What these notes do

These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87).

- These Explanatory Notes have been prepared by the Department for Communities and Local Government 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.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.
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Overview of the Bill

1 The Bill is intended to support the delivery of the Government’s commitments as put forward in the Conservative Party manifesto and the productivity plan *Fixing the foundations: Creating a more prosperous nation*. Through this Bill, the Government aims to take forward proposals to build more homes that people can afford, give more people the chance to own their own home, and ensure the way housing is managed is improved.

2 This Bill seeks to achieve this, in part, by implementing reforms that will make sure that the planning system does not add any unnecessary obstacles to the delivery of new homes.

3 This Bill is made up of nine parts. A summary of these parts and their contents is provided below.

- **Part 1: New Homes in England**
  - Starter Homes – providing a statutory framework for the delivery of starter homes
  - Self-build and custom housebuilding – requiring local authorities to meet demand for custom-built and self-built homes by granting permissions for suitable sites

- **Part 2: Rogue landlords and property agents in England**
  - Private rented sector – providing greater powers for local authorities to identify and tackle rogue landlords and property agents.

- **Part 3: Recovering abandoned premises in England**
  - Private rented sector – reforming abandonment to more effectively recycle rented property

- **Part 4: Social housing in England**
  - Implementing the Right to Buy on a voluntary basis – enabling the Secretary of State to pay for the cost of Right to Buy discounts for housing association tenants and to set criteria for home ownership against which private registered providers may be monitored
  - Vacant high value local authority housing – requiring local authorities to manage their housing assets more efficiently, with the most valuable vacant properties sold to fund an increase in home ownership and overall housing supply
  - High income social tenants – requiring local authority tenants in social housing on higher incomes (over £40,000 in London and over £30,000 outside London) to pay a fairer level of rent. The policy will be voluntary for housing associations to operate
  - Secure tenancies etc. – requiring local authority landlords to grant new tenants a fixed term tenancy of between 2 and 5 years and restricting the rights of family members to succeed to local authority tenancies
  - Reducing regulation – allowing the Secretary of State to reduce
regulations on Housing Associations

- Special Administration Regime – allowing the Secretary of State or the regulator of social housing with the agreement of the Secretary of State to apply to the Court to appoint a special administrator for private registered providers of social housing that have become insolvent

- Part 5: Housing, estate agents and rentcharges: other changes

- Housing needs in England – simplifying the legislation governing the assessment of housing and accommodation needs of the community, whilst ensuring that the needs of all members of the community are assessed on an equal basis

- Regulation and enforcement – a more stringent ‘fit and proper’ person test for landlords letting out licensed properties, such as Houses in Multiple Occupation, to help ensure that they have the appropriate skills to manage such properties and do not pose a risk to the health and safety of their tenants; allowing financial penalties to be imposed as an alternative to prosecution for certain offences; requiring Tenancy Deposit Scheme data to be shared with local authorities; and amending the Estate Agents Act 1979 to allow the Secretary of State to appoint the lead enforcement authority

- Enfranchisement and extension of long leaseholds – making provision for the valuation of minor intermediate leasehold interests in leasehold enfranchisement and lease extension cases to continue to be possible when using the legislation

- Rentcharges – allowing the formula for calculating the amount needed to redeem a rentcharge to be amended by secondary legislation

- Part 6: Planning in England

- Neighbourhood planning – simplifying and speeding up the neighbourhood planning process to support communities that seek to meet local housing and other development needs through neighbourhood planning

- Local planning – giving the Secretary of State more flexible powers to intervene if Local Plans are not effectively delivered

- Planning in Greater London – devolving further powers to the Mayor of London

- Local registers of land and permission in principle – creating a duty for local authorities to hold a register of various types of land, with the intention of creating a register of brownfield land to facilitate unlocking land to build new homes; and giving housing-led sites identified in the brownfield register, local and neighbourhood plans ‘permission in principle’, and providing an opportunity for applicants to obtain permission in principle for small sites
These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)

- Planning permission etc – amending the power which enables conditions to be attached to development orders for building operations so that they are consistent with those for change of use; extending the planning performance regime to apply to smaller applications; putting the financial benefits of proposals for development before local authority planning committees; and simplifying the process for making changes to planning application fees that affect some authorities but not others

- Planning obligations and affordable housing – allowing the Secretary of State to place restrictions or conditions on the enforceability of planning obligations relating to the provision of affordable housing

- Resolution of disputes about planning obligations – providing for the Secretary of State to appoint a person to help resolve outstanding planning obligations issues within set timeframes

- Nationally significant infrastructure projects – allowing developers who wish to bring forward applications for housing relating to a major infrastructure project to apply for consent under the nationally significant infrastructure planning regime

- Processing of planning applications – allowing the Secretary of State to introduce, by regulations, pilot schemes to test the benefits of introducing competition in the processing (but not determination) of applications for planning permission

- Urban development corporations – creating a faster and more efficient process for creating Urban Development Areas and Corporations whilst ensuring that those with an interest locally are properly consulted at an early stage

- Part 7: Compulsory purchase etc
  - Taking steps to improve the compulsory purchase regime, and make it clearer, fairer and faster

- Part 8: Duty to Dispose
  - Engagement in relation to disposal of land – creating a duty on Ministers of the Crown to engage with local authorities when preparing to dispose of land
  - Duty to report on surplus land – requiring relevant public authorities to prepare reports specifying land which they have retained as surplus for longer than two years; or, in the case of property which is wholly or mainly residential property, longer than six months. In each instance, the report must set out the body’s reasons for retaining the surplus land
  - Power to direct bodies to dispose of land – building on existing powers for the Secretary of State to direct bodies to dispose of land. Adding further circumstances under which this power may be exercised
○ Reports on efficiency and sustainability of local government estate – creating a new duty on local authorities to prepare an annual report on the efficiency and sustainability of buildings within their estate, including progress towards reducing the size of the estate and efficiency ratings of individual buildings

○ Reports on efficiency and sustainability of military estate – creating a new duty on the Minister for Cabinet Office to prepare an annual report on the efficiency and sustainability of buildings within the military estate, including progress towards reducing the size of the estate and efficiency ratings of individual buildings

- Part 9: General

Policy background

Home ownership

4 In England most of the available data shows that the aspiration to buy and own a home remains strong for the majority of households. Three fifths (61%) of private renters and around a quarter (25%) of social renters in the U.K. think they will eventually buy their own home. This desire to achieve homeownership is also reflected in the latest British Social Attitudes survey which reported that 86% of people want to own their own home (https://www.gov.uk/government/statistics/english-housing-survey-2013-to-2014-household-report).

5 Around two thirds of social renters (68%) and three fifths (60%) of private renters stated, as their main or only reason for why they don’t expect to buy their own home in the U.K., that they would be unable to afford it.

6 The proportion of English households that owned their own home, either outright or with the help of a mortgage peaked in 2003 (71%) and has been falling ever since then (https://www.gov.uk/government/statistics/english-housing-survey-2013-to-2014-household-report). By 2013-14 only 63% of households owned their own home.

7 Within this trend, the change in the chances of becoming a homeowner has disproportionately affected younger households. Of those households that do own their home 75% are over the age of 45 and nearly half (48%) of households in the 25-34 age group live in the private rented sector (only 21% were renting privately in 2003-04). In the last twenty years, the proportion of under-40 year-olds who own their own homes has fallen from 62% to 41% (https://www.gov.uk/government/statistics/english-housing-survey-2013-to-2014-headline-report), and, in 2014, the Office for National Statistics (ONS) reported that 3.3 million people between the ages of 20 and 34 were still living with their parents (accounting for 26% of the age group).

8 The number of first-time buyers since the financial crash of 2007-08, as measured by the number of mortgages issued to first-time buyers, has fallen significantly. Throughout the 1980s and 1990s the number of mortgages to this group averaged over 400,000 per year (https://www.cml.org.uk/news/723/) but between 2008 and 2014 the average annual number of loans has been fewer than 300,000.

9 In its manifesto the Government committed to "build more homes that people can afford, including 200,000 starter homes exclusively for first-time buyers under 40". The Bill will
require local planning authorities to actively promote the development of starter homes for first-time buyers under 40. Starter homes will be sold at 20% below the market price to provide the opportunity for more young, first-time buyers to get onto the housing ladder.

10 The Government also announced its intention to extend the Right to Buy to the tenants of housing associations in its manifesto. Working with the National Housing Federation, the Government has secured an agreement with housing associations to give their tenants the opportunity to buy their home with an equivalent discount to the Right to Buy.

11 Homes sold to tenants under this agreement will be replaced on a one for one basis nationally using the proceeds from the sale of the property. This seeks to support an increase to the overall supply of new housing.

12 The Government will compensate the housing association for the discount offered to the tenant, and housing associations will retain the sales receipt to enable them to reinvest in the delivery of new homes.

Housing supply and the speed of delivery

13 Following the financial crisis, housebuilding in England fell to its lowest point in the post-war era. Since 2010-11, where completions totalled 108,000, the number of new homes built in England has been on the rise, reaching 125,000 completions in the financial year 2014-15 (https://www.gov.uk/government/collections/house-building-statistics). But this number is far short of the number estimated that is required to keep up with the existing demand, with the figure in some cases ranging from 200,000 to 300,000 per year.

14 The difference in the supply of new homes and the demand for new homes has implications for cost. At present, one of the main obstacles to home ownership in England is affordability. As of July 2015, according to the ONS average mix-adjusted house prices in England stood at £295,000, up 5.6% on the previous year. London also continued to be the English region with the highest average house price at £525,000.

15 This Bill intends to put in place various measures to ensure that housebuilders and decision-makers in local authorities have the tools necessary to support and promote an increase in housing supply and at a quicker pace. It will also put forward a number of reforms that are aimed at streamlining the planning system to help speed up the delivery of housing.

New tools for housebuilders and decision-makers

16 The Government made a commitment to get planning permission in place on 90% of brownfield land suitable for housing by 2020. The Bill aims to support the development of brownfield land by requiring local authorities to prepare, maintain and publish local registers of specified land.

17 The Bill seeks to enable permission in principle to be granted for housing-led development on sites chosen and allocated by local authorities, parish and neighbourhood groups within Development Plan Documents, Neighbourhood plans and the brownfield register. It seeks to allow development on suitable sites to proceed quicker by ensuring that in principle matters are agreed upfront.

