: change to boundaries of an STB's area

- 95 This section allows the Secretary of State to make regulations to change the boundaries of an STB's area by (a) adding the area of a relevant authority to an existing STB area or (b) removing the area of a constituent authority from an existing STB area.
- 96 *Subsection (2)* provides that regulations may be made (a) only if the constituent authorities have together made a proposal to the Secretary of State for the change in boundaries; (b) in the case of regulations adding an area, only if authority joining the STB area joins in the making of the proposal; and (c) in the case of a constituent authority exiting an STB, only if the resulting area of the STB would still consist of the whole of two or more relevant authorities.
- 97 *Subsection (3)* provides that regulations changing the boundaries of an STB's area may only be

made if the Secretary of State considers that the new STB area would still facilitate the development and implementation of transport strategies for the area and economic growth in the area would still be furthered by the development and implementation of the STB's transport strategies.

- 98 By *subsection (4)* regulations may only be made with the consent of the STB but also the consent of the relevant authority whose area would be added to the STB.

Section 102R: change of name

- 99 This section sets out provisions which allow an STB to change its name by a resolution which is to be considered at a meeting of the STB convened for that purpose. The resolution must be included in the notice of the meeting and the resolution must be passed at the meeting by not less than two-thirds of the members of the STB who vote on it.
- 100 *Subsection (5)* requires an STB which changes its name under this section to (a) send notice of the change to the Secretary of State, and (b) publish the notice as the Secretary of State may direct. A change of name under this section does not affect the rights or obligations of the STB or render defective any legal proceedings (*subsection (6)*). Any legal proceedings may be commenced or continued as if there had been no change of name (*subsection (7)*).

Section 102S: incidental etc provision

- 101 This section enables the Secretary of State, by regulations, to make incidental, consequential, transitional or supplementary provisions in relation to regulations made under Part 5A. *Subsection (2)* allows regulations being made under Part 5A to make different provision for different STBs or otherwise for different purposes.
- 102 *Subsection (3)* allows the regulations under Part 5A to include provision for the transfer under the regulations of property, rights and liabilities. *Subsection (4)* provides that the regulations may include provisions (a) for the creation or imposition by the Secretary of State of new rights or liabilities regarding anything transferred under the regulations; (b) for the management or custody of transferred property; and (c) for bodies to make agreements with respect to any property, income, rights, liabilities and expenses of, and any financial relations between, the parties to the agreement.
- 103 *Subsection (5)* provides for a Henry VIII power. This provision allows the Secretary of State to make regulations to amend either primary or secondary legislation.

Section 102T: procedure for regulations under this Part

- 104 This section provides that regulations under Part 5A must be made by statutory instrument and for the affirmative resolution procedure to be used. *Subsection (3)* requires the Secretary of State to lay a report before Parliament at the time the draft statutory instruments are laid explaining the effect of the regulations and why the Secretary of State considers it appropriate to make the regulations.
- 105 *Subsection (3)* provides that the negative resolution procedure shall apply to regulations made under section 102J(4) and (5)(b); section 102K(4) and (5)(b); section 102O(1) for the purposes mentioned in section 102O(4)(b); and section 102O(2).
- 106 *Subsection (6)* disapplies the hybrid instrument procedure in respect of regulations under new Part 5A of the Local Transport Act 2008, which but for this subsection might otherwise be hybrid.

Section 102U: interpretation

- 107 This section provides definitions for Part 5A.

Commons Amendment 54: English National Park authorities: general power

Commons Amendment 54

- 108 **Commons Amendment 54** would insert a new clause into the Bill. The new clause inserts new sections 65A to 65D into the Environment Act 1995, to provide English National Park authorities (“NPAs”) with a clear function-specific power of competence. This will assist NPAs to fully engage in the negotiation and implementation of devolution deals.
- 109 New section 65A sets out the general powers and new section 65B the boundaries of those powers, largely mirroring the approach taken in section 13 of the Localism Act 2011 (which inserts section 113A into the Local Democracy, Economic Development and Construction Act 2009) in respect of combined authorities.
- 110 Section 65A(1) sets out the general powers, and subsection (2) enables English NPAs to work in cross-border partnerships. Subsection (3) makes it clear that the new powers are in addition to, and not limited by, existing powers. New section 65B(1) provides that the new powers do not override any existing restriction, and subsection (2) that they are subject to any subsequent restriction unless expressly exempted. Under subsection (3), any restrictions on existing powers will apply to the exercise of the new powers so far as they overlap. Subsection (4) continues the bar on NPAs borrowing money under general powers, which at present is contained in section 65(6)(b) of the Environment Act 1995, and subsection (5) makes it clear that the general powers do not authorise an NPA to charge for anything other than commercial services. Although existing specific powers will continue to allow charges for the provision of certain statutory services, subsection (6) makes it clear that the new general power cannot be used to charge for statutory services. In keeping with the parallel provisions in the Localism Act 2011, subsection (7) restricts NPAs to conducting commercial activities through a company or a registered society.
- 111 New section 65C(1) provides a power for the Secretary of State to make regulations limiting what an NPA may do under the general power, again mirroring the approach taken in the Localism Act 2011, as does subsection (2) in providing for regulations to attach conditions to the use of the powers. Before making such regulations, subsection (3) requires the Secretary of State to consult those she considers appropriate, including representatives of NPAs, and subsection (4) limits that requirement to where new provision is made.
- 112 New section 65D sets out the procedure for making regulations under new section 65C, subsection (2) providing that the affirmative procedure will normally apply. Subsection (3) sets out where the negative procedure will apply: where revoking certain regulations under section 65C; where regulations impose conditions on the doing of things for a commercial purpose; or where making incidental, supplementary or transitional etc. provision that does not entail amending an Act. Subsection (4) provides that in such instances the negative procedure would apply. Subsection (5) provides that no draft regulations under new section 65C would be caught under hybrid instrument standing orders of either House of Parliament.