18 In line with Government’s commitment to devolution, this Bill will devolve further planning powers to the Mayor of London. This is intended to ensure that London’s housing supply is fully considered, particularly in those areas where it would have the most impact.

19 To ensure that the public are aware of the potential financial benefits of planning applications, the Bill will require that prescribed financial benefits, which might accrue to the local area as a
result of granting planning permission, are recorded in reports to planning committees and the authority itself. It also seeks to simplify the process for making any changes to planning application fees that affect some authorities but not others, while retaining a robust system of Parliamentary oversight.

20 In March 2015 Parliament passed the Self-build and Custom Housebuilding Act 2015. The Act, which has not yet been brought into force, will require local planning authorities to compile a register of persons seeking to acquire land to build or commission their own home and to have regard to that register when carrying out their planning, housing, land disposal and regeneration functions. These requirements are expected to come into force in Spring 2016, once the necessary secondary legislation has been passed. The Housing and Planning Bill will go further and require local planning authorities to ensure that there are sufficient serviced permissioned plots consistent with the local demand on their custom build registers. This intends to make it much easier for people to find land to build or commission their own home, diversifying housing supply and revitalising smaller builders who have not experienced the same level of recovery as the large housebuilders since the financial crisis.

21 Since 2012, developers putting forward applications for major development have been able to submit these applications to the Planning Inspectorate for decision should the local planning authority not make a decision on time. This has seen the number of major applications decided on time increase to 79% in July to September 2015, compared with 57% in July to September 2012, when the designation approach was first introduced. This Bill will allow planning applications for non-major development to be submitted to and decided by the Planning Inspectorate where the local planning authority has a track record of very poor performance in the speed or quality of its decision-making.

22 This Bill will also take forward the Government’s commitment to require local authorities to manage their housing assets more efficiently. Local authorities will be required to make a payment to the Secretary of State based on the value of their vacant high-value housing. These payments would be used to help support people into home ownership, including funding discounts for housing association tenants’ Right to Buy. The value of this housing will also be used to fund the building of new homes to meet housing need.

23 At present planning authorities may be delayed while an Urban Development Corporation is established. This is in part due to the uncertainty of the timescales associated with the Parliamentary process. This Bill will therefore change the procedure to allow Urban Development Corporations and Areas to be established through negative resolutions. The Government also intends to ensure through the Bill that people with an interest locally are properly consulted at an early stage before any Urban Development Corporation is established.

24 Local Plans are the primary basis for identifying what development is needed in an area. Where there is no Local Plan, there is less certainty of where development will take place. Whilst the Secretary of State can intervene, he is required to take over plan-making in its entirety with decisions made in Whitehall. The Government will therefore allow more targeted and proportionate intervention, allowing the majority of local decisions to remain at the lowest appropriate level whilst ensuring a local plan is in place.

Streamlining the planning system

25 Effective regeneration of areas, which could comprise of considerable amounts of new housing, often requires the compulsory purchase of land or property. The existing process remains too convoluted and complex. This Bill will therefore streamline the process, make powers of entry for survey fairer and more consistent, widen the remedies available to the Courts to allow faster reconsideration in some cases, ensure possession of acquired land is
These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)

made easier, improve how compensation is paid, and harmonise procedures for settling disputes about material detriment.

26 The Secretary of State cannot currently grant approval for housing as part of an application for a nationally significant infrastructure project, submitted under the Planning Act 2008. This means either temporary accommodation for workers must be demolished once construction is completed, or a separate planning application has to be made. This Bill changes the approval system to allow developers to include an element of housing as part of their application for consent for an infrastructure project deemed of national significance.

27 On average, the neighbourhood planning process takes two years to complete. This Bill is intended to reduce this by introducing powers to allow automatic decisions on the designation of whole parish areas (or other types of area after a set time period), introducing time periods for making key decisions by the local planning authority, and allowing the Secretary of State to intervene on the decision to send a plan to referendum. The Bill will also allow neighbourhood forums to request notification of planning applications in their area, with the intention of enabling them to participate more effectively in local planning and promote appropriate new development.

28 Currently, local authorities can only consider approval of matters related to the siting and design of buildings where permission is granted under permitted development rights for the erection, extension, or alteration of any buildings. This Bill will widen the range of matters which a development order may allow local authorities to consider in a prior approval for building operations. Any permitted development rights to allow for building operations would be expected to reduce planning application costs.

29 Planning obligations can help mitigate the impact of development to make it acceptable in planning terms. The negotiation of such obligations can become protracted. The Bill provides for the Secretary of State to appoint a person to help resolve outstanding issues about planning obligations, and requires that person to produce a report to set timeframes setting out steps taken to resolve those issues and, where issues have not been resolved, recommendations. This is intended to help speed up the negotiation of such obligations. This Bill also allows the Secretary of State, through regulations, to place restrictions or conditions on the enforceability of obligations relating to affordable housing.

30 Implementing alternative delivery models, such as outsourcing and shared services, are common for some local authority services but less so for planning services. Choice for the user also has an important part to play in the provision of effective public services. The Bill will allow the introduction of pilot schemes to test the benefits of introducing competition in the processing (but not determination) of applications for planning permission.

Housing management

31 This Bill also intends to improve the housing system and the way it is managed. The Bill intends to ensure that social homes support those most in need. Protections for private tenants will be introduced so that they know that rogue landlords will be tackled and forced to improve or leave the sector, stopping them profiting from dangerous or badly managed properties. Local authorities will be equipped with greater tools to know and meet the housing need in their area.

32 Social housing is let at low rents on a secure basis to those in housing need. However, there are approximately 350,000 social rented tenants (across the local authority and housing association sectors) with household incomes over £30,000 per annum, including over 40,000 with incomes in excess of £50,000 per year. The Bill aims to more closely link social housing rents to the income of social tenants.
Since 2012, local authorities have been able to grant flexible tenancies but they are not taking advantage of this flexibility. Instead, the majority of council tenancies continue to be granted on a ‘lifetime’ basis meaning that tenants have the right to live in their social home for the rest of their life (provided they keep to the conditions of their tenancy), regardless of how the household’s circumstances change in the future. The Bill ensures that local authorities can generally only grant new social tenancies of between 2 and 5 years and must carry out a review of the household’s circumstances at the end of the fixed term. It also ensures that family members who succeed to a lifetime tenancies may only be granted a 5 year tenancy.

There are a small number of rogue or criminal landlords who knowingly rent out unsafe or substandard accommodation. The Bill introduces a number of measures to give local authorities tools to ban rogue landlords or property agents, preventing them from exploiting more tenants.

Local authorities have a duty to review housing conditions so they can take action to improve them. However, they frequently have a limited picture of the size and scale of the private rented sector in their area. Through this Bill the Government intends to allow them access to data relating to nearly 3 million tenancy deposits, which is estimated to cover over 70 per cent of private rented sector properties.

Section 8 of the Housing Act 1985 requires every local housing authority to review the housing conditions and the needs of their district. Currently, the Housing Act 2004 identifies ‘gypsies and travellers’ as requiring specific assessment for their accommodation needs when carrying out reviews of housing needs. As part of this Bill the Government seeks to amend the Housing Act 2004 governing the assessment of accommodation needs to include all people residing in or resorting to the district in caravans or houseboats.

Rentcharges are an annual sum paid by the owner of freehold land to another person who has no other legal interest in the land. The means by which payments are calculated can no longer be used. The Government will therefore replace the redeemed Gilt used in the formula.

The current Lead Enforcement Authority for the Estate Agents Act 1979 is named in primary legislation as Powys County Council. Should it fail to secure a further contract, the Lead Enforcement Authority would be unable to exercise its powers. The Bill enables the Secretary of State to appoint an authority of his choice.

This Bill intends to reduce the regulatory controls for private registered providers of social housing to increase the freedoms of registered providers to manage their housing stock while maintaining protections for tenants and the viability of the sector. The Bill also introduces a Special Administration Regime for private registered providers of social housing that have become insolvent.

Land management

Government has committed to release public land with capacity for at least 160,000 homes and raise at least £5 billion from land and property disposals over this Parliament. Government is demonstrating its commitment to engaging with local authorities by introducing a new duty to engage.

To incentivise public authorities to release surplus land in a timely manner, this Bill introduces a new duty to report on surplus land is being introduced. This is a transparency measure, ensuring that when bodies retain surplus land for a specified period that they publish details, including their reasons for retaining that land.

The Bill will build on existing powers contained in the Local Government, Planning and Land Act 1980 for the Secretary of State to direct a body to dispose of land under certain
circumstances. The Bill makes provision for this power to be exercised under a broader set of circumstances.

43 The Climate Change Act 2008 requires the Minister for Cabinet Office to publish an annual report on the efficiency and sustainability of the central civil estate. The Bill applies similar requirements in respect of local government buildings and military estate buildings. Such reports will set out the progress made by the reporting body on reducing the size of its estate, and its performance on sustainability of its buildings.

**Legal background**

44 The legislation which this Bill amends is set out in a number of Acts of Parliament. This legislation is referred to below. Further explanations, where required, are set out in the section-by-section commentary.

45 The principal planning Act is the Town and Country Planning Act 1990 ("1990 Act"). This Bill amends the 1990 Act, as well as the following other planning legislation:

   a. the Local Government, Planning and Land Act 1980, which makes provision in respect of enterprise zones and urban development corporations;
   b. the Planning (Listed Buildings and Conservation Areas) Act 1990 concerning special controls of buildings and areas of special historic or architectural interest;
   c. the Planning and Compulsory Purchase Act 2004 which brought about changes to the development plan system and to planning control;
   d. the Planning Act 2008 in relation to nationally significant infrastructure projects.

46 Rentcharges are dealt with in the Rentcharges Act 1977; this Bill amends sections 8 and 9 of that Act. The Estate Agents Act 1979 sets out provisions concerning Estate agents. This Bill inserts a new section 24A into that Act, and amends section 33.

47 This Bill also amends the following legislation which makes provision concerning housing, including social housing:

   a. the Housing Act 1985;
   b. the Housing Act 1988;
   c. the Local Government and Housing Act 1989;
   d. the Housing Act 1996;
   e. the Housing Act 2004;
   f. the Commissioners for Revenue and Customs Act 2005; and
   g. the Housing and Regeneration Act 2008.

48 The main legislation relating to compulsory purchase, which this Bill amends, is as follows:

   a. the Land Compensation Act 1961;
   b. the Compulsory Purchase Act 1965;
   c. the Land Compensation Act 1973;
   d. the Acquisition of Land Act 1981; and
These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87).

49 The Bill amends the Local Government, Planning and Land Act 1980, Part 10 of which deals with land held by public bodies. The sustainability and efficiency of the central government estate is dealt with by the Climate Change Act 2008; the Bill contains provisions which amend that Act.

**Territorial extent and application**

50 Clause 191 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.

51 The Bill applies mainly to England only, with some exceptions. In particular:

- Clauses 122 and Schedule 10 (leaseholds), clause 123 (rentcharges), Part 7 and schedules 14 to 19 (Compulsory purchase) and clauses 185 and 187 (Public Authority Land) apply to England and Wales;
- Clauses 183 and 184 (Public Authority Land) apply to England, Wales and Scotland;
- Clause 121 (Estate Agents), Part 4 of Chapter 5 and Schedules 5 and 6 (Insolvency of Registered Providers of Social Housing) and clause 187 apply to the whole of the UK.

52 More detailed information about the extent and application of the individual provisions of the Bill can be found in Annex A.

**Commentary on provisions of Bill**

**Part 1: New Homes in England**

**Chapter 1: Starter Homes**

**Clause 1: Purpose of this Chapter**

53 This clause sets out the purpose of this chapter, which is to promote the delivery of starter homes.

54 There are two main duties in this chapter: a general duty to promote the supply of starter homes when planning functions are being carried out, and a specific duty in relation to decisions on planning applications.

**Clause 2: What is a starter home?**

55 This clause explains what a starter home is, and enables the Secretary of State to make regulations about the definition of a starter home.

56 A starter home is a new dwelling which is only available for purchase by qualifying first-time
buyers and which is made available at price which is at least 20% less than the market value.

57 The clause sets out the essential characteristics of a qualifying first-time buyer which includes that they are a first-time buyer (which is separately defined in the clause by reference to the definition in section 57AA(2) of the Finance Act 2003) and that they are under the age of 40. Section 57AA(2) provides that a first-time buyer is a person who has not previously acquired freehold or leasehold residential property in the U.K., or its equivalent in Scotland or elsewhere, and who has not previously purchased property under alternative finance arrangements. The Secretary of State may also, through regulations specify additional characteristics (e.g. minimum age or nationality) that a first-time buyer must have.

58 This clause also specifies a maximum price that a starter home may be sold to a first-time buyer: the price cap is £250,000 outside Greater London and £450,000 in Greater London. That price cap reflects the published proposed maximum threshold for the Help to Buy ISA. The Secretary of State can through regulations amend these price caps and set different price caps for different areas.

59 The Secretary of State can, through regulations, place restrictions on the sale and letting of starter homes. The purpose of such restrictions would be to ensure that starter homes are purchased by people who wish to own their home rather than by people who wish to use the property for rental investment or short-term speculation.

Clause 3: General duty to promote supply of starter homes

60 This clause requires all planning authorities in England (which for these purposes includes the Secretary of State) to promote the supply of starter homes when carrying out relevant planning functions. These functions include, for instance, preparing local plans, cooperating with neighbouring areas on strategic planning matters, and determining planning applications.

61 Local planning authorities will also have to have regard to any guidance issued by the Secretary of State about the exercise of this duty.

62 The Secretary of State may amend the definition of ‘planning authority’ and ‘relevant planning function’ through regulations.

Clause 4: Planning permission: provision of starter homes

63 This clause contains a new duty that applies to decisions on planning applications. This follows the announcement in the Government’s Productivity Plan published in July 2015. This new requirement, to be brought into force by regulations, is intended to ensure that starter homes become a common feature of new residential developments across England.

64 This clause provides that an English planning authority (which is either a local planning authority or the Secretary of State) will only be able to grant planning permission for certain residential developments if specified requirements relating to starter homes are met.

65 These requirements are to be set out in regulations. The requirements could include the provision of a particular number or proportion of starter homes on site or the payment of a commuted sum to the local planning authority for the provision of starter homes. The Secretary of State will have flexibility to apply different requirements to different types of residential developments and to different areas, including conferring discretions on local planning authorities.

66 For example, the clause would enable the Secretary of State, through regulations, to require all that in relation to applications for residential development above a certain size there must be a planning obligation (under section 106 of the 1990 Act) securing a certain proportion of starter homes on the site.
67 The regulations may also specify that certain types of residential development should be exempt, or that certain areas should have a higher starter home requirement, or that local planning authorities should have discretion about certain requirements.

Clause 5: Monitoring
68 This clause requires a local planning authority to prepare reports about the actions they have taken under the starter homes duties in this Chapter. This will provide transparency about how a local planning authority is delivering starter homes in its area.

69 These reports must be made available to the public, and the Secretary of State can make regulations about the form, content and timing of the report, including whether they should combined with the existing statutory Authority Monitoring Report for local plans.

Clause 6: Compliance directions
70 If a local authority is failing to comply with its starter homes duties and has a policy contained in a local development document which is incompatible with these duties then the Secretary of State may make a compliance direction directing that the incompatible policy should not be taken into account when certain planning decisions are taken.

71 The compliance direction must set out the Secretary of State’s reasons for making the compliance direction and must be published.

Clause 7: Interpretation of this Chapter
72 This clause is self-explanatory.

Chapter 2: Self-Build and Custom Housebuilding

Clause 8: Definitions
73 This chapter amends and supplements the duties placed on local authorities under the Self-build and Custom Housebuilding Act 2015 (“the 2015 Act”). The 2015 Act introduced new duties on local authorities to keep, and have regard to, registers of people seeking land for self-build and custom housebuilding. Those duties will be brought into force through regulations.

74 This clause explains what is meant by “self-build and custom housebuilding” by inserting new definitions and making related amendments. It also substitutes the existing definition of “serviced plot of land” and enables the Secretary of State to amend that definition through regulations. The definitions are self-explanatory.

Clause 9: Duty to grant planning permission etc
75 This clause inserts a new duty into the 2015 Act. It requires local authorities to grant sufficient suitable development permissions on serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The demand for self-build and custom housebuilding is evidenced by the number of people on the register held by local authorities under the 2015 Act.

76 The Secretary of State has a power to make regulations to prescribe the timeframe in which authorities have to grant sufficient suitable development permissions.

77 A “development permission” includes both planning permission (as defined under the 1990 Act) and permission in principle. Permissions granted by the Secretary of State or the Mayor of London are also counted. Any permission can only be counted once. A permission
The Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87).

78 A development permission is “suitable” where it authorises development that could include self-build and custom housebuilding on those plots.

**Clause 10: Exemption from duty**

79 This clause enables the Secretary of State to make regulations about how and when authorities can apply for an exemption from the new duty.

80 Those regulations can specify the information that must be supplied by anyone asking for an exemption. That information might include, for example, details about the level of demand for self-build and custom housebuilding and the availability of land for housing.

**Clause 11: Further and consequential amendments**

81 This clause makes three further changes to the 2015 Act.

82 The first change relates to the obligation to keep a register under the 2015 Act. This clause enables the Secretary of State to provide, in regulations, for the register to have two parts. The second part would be for anyone who had applied to be registered but who failed to meet conditions of eligibility (for example, local authorities might introduce a requirement that a person must have a connection to the local area before they can be registered). Demand as evidenced by the second part of the register would not have to be taken into account in considering whether there were sufficient suitable development permissions. However, authorities would have to have regard to the second register in the exercise of their planning, housing, regeneration and land disposal functions accordance with the provisions of section 2 of the 2015 Act.

83 The second change is about fees. It enables the Secretary of State to provide, through regulations, that local authorities can recover fees connected with their duty to provide sufficient suitable development permissions. It also enables the Secretary of State to specify, through regulations, circumstances in which no fee is payable. It is expected that the fees will be set at a level that broadly reflects the actual costs incurred by the authority.

84 The final change is to section 4 of the 2015 Act and specifies the parliamentary procedures to which the new regulation making powers will be subject. This confirms that regulations made in connection with the new duty and regulations made to change the definition of “serviced plot of land” will be subject to the affirmative procedure.

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**Part 2: Rogue Landlords and Property Agents in England**

**Chapter 1: Introduction**

**Clause 12: Introduction to this Part**

85 This clause introduces the provisions about rogue landlords and property agents.

**Chapter 2: Banning Orders**

*Banning orders: key definitions*

*These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)*
Clause 13: "Banning order" and "banning order offence"

86 This clause introduces the concept of a banning order, which is an order made by the First-tier Tribunal, which has the effect of banning a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;
- engaging in property management work that relates to housing in England; or
- doing two or more of those things;
- being involved in a company that carries out activities from which the person is banned.

87 The clause also introduces the concept of a “banning order offence” and provides the Secretary of State with the power to make regulations describing the offences which are to be banning order offences.

88 In particular, regulations made by the Secretary of State may describe an offence by reference to the nature of the offence, characteristics of the offender, the place where the offence is committed, the circumstances in which it is committed, the sentencing court or the sentence imposed.

Imposition of banning orders

Clause 14: Application and notice of intended proceedings

89 This clause provides that a local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence (as defined in clause 13 above). Where a banning order application is made in relation to a company, the local housing authority must also make an application for a banning order against any officer of the company who was convicted of the same offence as the company. Before applying for a banning order, the authority must give the person in relation to whom it is proposed to make a banning order a notice of intended proceedings, informing them that the authority is proposing to apply for a banning order for a specified period of time and explaining why, and inviting them to make representations during a ‘notice period’, which must not be less than 28 days. The authority must consider any representations made during the notice period and wait until this period has ended before applying for a banning order. A notice of intended proceedings must be given within 6 months from the date on which the person is convicted of a banning order offence.

Clause 15: Making a banning order

90 This clause provides that the First-tier Tribunal may make a banning order against a person who has been convicted of a banning order offence and was a residential landlord or property agent at the time that offence was committed.