Commons Amendments to Clause 22: Minor and consequential amendments

Commons Amendment 55

- 113 **Commons Amendment 55** would amend clause 22 to make it clear that in addition to the ability to make regulations to make changes to legislation that may be needed as a consequence of any

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of the provisions of the Bill, the Secretary of State also has the power to make regulations which make necessary changes following the making of secondary legislation under the powers in the Bill.

Commons Amendments to Clause 25: Short title

Commons Amendment 56

114 **Commons Amendment 56** would remove the amendment inserted by the Lords to avoid questions of privilege.

Commons Amendments to Schedule 1: Mayors for combined authority areas: Further provisions about elections

Commons Amendments 57 to 61

115 **Commons Amendments 57 to 61** would be technical amendments. **Amendments 57 and 58** would provide that any order-making power of the Secretary of State in the Bill that relates to electoral functions can be exercised concurrently by the Chancellor of the Duchy of Lancaster. This would bring the Bill in step with the mayoral election provisions for directly elected mayors in the Local Government Act 2000 and other local polls and ensure that there is consistency across local and national electoral provisions.

116 **Commons Amendment 59** would provide that, before an order is made under new Schedule 5B to the 2009 Act, the Chancellor of the Duchy of Lancaster must consult the Electoral Commission.

117 **Commons Amendments 60 and 61** would provide that the Chancellor of the Duchy of Lancaster can only make an order limiting the expenses that can be incurred during an election for the return of a mayor on the recommendation of the Electoral Commission, except where the Chancellor of the Duchy of Lancaster considers that it is expedient to exercise that power in consequence of changes in the values of money.

Commons Amendments to Schedule 2: Mayors for combined authority areas: Police and Crime Commissioner functions

Commons Amendment 62

118 **Commons Amendment 62** would make a minor drafting change to paragraph 1(1) of new Schedule 5C to achieve consistency with the language used in new section 107E(1) as inserted by clause 5 of the Bill. This ensures that police and crime commissioner (PCC) functions are referred to as “functions of a police and crime commissioner” throughout the Bill.

Commons Amendment 63

119 **Commons Amendment 63** would clarify that an order under made under new Schedule 5C to transfer the functions of a PCC to an elected mayor can be made at any time before the relevant mayor is first elected, and would also makes it plain that an order under Schedule 5C can be made subsequently to an order under new section 107E.

Commons Amendments 64 to 70 and 72

120 **Commons Amendments 64 to 70 and 72** would make minor drafting changes so that a deputy mayor appointed in respect of police and crime commissioner functions under paragraph 3 of new Schedule 5C is to be known as the “deputy mayor for policing and crime” (rather than “deputy PCC mayor”). This would be consistent with the position in London.

Commons Amendment 71

121 **Commons Amendment 71** would enable the Secretary of State by order to give a police and crime panel established under paragraph 4 of new Schedule 5C scrutiny functions over any general functions of the mayor where those functions are ones that the mayor has arranged for the deputy mayor for policing and crime to exercise under new section 107D(3)(c)(i) and also related functions. This will ensure that, where general functions of the mayor are delegated to the deputy mayor for policing and crime, the scrutiny of these functions (and any related functions) is exercised by the appropriate scrutiny body, namely the police and crime panel.

Commons Amendment 73

122 **Commons Amendment 73** would ensure that an order made under new Schedule 5C can make provision to prevent a person who is acting in place of a mayor with PCC functions from carrying out particular PCC functions such as issuing or varying a police and crime plan, consistent with the current position in respect of acting PCCs.

Commons Amendment 74: New Schedule (Amendments to the National Health Service Act 2006)

Commons Amendment 74

123 **Commons Amendment 74** (together with Commons Amendment 51) would insert a new Schedule into the Bill, which provides for amendments to the National Health Service Act 2006 (“the 2006 Act”). The amendments concern the making of arrangements by National Health Service bodies with combined authorities or local authorities for the exercise of health commissioning functions under the 2006 Act, as well as provision which may be made in regulations concerning local authority social care information. The Schedule would insert in the 2006 Act sections 13ZA, 13ZB, 14Z3A, and would amend sections 75 and 251 of that Act.