91 A banning order can only be made on the application of a local housing authority, where that authority has complied with the provisions regarding a service of a notice of intended proceedings, as set out in clause 14.

92 The requirement to comply with clause 14 does not apply where the application is made in respect of an officer of a company convicted of the same offence as the company, as in that case the local authority is required to apply for the banning order against the officer if also seeking
one against the company which would be served with a notice of intended proceedings. The clause provides that in deciding whether to make a banning order and if so, what order to make, the Tribunal must consider:

- the seriousness of the offence;
- any previous convictions that the person has for a banning order offence;
- whether the person is or ever was included in the database of rogue landlords and property agents (as described in clause 27);
- the likely effect of the banning order on the person against whom the banning order is proposed to be made and anyone else who may be affected by such an order.

**Clause 16: Duration and effect of banning order**

This clause requires a banning order to specify the duration of the ban in respect of each of the activities that the person is banned from doing, including being involved in certain companies (see clause 17). A ban must last for a period of at least 12 months. The clause also provides that a banning order may contain exceptions to the ban for some or all of the period to which it relates. This may, for example, allow a landlord to continue letting out a property for a period of time whilst subject to a banning order if there are existing tenants in a property and the landlord cannot end these tenancies immediately. An exception could also allow a property agent to wind down current business.

**Clause 17: Content of banning order: Company involvement**

This clause provides that when making a banning order against a person, the First-tier Tribunal may also make an order prohibiting that person from acting as an officer of a company that carries out activities from which the person is banned or from being involved directly or indirectly in the management of such a company.

**Clause 18: Power to require information**

This clause provides that a person may be required to give specified information to the local housing authority so it can decide whether to apply for a banning order against that person. It further provides that it is an offence, punishable by way of a fine, to fail to provide the required information or to provide information that is false or misleading. Such information might, for example, include information about the properties that a person owns.

**Clause 19: Revocation or variation of banning order**

This clause permits a person who is subject to a banning order, to apply to the First-tier Tribunal for the order to be revoked or varied, in certain circumstances. Those circumstances are that one or more of the convictions for banning order offences have been overturned on appeal or one or more of those convictions have become spent (defined by reference to the Rehabilitation of Offenders Act 1974 which provides that convictions may become spent following a specified period of time). Where all convictions have been overturned the Tribunal must revoke the order. In any other case the Tribunal may revoke or vary the order. A variation of a banning order may relate to the activities from which the person is banned, the existing exceptions to that order or its length.

**Consequences of banning order, including consequences of breach**

These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)
**Clause 20: Offence of breach of banning order**

97 This clause provides that it is an offence to breach a banning order i.e. to undertake or be involved in activities that the person is banned from. A person who is convicted of breaching a banning order is liable to a term of imprisonment (see subsections (2) and (4)) or a fine. A person may not be convicted of an offence if they have incurred a financial penalty imposed upon them in relation to the same conduct under clause 22.

**Clause 21: Offences by bodies corporate**

98 This clause provides that if a breach of a banning order is committed by a company and it is proved that the breach was committed with the approval or connivance of an officer of the company, or is attributable to that person’s negligence, then the officer as well as the company commits the offence and the officer is liable to punishment for the offence.

**Clause 22: Financial penalty for breach of banning order**

99 This clause sets out that a “responsible local housing authority” may impose a financial penalty if it is satisfied that a person’s conduct amounts to an offence of breaching a banning order. The financial penalty can be imposed by the local housing authority in whose area the offence was, or is being, committed. The local authority may determine the amount of the penalty but this may not exceed £30,000. A person cannot be liable to a financial penalty if the person has been convicted of an offence in respect of the same conduct or where criminal proceedings for that offence have begun (but not concluded).

100 A local housing authority must have regard to any guidance issued by the Secretary of State about the exercise of its functions under this section or under Schedule 1. Schedule 1 sets out the procedure to be followed by a local authority where it imposes a financial penalty on a person for a breach of a banning order.

101 The clause also enables the Secretary of State to make regulations:

- setting out how local housing authorities are to deal with the money recovered through financial penalties; and
- amending the maximum amount of penalty to be charged, to reflect changes in the value of money over time.

**Schedule 1: Financial penalty for breach of banning order**

102 This Schedule sets out the procedure to be followed by a local authority where it imposes a financial penalty on a person whose conduct amounts to an offence of breaching a banning order.

103 Before imposing a financial penalty on a person, the local authority must give that person notice of their intention to do so. This notice must be given within a period of 6 months, beginning with the first day on which the authority has evidence of the person’s breach of the banning order. The notice must set out the amount of the penalty, the reasons for imposing the penalty and information about the right to make representations.

104 A person who is given a notice of intent may make representations to the local authority within 28 days, beginning with the day after the day on which the notice was given. After the end of the period for representations, the local authority will decide whether or not to impose a financial penalty and if it decides to do so, must decide the amount of the penalty.

105 If the local authority decides to impose a penalty, it must give the person a final notice imposing the penalty. The final notice must require payment of the penalty within 28 days, beginning with the day after the notice was given and must set out certain information,
including the amount of penalty, how to pay, the rights of appeal and consequences of failing to comply with the notice.

106 A local authority may at any time withdraw a notice of intent or a final notice. The authority may also reduce the amount specified in a notice of intent or a final notice. The person who has received the notice must be notified in writing of any such withdrawal or reduction.

107 A person to whom a final notice is given may appeal to the First-tier Tribunal against the decision to impose the penalty or against the amount of the penalty. If a person makes an appeal, the final notice is suspended until the appeal is determined or withdrawn. Following an appeal, the First-tier Tribunal may confirm, vary or cancel the final notice. However, the notice may not be varied so as to increase the financial penalty by more than the amount that the local authority could have imposed.

108 If a person fails to pay all or part of the financial penalty, the local authority may recover the penalty or part of it on the order of the county court, as if it were payable under an order of that court.

Clause 23: Saving for illegal contracts

109 This clause provides that a breach of a banning order does not invalidate or affect the enforceability of any provision of a tenancy or other contract. In particular, this is to ensure that a tenancy agreement cannot be found to be invalid on the basis that it was granted when a landlord or property agent was subject to a banning order. This provides protection for the parties to a tenancy agreement by ensuring that they do not lose their rights under the agreement as a result of the banning order.

Clause 24: Banned person may not hold HMO licence etc

110 This clause introduces Schedule 2, which makes changes to the provision in Parts 2 and 3 of the Housing Act 2004 about the granting and revoking of licences where a banning order has been made.

Schedule 2: Banned person may not hold HMO licence etc

111 This Schedule makes amendments to the Housing Act 2004 to provide that where a banning order has been made against a person they are not a fit and proper person for the purposes of the HMO licensing requirements, under section 64(3)(b) or (d) of that Act. A licence may also not be granted in relation to a property where a person who owns an interest in that property is subject to a banning order. A local housing authority is also required to revoke a licence under Part 2 or Part 3 of the Housing Act 2004 if a banning order is made against the licence holder, or against a person who owns an interest or estate in the house and is a lessor or licensor of that house. Amendments are made to Schedule 5 of the Housing Act 2004 to provide that there is no right to make representations to the local authority or right of appeal to the First-tier Tribunal where a licence is refused or revoked due to a banning order.

Clause 25: Management orders following banning order

112 This clause introduces Schedule 3, which makes amendments to the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

Schedule 3: Management orders following banning order

113 This Schedule makes changes to provisions in Part 4 of the Housing Act 2004 which deal with the making of interim and final management orders by local authorities. Local authorities are currently able to make management orders to allow them to take over control of the running of a property in certain situations, such as where a property is unlicensed and a suitable licence...
holder cannot be found. The amendments made by this Schedule provide an additional circumstance in which a management order can be made, which is that a property is let in breach of a banning order. In this circumstance a local authority may decide to make a management order for example if there are tenants in a property who cannot or the local authority does not wish to see evicted.

114 Where a management order is made due to a property being let in breach of a banning order, the local authority will receive any rent paid by the tenants instead of the landlord and can use this income to help cover its costs in managing the property. Whereas under the existing management order provisions in the Housing Act 2004 the landlord is entitled to receive any surplus from the local authority at intervals during and at the end of the management order, where a management order is made due to a breach of a banning order, the local authority keeps any surplus and regulations made by the Secretary of State may set out how local authorities are to deal with any surpluses received.

**Anti-avoidance**

**Clause 26: Prohibition on certain disposals**

115 This clause makes provision to prevent a person who is subject to a banning order from transferring property to a ‘prohibited person’ whilst the banning order is in force. The definition of prohibited persons is set out in the clause and includes family members, business partners and companies which the person subject to the banning order has shares or a financial interest in, of which they or an associated person are a director, secretary or other officer. It also provides that a transfer is prohibited between companies that share in common one or more officers. This is designed to prevent persons from getting around a banning order by transferring their property to family members or to a company that they own. However, persons subject to a banning order are able to apply to the First-tier Tribunal for authorisation to make a transfer of property to a prohibited person.

**Chapter 3: Database of Rogue Landlords and Property Agents**

**The database and its contents**

**Clause 27: Database of rogue landlords and property agents**

116 This clause requires the Secretary of State to establish and operate a database of rogue landlords and property agents. Local housing authorities are responsible for maintaining the content of the database, and are able to edit and update it for the purpose of carrying out their functions under it in clauses 28 to 30 and updating the database under clause 33.

**Clause 28: Duty to include person with banning order**

117 This clause requires a local housing authority in England to make an entry on the database in relation to a person if a banning order has been made against that person, following that local authority’s application for such an order and the person is not already included in the database by virtue of clause 27. An entry in the database made under this section is required to be maintained for the period during which the banning order is in force. After that date, the entry must be removed from the database.

**Clause 29: Power to include person convicted of banning order offence**

118 This clause enables a local housing authority to make an entry on the database in relation to a
person if that person has been convicted of a banning order offence and was a residential landlord or property agent at the time at which the offence was committed. A local authority might, for example, decide to make an entry in the database rather than apply for a banning order in a case where a person’s offences are slightly less serious and the local authority considers that monitoring of that person through the database is more appropriate than seeking a banning order at this stage.

119 An entry may also be made if a person has incurred two civil penalties in respect of banning order offences within the last 12 months.

120 An entry in the database is required to be maintained for the period set out in the local authority’s decision notice (as described in clause 30 below) and then removed at the end of that period or, as the case may be, any reduced period under clause 35. The Secretary of State is also required to publish guidance setting out criteria to which local housing authorities must have regard when deciding whether to include a person in the database and how long their entry must be maintained for.

Clause 30: Procedure for inclusion under section 29

121 This clause sets out that if a local housing authority decides to make an entry in relation to a person in the database of rogue landlords and property agents (as described in clause 27), it must give the person a decision notice before the entry is made. The decision notice must explain that the authority has decided to make the entry in the database after the end of a 21 day notice period and must specify the period for which the person’s database entry will be maintained, which must be at least 2 years from the date on which the entry is made. The notice must also summarise the person’s appeal rights (as described in clause 31). The authority is required to wait until the notice period has ended before making the entry in the database. If a person appeals, the authority must not make the entry until the appeal has been determined or withdrawn and there is no possibility of any further appeal. A decision notice to make an entry must be given within 6 months of the date of conviction for the offence to which it relates.

Clause 31: Appeals

122 This clause enables a person who has been given a decision notice setting out that they are to be included in the database of rogue landlords and property agents to appeal to the First-tier Tribunal. They may appeal against the decision to make an entry in relation to them in the database or in relation to the period for which the entry is to be maintained. An appeal under this section must be made before the end of the 21 day notice period, although the Tribunal may allow an appeal to be made after that period if satisfied that there is a good reason for the delay. The Tribunal may confirm vary or cancel a decision notice following an appeal.

Clause 32: Information to be included in the database

123 This clause enables the Secretary of State to make regulations about the information that must be included in a person’s entry in the database.

Clause 33: Updating

124 This clause requires a local authority to take reasonable steps to keep information in the database up to date.

Clause 34: Power to require information

125 This clause provides that a local housing authority may require a person to provide information for the purpose of enabling the authority to decide whether to make an entry in relation to a person in the database. The person may be required to provide any information...
needed to complete their entry or keep it up to date. For example, a person could therefore be required to provide the local authority with the addresses of all the properties which they own. A person commits an offence if they fail to comply with a requirement to provide information (unless they have reasonable excuse for the failure) or if they knowingly or recklessly provide false or misleading information. A person who commits such an offence is liable on summary conviction to a fine.

Removal or variation

Clause 35: Removal or variation of entries made under section 29

126 Clause 35 provides that a local housing authority that made an entry on the database in relation to a person must or may in certain circumstances remove the entry. Where a person’s conviction for one or all banning order offences has been overturned on appeal, the entry must be removed. Where one, but not all convictions have been overturned, the local housing authority may remove the entry or reduce the period it is to be maintained for, including to less than 2 years. It may also take either of those courses of action if one or more convictions for which the database entry was made have become spent.

127 Where a person has been included in the database because they have incurred two or more civil penalties the local housing authority may revoke or reduce the period of the entry if at least one year has lapsed since the entry was made.

Clause 36: Requests for exercise of powers under section 35 and appeals

128 This clause permits a person about whom an entry has been made on the database to seek its removal or a reduction in the length of the period for which the entry is to be maintained within the circumstances set out in clause 35. Such a request must be made in writing. The local housing authority must notify the person of its decision. Where it refuses to comply with the request it must give reasons for the decision. Where the authority decides not to comply with the request the person making the request has a right of appeal to the First Tier Tribunal. An appeal must be made within 21 days of the local housing authority's notification of the decision, or such longer period as the tribunal may allow if the person has good reason for delay. If the Tribunal allows the appeal it may order the local housing authority to remove the entry or reduce the period for which it is to be maintained.

Access to information in the database

Clause 37: Access to database

129 Clause 37 provides that the Secretary of State must give every local housing authority in England access to information in the database of rogue landlords and property agents.

Clause 38: Use of information in database

130 This clause provides that the Secretary of State may use the information in the database for statistical or research purposes and may disclose to any person information in an anonymised form for those purposes. A local housing authority may only use information obtained from the database of rogue landlords and property agents for certain specified purposes, which include purposes connected with its functions under the Housing Act 2004, investigating contraventions of housing or landlord and tenant law and promoting compliance with such law.
Chapter 4: Rent Repayment Orders

Rent repayment orders: introduction

Clause 39: Introduction and key definitions

131 Chapter 4 empowers the First-tier Tribunal to make rent repayment orders to deter rogue landlords who have committed an offence to which the Chapter applies. This clause lists the offences concerned: breaches of improvement orders and prohibition notices and of licensing requirements under the Housing Act 2004, violent entry under the Criminal Law Act 1977, unlawful eviction under the Protection from Eviction Act 1977 and breach of a banning order under this Act. In respect of breach of licensing requirements, the Chapter consolidates existing provisions, with certain modifications. The Chapter newly extends the power to the other cases. This clause states that an order requires a landlord to repay rent paid by a tenant, or to repay to a local housing authority housing benefit or universal credit which had been paid in respect of rent.

Application for rent repayment order

Clause 40: Application for rent repayment order

132 This clause provides that a tenant or a local housing authority may apply for a rent repayment order against a landlord who has committed an offence listed. A tenant may apply in respect of an offence relating to premises let to the tenant, and committed within 12 months before the application is made. Where a local housing authority makes an application, the offence must relate to housing in its area and it must have given the landlord a notice of intended proceedings, as described in the clause 41.

Clause 41: Notice of intended proceedings

133 This clause provides that a local housing authority must give the landlord a notice of intended proceedings stating that the authority is planning to apply for a rent repayment order and why, and the amount the authority seeks to recover. The notice must be given within twelve months of the offence. It must invite the landlord to make representations within not less than 28 days. The authority must consider any representations made and in any event must wait until the notice period has ended before applying for the order.

Making of rent repayment order

Clause 42: Making of rent repayment order

134 This clause enables the First-tier Tribunal to make a rent repayment order if satisfied that a landlord has committed an offence to which the Chapter applies, and an application made under clause 40. The amount of rent to be repaid is to be determined in accordance with clause 43 on a tenant’s application or with clause 44 on an application by a local housing authority.

Clause 43: Amount of order: tenants

135 This clause sets out the rules by which the First-tier Tribunal must determine the amount of rent to be repaid after an offence on an application by a tenant. The repayment must relate to rent paid in the 12 months preceding an offence of unlawful eviction or violent entry, or in
other cases in the period during which the offence was being committed, up to a maximum of twelve months. Any housing benefit or universal credit paid in respect of rent must be deducted. In determining the amount the Tribunal must take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has any previous convictions for an offence to which Chapter 4 applies.

**Clause 44: Amount of order: local housing authorities**

136 This clause sets out the rules by which the First-tier Tribunal must determine the amount of rent to be repaid after an offence on an application by local housing authority. The repayment must relate to housing benefit or universal credit paid in respect of rent and received by the landlord in the 12 months preceding an offence of unlawful eviction or violent entry, or in other cases in the period during which the offence was being committed, up to a maximum of twelve months. In determining the amount the Tribunal must take into account the conduct and the financial circumstances of the landlord and whether the landlord has any convictions for an offence to which Chapter 4 applies.

**Clause 45: Amount of order: following conviction**

137 The amount of the order in a case under clause 42 must be the maximum that the Tribunal may order in favour of a tenant under clause 43 except for an offence relating to licensing, or in favour of a local housing authority under clause 44, unless in either case by reason of exceptional circumstances the Tribunal considers it would be unreasonable to require the landlord to pay the full amount.

**Enforcement of rent repayment order**

**Clause 46: Enforcement of rent repayment orders**

138 This clause provides that an amount payable under a rent repayment order is recoverable as a debt. Money payable to a local housing authority is not to be treated as recovered housing benefit or universal credit, but the Secretary of State may make regulations providing how local authorities are to deal with money recovered.

**Local housing authority functions**

**Clause 47: Duty to consider applying for rent repayment orders**

139 This clause provides that if a local housing authority becomes aware that a person has been convicted of an offence to which Chapter 4 applies in relation to housing in its area, the authority must consider applying for a rent repayment order.

**Clause 48: Helping tenants apply for rent repayment orders**

140 This clause sets out that a local housing authority may help a tenant apply for a rent repayment order, such as by providing advice or by conducting proceedings.

**Amendments etc and interpretation**

**Clause 49: Rent repayment orders: consequential amendments**

141 This clause makes amendments to the Housing Act 2004 in consequence of the fact that the new Chapter applies only in England, housing being a devolved matter in relation to Wales.
Clause 50: Housing benefit: inclusion pending abolition

142 This clause makes provision with regard to housing benefit. The preceding clauses of the Chapter have referred to universal credit only but the clause provides that these references include housing benefit, pending its eventual abolition.

Clause 51: Interpretation of Chapter

143 This clause is self-explanatory.

Chapter 5: Interpretation of Part 2

Clause 52: Meaning of "letting agent" and related expressions

144 This clause provides the definition of a "letting agent", and "letting agency work in England".

Clause 53: Meaning of "property manager" and related expressions

145 Clause 52 explains the definition of a "property manager" and "property management work" in England.

Clause 54: General interpretation of Part

146 This clause is a general interpretation section for Part 2 of the Bill.

Part 3: Recovering Abandoned Premises in England

Clause 55: Recovering abandoned premises

147 This Part of the Bill sets out a procedure that a landlord may follow to recover possession of a property where it has been abandoned, without the need for a court order. Clause 55 sets out that a private landlord may give a tenant notice which brings the tenancy to an end on that day, if the tenancy relates to premises in England and certain conditions are met. These conditions are that a certain amount of rent is unpaid (i.e. the 'unpaid rent condition' set out in clause 56 has been met); that the landlord has given a series of warning notices as required by clause 57 and that neither the tenant or a named occupier has responded in writing to those warning notices before the date specified in the notices.

Clause 56: The unpaid rent condition

148 This clause sets out the amount of lawfully due rent which must be unpaid for the unpaid rent condition to be met. It also provides that if any payment of rent (irrespective of the period it relates to) is received after a warning notice has been served then the unpaid rent condition ceases to apply.