124 Sections 13ZA and 13ZB concern “devolved arrangements” for the exercise of functions of the NHS Commissioning Board which it may make with clinical commissioning groups and other prescribed bodies under section 13Z of the 2006 Act. Combined authorities, and local authorities may be prescribed under section 13Z. Sections 13ZA and 13ZB make provision for those authorities and clinical commissioning groups, amongst others, to be able to exercise functions of the Board jointly, subject to certain requirements, to do so via a joint committee, and to pool funds received under section 13Z arrangements. “Devolved arrangements” may relate to one or more of the functions of the Board: the Board may agree terms with its delegates or partners that permit payments out of pooled funds to be spent on any of its functions which are the subject of a single set of devolved arrangements. Section 13ZB makes particular provision in respect of functions of the Board under section 3B(1)(d) of the 2006 Act, requiring that section 13Z arrangements may only be made if they are “devolved arrangements” under section 13ZA and the Board considers it appropriate to make such arrangements having regard to specified considerations.

125 The new Schedule would further amend section 13ZA to clarify that “devolved arrangements”

may relate to one or more of the functions of the NHS Commissioning Board. The Board may agree terms with its delegates or partners that permit payments out of pooled funds to be spent on any of its functions which are the subject of a single set of devolved arrangements. It would also provide that the minimum membership of a joint committee exercising functions under section 13ZA must include one clinical commissioning group and one combined authority or local authority.

126 Section 14Z3A would make provision for one or more clinical commissioning groups to make arrangements to exercise their functions jointly with a combined authority.

127 Amendments to section 75 of the 2006 Act would make provision for the participation of combined authorities in partnership arrangements under that section where they exercise a function by virtue of voluntary arrangements (as defined).

128 Amendments to section 251 of the 2006 Act would clarify the existing regulation-making power to ensure that local authority social care information about individuals may, alongside health care patient data, be the subject of regulations controlling patient data.

Commons Amendments to Schedule 5: Minor and consequential amendments

Commons Amendment 75

129 **Commons Amendment 75** provides for consequential amendments of the Local Government Act 1972, including the following:

- It would amend that Act so that a committee put in place under section 107E of the 2009 Act, or a joint committee put in place under these provisions, will be subject to Part 5A of the Local Government Act 1972 which provides for access to meetings and documents.
- It would amend section 101 of that Act to provide that a combined authority may not arrange for the discharge of a mayoral function by a committee, a sub-committee or an officer of the authority, or by any other local authority. Only a mayor can make such an arrangement, and then only for the discharge of general mayoral functions by a joint committee under section 101(5) of the Local Government Act 1972.
- Finally, it would amend section 101 of that Act to provide that where a combined authority is exercising a function jointly through a joint committee, and that function becomes a general function of the mayor, those arrangements must cease. However, this does not preclude the mayor from deciding to exercise such a function jointly through a mayoral joint committee established under new section 107DA which is inserted into that Act by Commons Amendment 16.

Commons Amendment 76

130 **Commons Amendment 76** would be consequential on Amendment 26 which would amend the consent arrangements for regulations made under the Local Government Finance Act 1988 for combined authority levying.

Commons Amendments 77, 85 and 86

131 **Commons Amendments 77, 85 and 86** would make consequential amendments in legislation to insert references to an STB. **Commons Amendment 77** would also insert a consequential amendment arising out of Commons Amendment 54. The amendment of the Environment Act 1995 stops the existing general powers of National Park authorities under section 65(5)(b) of that

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Act from applying in England when the new powers come into force, but leaves in place the existing power in section 65(5)(a) to do anything which an NPA considers is calculated to facilitate or is conducive or incidental to the accomplishment of National Park purposes.

Commons Amendments 78 and 79

132 **Commons Amendments 78 and 79** are minor and technical amendments that would insert provisions which enable an order conferring local authority functions on a combined authority to specify that both authorities exercise the functions concerned jointly.

Commons Amendment 80

133 **Commons Amendment 80** would identify the representative councils which are required to appoint elected members as a member of the combined authority for the purpose of section 85(1)(c) of the Local Transport Act 2008, as applied in section 104 of the 2009 Act.

Commons Amendments 83 and 84

134 **Commons Amendments 83 and 84** are minor and technical amendments consequential on Amendments 57 to 61. They would provide that the Secretary of State's power to make an order under new Schedule 5B to the 2009 Act to be able to make incidental, consequential, transitional or supplementary provisions in relation to provisions about elections may be exercised concurrently by the Chancellor of the Duchy of Lancaster.

135 **Commons Amendment 84** would also clarify that criminal liabilities can be transferred on the same basis as other liabilities in connection with an order made under section 115 of the 2009 (transfer of property, rights and liabilities).

In the Title

Commons Amendment 87

136 **Commons amendment 87** would amend the long title of the Bill to incorporate a reference to establish and make provision regarding Sub-national Transport Bodies.