Clause 57: Warning notices

149 This clause describes the warning notices that a landlord must give to the tenant and any named occupier where the landlord believes the premises have been abandoned. The clause provides that the landlord must give three warning notices, at different times, before bringing the tenancy to an end.

150 The first two warning notices must be addressed to the tenant and any other person named on the tenancy agreement and served in accordance with clause 59 (2) or (3). Each of those
warning notices must explain that the landlord believes that the premises have been abandoned and that the tenant or named occupier must respond in writing before a specified date if the premises have not been abandoned. The notices must also set out that the landlord proposes to bring the tenancy to an end if neither the tenant nor a named occupier responds in writing before that date. The date specified in the notice must be at least eight weeks after the date on which the first warning notice is given to the tenant.

151 The first warning notice may be given even if the unpaid rent condition has not been met, but the second warning notice may only be given after the unpaid rent condition has been met. There must also be at least two weeks but not more than four weeks between the first and second warning notices being given.

152 The third warning notice must be affixed to a conspicuous party of the premises, for example the front door. It must be given at least 5 days before the end of the warning period given to the tenant or named occupier in which to respond. The Secretary of State may make regulations prescribing the form of the third warning notice.

Clause 58: Reinstatement
153 This clause sets out the remedies available to a tenant where their tenancy has been brought to an end by a notice under clause 55, but they had a good reason for failing to respond to the warning notices. In this circumstance the tenant may apply to the county court, within 6 months of the notice bringing the tenancy to an end, for an order reinstating the tenancy. If the county court finds that the tenant had a good reason for not responding to the warning notices, the court may make any order it thinks fit for the purpose of reinstating the tenancy.

Clause 59: Methods for giving notices under section 55 and 57
154 Clause 59 deals with the methods of service for notice given under clauses 55 and 57 (a notice bringing a tenancy to an end and the first two warning notices). Such notices may be given by delivering the notice to the tenant or a named occupier in person. Where such a notice is not delivered in person, it must be given by leaving it at, or sending it to, the premises to which the tenancy relates; leaving it at, or sending it to, every other postal address in the U.K. that the tenant or named occupier has given the landlord as a contact address for giving notices; and sending it to every email address that the tenant or named occupier gave the landlord as a contact address for giving notices. It must also be sent, in the case of the tenant, care of any person who has agreed with the landlord to guarantee the performance of the tenancy.

Clause 60: Interpretation of Part
155 This clause is self-explanatory.

Clause 61: Consequential amendment to Housing Act 1988
156 This clause makes a consequential amendment to section 5 of the Housing Act 1988 to reflect the new circumstance in which a tenancy may be brought to an end.

Part 4: Social Housing in England

Chapter 1: Implementing the Right to Buy on a Voluntary Basis

Funding of discounts offered to tenants

These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)
Clause 62: Grants by Secretary of State

157 Clause 62 enables the Secretary of State to pay grant to private registered providers to cover the cost of a discount awarded to the tenant of a provider when buying their home from that provider.

158 The effect of this clause would be to enable the Secretary of State to pay for the cost of the discount when a tenant of a private registered provider applies to buy their home under the terms of a voluntary agreement between the Secretary of State and the private registered provider sector.

159 The clause sign-posts the ability of the Secretary of State to direct the Homes and Communities Agency to make grants under the Agency’s power in section 19 of the Housing and Regeneration Act 2008.

Clause 63: Grants by Greater London Authority

160 Clause 63 makes provision for the Greater London Authority to make equivalent grants in respect of Right to Buy discounts for dwellings in Greater London.

Monitoring compliance

Clause 64: Monitoring

161 This clause is based upon the Secretary of State setting criteria for home ownership (which he must publish) against which private registered providers may be monitored. The Regulator must, if requested by the Secretary of State, monitor compliance by providers with these criteria and report to the Secretary of State accordingly. It also gives the Secretary of State the power to publish data about the level of compliance by private registered providers.

162 The effect of this clause is to ensure the Regulator has the power to monitor and report on how private registered providers are supporting their tenants into home ownership. It is envisaged that the criteria will initially be set with reference to the voluntary Right to Buy agreement that has been agreed between the Secretary of State and the private registered providers sector. Compliance with this voluntary agreement is expected to be sufficient to meet the expected level of compliance with the home ownership criteria. It would be open to private registered providers to meet the criteria in ways other than compliance with the voluntary agreement, but these ways will be expected to be of an equal, or greater, level of support to tenants to help them into home ownership to that afforded through the agreement.

Amendments to other legislation

Clause 65: Consequential changes to HCA’s duty to give grants

163 This clause amends section 35 of the Housing and Regeneration Act 2008 to remove a duty of the Homes and Communities Agency to make a grant, preventing an overlap of provisions.

Interpretation

Clause 66: Interpretation of this Chapter

164 This clause is self-explanatory.
Chapter 2: Vacant High Value Local Authority Housing

165 Chapter 2 enables the Secretary of State to require local housing authorities to make a payment to the Secretary of State calculated by reference to the market value of the high value vacant housing owned by the authority. The requirement only applies to local authorities which are required to keep a Housing Revenue Account (“HRA”). The HRA is a record of revenue expenditure and income relating to an authority’s own housing stock and there are currently 165 such local authorities in England.

166 The provisions also place a duty on local housing authorities to consider selling such housing and enable the Secretary of State to enter into an agreement with a local authority to reduce the amount of the payment, so long as the money is spent on housing or on things that will facilitate the provision of housing.

167 The provisions are intended to encourage the more efficient use by local authorities of their housing stock through the sale of their high value housing so that the value locked up in high value properties can be released to support an increase in home ownership and the supply of more housing.

Payments to Secretary of State by Local Housing Authorities

Clause 67: Payments to Secretary of State

168 This clause enables the Secretary of State to make a determination requiring local authorities to make a payment to the Secretary of State. The payment must be calculated by reference to the market value of the high value housing the local authority owns and which is expected to become vacant during a financial year, less any costs or other deductions that are set out in the determination. An example of a deduction could be the transaction costs involved in selling housing such as estate agency fees.

169 “Housing” is defined in clause 77 (interpretation) and means a building, or a part of a building, which is intended to be occupied as a dwelling or more than one dwelling. This definition does not include hostels. Housing “becomes vacant” for these purposes when a tenancy comes to an end and is not renewed either expressly by the local authority or by operation of law (see clause 77). The definition would not, therefore, capture situations where, for example, a local authority renews a fixed term tenancy to the same tenant(s), where a tenancy is assigned or where someone succeeds to (i.e. inherits) a tenancy. The Secretary of State may specify in regulations cases in which housing is not to be treated as having become vacant (see clause 77(2)).

170 The determination must set out the method for calculating the payment (subsection (5)) and some or all of the calculation may be based on a formula (subsection (6)). Subsection (7) provides that a determination may provide for assumptions to be made in making a calculation. This will enable a determination to be made before the start of the financial year to which it relates as required by clause 70. Examples might include assumptions about the rate at which an authority’s high value housing will become vacant during the forthcoming financial year based on data from local housing authorities relating to earlier financial years and assumptions about the transaction costs involved in selling such housing. Any such assumptions must be set out in the determination.

171 The definition of “high value” must be set out in regulations made by the Secretary of State (subsection (8)). The definition of “high value” may be different in different areas (subsection (9)).
Clause 68: Housing to be taken into account

172 The housing to be taken into account when calculating the payment for each local authority is any housing above the relevant high value threshold (as set out in regulations under clause 67(8)) which the local authority is required to account for within its HRA (see subsection (2)(a)). Under regulations the Secretary of State can exclude housing from the calculation. The exclusion could be framed by reference to, for instance, the characteristics of the housing, its geographical location or other factors.

173 Subsection (3) applies where a local housing authority disposes of some or all of its housing to a private registered provider (i.e. a housing association) under section 32 or 43 of the Housing Act 1985. Such disposals are generally referred to as stock transfers. Subsection (3) enables the Secretary of State to continue to take the housing that has been transferred into account when making a determination in relation to that local authority under clause 66. Any such housing must be identified in the determination to ensure that it is clear when this provision is being relied on (subsection (4)).

Clause 69: Procedure for determinations

174 This clause (and clause 70) sets out the procedure that the Secretary of State must follow when making a determination under clause 69.

175 The Secretary of State must consult before making a determination and must send a copy of the determination to each local housing authority it relates to as soon as possible after making it (subsection (3)).

176 Subsection (4) provides for the methods of communication by the Secretary of State to each local authority. This ensures that this legislation applies the same methods of communication as other legislation in the housing finance context.

Clause 70: More about determinations

177 This clause requires a determination to be made before the beginning of the financial year to which it relates (subsection (1)) and enables the Secretary of State to include provision in the determination about when payments must be made (subsection (4)). These provisions are intended to enable the Government and local authorities to plan ahead financially. In addition, subsection (3) provides for a determination to relate to more than one financial year which will enable longer term financial planning if considered appropriate. In the event of a late payment, the Secretary of State may charge a local authority interest if provided for in the determination (subsection (5)).

178 It is possible that there will be a need to vary or revoke a determination after it is made. Subsection (2) provides the power to change the determination if required.

179 Subsection (6) enables the Secretary of State to make different provision in the determination for different areas, different local housing authorities or for other purposes.

Clause 71: Determinations in the first year that section 67 comes into force

180 Where clause 67 (payments to the Secretary of State) comes into force part way through a financial year, this clause enables the Secretary of State to make a determination during that financial year even though in relation to future financial years there is a requirement that the determination is made before the start of the financial year concerned (see clause 70(1)). If a determination is made in reliance on this clause, then the determination can only relate to housing which is likely to become vacant during the period after the date on which the determination is made.

Clause 72: Reduction of payment by agreement

These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)
181 This clause provides the Secretary of State with the power to make an agreement with a local authority which reduces the amount the local authority is required to pay under the determination (subsection (1)). The agreement will contain terms and conditions specifying what the local authority must do with the retained money. This approach is similar to that taken in relation to capital housing receipts under section 11(3) of the Local Government Act 2003.

182 Under subsection (2) of this clause the terms and conditions contained in the agreement will require the provision of housing or things that facilitate housing. This could include the provision of infrastructure or land remediation.

183 As an example, if a local authority wanted to lead on a programme to build new housing then the Secretary of State could decide to enter into an agreement with the authority which would reduce the amount it had to pay under the determination. The local authority would then use that money to fund the building of new housing in accordance with the terms and conditions set out in the agreement.

184 Subsection (4) requires that when an agreement is made with a local housing authority in London it must require the authority to provide two new affordable homes (as defined in subsection (7)) for each of the local authority’s high value vacant dwellings taken into account under the determination (see the definition of “old dwelling” in subsection (7)). However, subsection (5) provides for an exception to this requirement where the Greater London Authority (GLA) has agreed to ensure that some of those new affordable homes are provided. For example, if the total number of new affordable homes required to be delivered is 10 and the GLA has agreed to ensure that 5 of those homes are delivered, the agreement need only require the authority to provide the other 5 new affordable homes. Subsection (6) enables the Secretary of State to create other exceptions to the requirement in subsection (4) for one or more local housing authorities. Subsection (9) enables the Secretary of State to amend the definition of “new affordable home” in subsection (7) by regulations. Regulations amending the definition of “new affordable home” are subject to the affirmative resolution procedure.

185 A determination may be made in relation to one or more financial years (see clause 70(3)) and so subsection (8) makes it clear that an agreement under this clause may be made in relation to one, more or all of the financial years covered by a multi-year determination. For example, if a determination is made which relates to three years an agreement could be entered into to reduce a local authority’s payment in respect of one, two or all three of those years in order for it to deliver more housing. Where a multi-year determination is made and the Secretary of State enters into an agreement with a local authority in London in respect of its payment for one or more of those years, the “new affordable homes” which it is required to deliver because of subsection (4) of this clause will be calculated by reference to the “old dwellings” which have been taken into account in the year (or years) of the determination to which the agreement relates.

**Clause 73: Set off against repayments under section 67**

186 Where a local housing authority has made an overpayment, this clause enables the Secretary of State to offset the amount which needs to be repaid against another payment the local authority is due to make under this Chapter or against any payment which the authority is due to make under section 11 of the Local Government Act 2003. That section concerns capital receipts from the disposal of housing land.

187 This clause aims to simplify accounting by reducing the number of payments between the Secretary of State and a local authority, where an overpayment has been made.

*These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)*
Duty to consider selling

Clause 74: Duty to consider selling vacant high value housing

This clause imposes a free-standing duty on local housing authorities to consider selling any high value vacant housing which they own. The definition of “high value” will be set out in regulations and the Secretary of State may, through regulations, exclude housing from the scope of the duty. The duty would apply even where no determination is made under clause 67. Local authorities must have regard to any guidance issued by the Secretary of State about the new duty.

Amendments and interpretation

Clause 75: Local authority disposal of housing: consent requirements

This clause amends section 34(4A) and section 43(4A) of the Housing Act 1985 to add to the list of matters which the Secretary of State may have regard to when considering whether to give consent to a local authority wishing to dispose of (i.e. sell or give away) housing under section 32 or 43 of that Act. The amendments will mean that if disposal of the housing by the local authority to another person or body could result in a reduced payment to the Secretary of State under clause 67, the Secretary of State may choose to take this, amongst other factors, into account when deciding whether or not to give consent to the disposal.

Clause 76: Set off under section 11 of Local Government Act 2003

This clause amends section 11 of the Local Government Act 2003 in relation to England only, so that the provisions about set off in section 11 mirror those in clause 73 of this Chapter. This means that where a local housing authority in England has made an overpayment under section 11 of the 2003 Act, the Secretary of State may set off the amount which needs to be repaid against any payment the authority is liable to make under section 11 or under this Chapter.

Clause 77: Interpretation of Chapter

This clause defines certain terms used in this Chapter, some of which are referred to in the explanatory notes for the other clauses of this Chapter.

Chapter 3: Rents for High Income Social Tenants

Mandatory rents for local authority tenants

Clause 78: Mandatory rents for high income local authority tenants

The clause gives the Secretary of State the power to set the levels of rent that local authorities must charge high income social tenants (‘HISTs’). Regulations will specify how much rent a HIST should pay. Housing associations who choose to operate a policy for high income social tenants will be able to determine the level of rent payable by their tenants.

Clause 79: Meaning of "high income" etc

Regulations made under this provision will define the meaning of “high income” by reference to income thresholds, the definition of “household”, and the type of “income” to be captured. Regulations could also be used to set out how income should relate to the rent set, in respect of...
the reference period.

194 Local authorities will also be required to have regard to guidance issued by the Secretary of State.

**Clause 80: Information about income**

195 Under regulations made under this clause, local authorities can be given the power to require their tenants to declare what their household income is. The power can determine the type of evidence that is required to satisfy a landlord. This will be used to determine whether that household is over or below the income thresholds that have been set. Regulations will encourage timely declaration of income information by providing that if a tenant fails to declare income in accordance with the Regulations the tenant’s rent will be raised to maximum levels.

**Clause 81: HMRC information**

196 Following the declaration of income by tenants, a process of verification may be needed to ensure that declarations of income are correct. The power in this clause allows data to be shared between HMRC and local authorities for the purposes of verification – either directly from HMRC to landlords, or via the Secretary of State or a single body nominated by the Secretary of State to act as the ‘gatekeeper’ for this purpose. The Secretary of State must obtain the consent of HMRC before making arrangements with a private body to fulfil this function, or making regulations which give a public body this function.

**Clause 82: Power to increase rents and procedure for changing rents**

198 Where a local authority determines that tenants in social households are high income social tenants, regulations made under this clause will give landlords the power to increase the rent payable under a tenancy (if it cannot be done already).

199 This clause also provides for other legislation to be amended by Regulation. The purpose of this power is to enable amendments to legislation which may otherwise prevent or limit the circumstances in which rents can be raised. Tenants will also, by regulations, be given the right to appeal decisions.

**Clause 83: Reverting to original rents**

200 The power ensures that where a local authority tenant ceases to be a high income social tenant, that the rent reverts to the current social rent. The circumstances that would trigger a review of rent can be set by regulations. In particular, regulations can be used to require a review of rent when a tenant has declared relevant evidence of income (having failed to within the original timeframe set by the landlord).

**Clause 84: Payment by local authority of increased income to Secretary of State**

201 Local housing authorities will be required by regulations to return any additional income received to the exchequer. The exact amounts and the process for returning the money will be set via regulations. Following consultation on the issue of administrative costs, regulations can be used to ensure that local authorities do not incur those costs.

202 Regulations also allow for interest to be charged in the event of late payment.

**Clause 85: Provision of information to Secretary of State**

203 This clause provides power for the Secretary of State to collect data from local authorities for the purposes of reviewing the operation of the policy.
Clause 86: Interaction with other legislation and consequential amendments

204 Subsection (1) provides that when regulations are made requiring local authority landlords to charge high income tenants of social housing increased rents provision, regulations must also be made to except such tenants from the rent reduction requirements in the Welfare Reform and Work Bill.

205 Subsection (3) makes changes to the provisions regarding the keeping of the Housing Revenue Account adding to the list of permissible debit items contained in Part 2 of Schedule to the Local Government and Housing Act 1989 a payment under regulations made in reliance on clause 79.

Private registered providers: rent policies for high income tenants

Clause 87: Private providers: policies for high income social tenants

206 The clause requires private registered providers who have adopted a voluntary policy to publish details of that policy. That published policy must allow for an appeal mechanism.

Clause 88: HMRC information for private registered providers

207 The Clause allows HMRC to share data with private registered providers in the same way as Clause 81 does for local authorities.

Interpretation

Clause 89: Interpretation of Chapter

208 This clause is self-explanatory.

Chapter 4: Reducing Regulation of Social Housing Etc

Clause 90: Reducing social housing regulation

209 Clause 90 introduces Schedule 4 which sets out the amendments to reduce the regulation of private registered providers of social housing.

Part 1 - Removal of disposal consents requirement

210 Existing legislation (Housing Act 1985, Housing Act 1988, Local Government and Housing Act 1989, Leasehold Reform, Housing and Urban Development Act 1993, and the Housing and Regeneration Act 2008) requires registered providers of social housing to seek permission from the social housing regulator to dispose of social housing stock. Part 1 of Schedule 4 (paragraphs 1 to 8, and 11 to 14) sets out the removal of the disposal consents. Disposal is defined in the Housing and Regeneration Act 2008 section 273.

211 To ensure that when property is charged for security purposes (for example when a private registered provider is raising finance for major repairs or to develop houses) it does not cease to be social housing, amendments are being made to the circumstances when housing stock is deemed to cease to be social housing. The Government’s intention is that property charged for security should not lose its status as social housing. Part 1 of Schedule 4 (paragraphs 7 to 10) sets out that certain transfers will result in stock losing its social housing status. It should be noted that this group of ‘transfers’ is narrower than disposals.
In order to no longer be considered social housing, the whole of the interest (whether leasehold or freehold) in a property must be transferred with no ability to claim the interest back. Therefore a new lease or the granting a sub-lease will not result in leaving the stock. Further, where a registered provider transfers their entire interest but on terms that mean it has a right to reclaim their interest in the future, the property does not leave the social housing stock.

Paragraphs 15 to 21 set out the new requirements for private registered providers to notify the Regulator of Social Housing about disposals of social housing. There is a power inserted in new section 176 of the Housing and Regeneration Act 2008 for the Regulator to give directions about the timing and content of notifications. It also enables the Regulator to dispense with the requirement for notification.

Part 2 - Restructuring and dissolution: removal of consent requirements etc.

Part 2 of Schedule 4 sets out the removal of the Regulator of Social Housing’s constitutional consents regime.

Under the Housing and Regeneration Act 2008, registered providers are required to gain permission from the Regulator for constitutional changes, restructuring and dissolution. Such changes include mergers, changes to some provisions of the constitution, restructuring of the organisation and winding up.

Paragraphs 22 to 29 remove the requirement for private registered providers to gain permission from the social housing regulator for changes to companies, conversion to a registered society, for a registered society to restructure or for dissolution. How an individual private registered provider is constituted will determine which of these provisions apply to them.

Although the constitutional consents regime is being removed the Regulator does need to keep the register of social housing providers up to date, therefore they have to be notified if:

- A registered society changes its rules;
- A charity changes its objects; or
- A company changes its articles.

Paragraph 29 sets out a power in new section 169D of the Housing and Regeneration Act 2008 that the Regulator may give directions about the timescale and content of the notification. It also enables the regulator to dispense with the requirement for notification.

In some cases the Financial Conduct Authority or Companies House may not register the change until it is satisfied that the Regulator has been notified.

Where the restructure creates a new body, the Regulator must decide whether this new body meets its requirements for registration. If it does, the Regulator must register it and designate it as non-profit.

Part 3 - Removal of the Disposal Proceeds Fund

Existing legislation (Housing and Regeneration Act 2008) requires registered providers of social housing to hold a Disposal Proceeds Fund to record proceeds (including historic grant) from certain sales of social housing stock. Money in the Disposals Proceeds Fund may only be spent as directed by the Regulator. If any private registered provider is unable to reinvest the
funds within the period specified by the Regulator they must return the funds to the Homes and Communities Agency or the GLA.

222 Paragraphs 32 and 33 abolish the requirement for private registered providers to hold a Disposal Proceeds Fund. As a transitional measure, any funds in a Disposal Proceeds Fund at the point of commencement of this legislation must still be applied only as directed by the Regulator.

223 After commencement only historic grant from disposals which would now go into the Disposal Proceeds Fund will be recycled in-line with the grant agreement.

Schedule 4: Reducing social housing regulation

224 Existing legislation (Housing and Regeneration Act 2008) gives the social housing regulator the power to appoint managers or officers (usually as members of the Board) to a private registered provider under certain circumstances. This section amends the Housing and Regeneration 2008 so that the Social Housing Regulator may only appoint a new manager to a non-profit private registered provider where there has been a breach of legal requirements (imposed by legislation or regulatory standards). This circumscribes more tightly the existing provisions whilst still enabling the regulator to take action where a private registered provider, or its tenants, are at risk.

Clause 91: Recovery of social housing assistance: successors in title

225 Sections 32-34 of the Housing and Regeneration Act 2008 enable the Homes and Communities Agency (HCA) to recover financial assistance given for the purpose of providing social housing from recipients and their successors in title. This clause amends section 33 to remove the HCA’s ability to recover this assistance in circumstances where the social housing provided as a result of the assistance is disposed of outside the regulated sector in consequence of either a lender enforcing its security or the winding up or administration of the recipient or a successor in title.

Chapter 5: Insolvency of Registered Providers of Social Housing

Housing administration

Clause 92: Housing administration order: providers of social housing in England

226 This is the first of a number of clauses which introduce a special administration regime for private registered providers of social housing that are at risk of entering insolvency proceedings. It sets out the remit for the different types of private registered providers.

227 A housing administration may only be commenced by an order of the court. Sub-section (1) sets out the meaning of a housing administration order. The order appoints a person (the “housing administrator” – see subsection (2)) to manage the affairs, business and property of a company, registered society or charitable incorporated organisation that is a register provider of social housing for the duration of the housing administration.

228 Subsection (3) gives the housing administrator an overarching objective by requiring them to manage the registered providers affairs, business and property and exercise their functions to achieve the objective of the housing administration which is set out in clause 93.

229 Sub-section (4) clarifies that for a housing administration order applying to a foreign company, the references in this section to affairs, business and property are references to those conducted and located in the U.K.
Clause 93: Objective of housing association

230 This clause sets out the objective of a housing administration.

231 Subsection (1) states that the objective is to ensure that:

- the registered provider’s social housing remains in the regulated sector; and
- the housing administration is brought to an end by one or more of two specified means.

232 These means are set out in subsection (2) as:

- the rescue as a going concern of the registered provider; and
- relevant transfers of some or all of the registered provider’s undertakings.

233 A relevant transfer, as stated in subsection 3, is a transfer as a going concern to another private registered provider, or there may be transfers to more than one registered provider.

234 Subsection 4 provides that one of the ways in which relevant transfers may be affected is through a “hive down”. A hive down is:

- a transfer of the undertaking (or part of the undertaking) of the registered provider subject to the housing administration order to a wholly-owned subsidiary of that provider; and
- a transfer to a registered provider of securities of a wholly-owned subsidiary to which there has been a transfer within paragraph (a).

235 Subsection (5) sets out that a wholly-owned subsidiary has the meaning given by section 1159 of the Companies Act 2006.

236 Subsection (6) sets out the limits on the extent to which relevant transfers can be used to achieve the objective of a housing administration. These emphasise that, where practicable and consistent with the objective of the housing administration, a rescue of the registered provider as a going concern is to be preferred to transfers. Transfers can only be used to the extent that:

- the rescue as a going concern of the registered provider is not reasonably practicable or is not reasonably practicable without the transfers;
- the rescue of the registered provider as a going concern would not achieve the objective of the housing administration or would not do so without the transfers;
- the transfers would produce a result for the registered provider’s creditors as a whole that is better than the result that would be produced without them; or
- the transfers would, without prejudicing the interests of the registered provider’s creditors as a whole, produce a result for the registered provider’s members as a whole that is better than the result that would be produced without them.

237 Subsection (7) sets out that for charitable incorporated organisations the reference in subsection (6)(d) to the registered providers members is a reference to the charitable incorporated organisation.

238 Subsection (8) sets out that social housing remains in the regulated housing sector so long as it
Cluster 94: Applications for housing administration orders

239 This clause sets out the process for applications to the court for housing administration orders.

240 Subsection (1) provides that only the Secretary of State or the Regulator of Social Housing (with consent of the Secretary of State) can make an application for a housing administration order.

241 When applying for such an order the applicant must give notice, as soon as practicable, of the application to a number of people as follows:

- every person who has appointed an administrative receiver of the registered provider;
- every person who is or may be entitled to appoint an administrative receiver of the registered provider;
- every person who is or may be entitled to make an appointment in relation to the registered provider under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment of administrators by holders of floating charges); and
- any other persons specified by housing administration rules (these are rules that can be made under section 411 of the Insolvency Act 1986 – see clause 97(5)).

Cluster 95: Powers of court

242 This clause sets out the powers of the court on hearing an application from the Secretary of State or the Regulator of Social Housing for a housing administration order. Subsection (1) states that the Court may:

- make the order;
- dismiss the application;
- adjourn the hearing conditionally or unconditionally;
- make an interim order;
- treat the application as a winding-up petition and make any order the court could make under section 125 of the Insolvency Act 1986 (power of court on hearing winding-up petition); and
- make any other order which it thinks appropriate.

243 Under subsection (2), the court may only make a housing administration order if it is satisfied that:

- the registered provider is unable, or is likely to be unable, to pay its debts; or
- that it would be just and equitable (disregarding the objective set out in clause 93) to wind up the provider in the public interest on a petition from the Secretary of State under section 124A of the Insolvency Act 1986 (and the Secretary of State has certified that (disregarding that objective) a petition for such a winding up would be appropriate – see subsection (3)).
Section 124A of the Insolvency Act 1986 states:

“(1) Where it appears to the Secretary of State from—

(a) any report made or information obtained under Part XIV (except section 448A) of the Companies Act 1985 (company investigations, etc).

(b) any report made by inspectors under—

(i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(bb) any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act.

(c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995 (fraud investigations), or,

(d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.”

Subsection (4) makes it clear that the court cannot make a housing administration order if the registered provider is already in administration (under Schedule B1 of the Insolvency Act 1986) or has gone into liquidation (as defined in section 247(2) of the Insolvency Act 1986).

Subsection (6) explains that where the court makes an interim order it may restrict the exercise of power of the registered provider or of its relevant officers or make provision to confer discretion on a person qualified to act as an insolvency practitioner in relation to the registered provider.

Subsection (7) explains that a relevant officer:

- in relation to a company, means a director;
- in relation to a registered society, means a member of the management committee or other directing body of the society; and
- (c) in relation to a charitable incorporated organisation, means a charity trustee (as defined by section 177 of the Charities Act 2011).

Subsection (8) sets out that in the case of a foreign company, the restrictions would relate to powers of the registered provider or the directors within the U.K. or in relation to the company’s U.K. affairs, business or property.

Subsection (9) sets out that for the purposes of this clause, the test for whether a registered provider is unable to pay its debts is the same as which applies under the Insolvency Act 1996.

Clause 96: Housing administrators

This clause sets out the status of a housing administrator of a registered provider and how that administrator should exercise his or her powers.
251 Subsection (1) states that a housing administrator is an officer of the court, and in exercising and performing powers and duties in relation to the registered provider, is the registered provider’s agent.

252 Subsection (2) provides that the housing administrator is under a duty to perform their functions as quickly and as efficiently as is reasonably practicable.

253 Subsection (3) states that the housing administrator of a registered provider must exercise and perform powers and duties in the way which, so far as it is consistent with the objective of the housing administration to do so, best protects:

- the interests of the registered provider’s creditors as a whole; and
- subject to those interests, the interests of the registered provider’s members as a whole.

254 Subsection (4) clarifies that in the case of a charitable incorporated organisation the reference in subsection (3)(b) interests of members is to the interests of the charitable incorporated organisation.

255 Subsection (5) clarifies that the housing administrator has to be qualified to act as an insolvency practitioner in relation to the registered provider.

256 Subsection (6) deals with a situation where the court appoints two or more persons as the housing administrator of a registered provider.

Clause 97: Conduct of administration etc

257 This clause introduces Schedule 5 which contains provisions applying the provisions of Schedule B1 of the Insolvency Act 1986, and certain other enactments, to housing administration orders in relation to companies.

258 Subsections (2) empowers the Secretary of State to make further regulations to provide for any provision of Schedule B1 and other insolvency legislation (defined in subsection (4)) to apply, with or without modifications, to cases where a housing administration order is made in respect of a registered society or charitable incorporated organisation.

259 Subsection (3) empowers the Secretary of State to make regulations to modify any insolvency legislation (defined in subsection (4)) as it applies in relation to a registered society or a charitable incorporated organisation if he considers the modifications are appropriate for a housing administration.

260 Subsection (5) applies the power to make rules under section 411 of the Insolvency Act 1986 to Parts 1 to 7 of that Act so that detailed procedural rules for a housing administration can be made in the same way that they are for a normal administration.

261 However, under subsection (6) the duty to consult the Insolvency Rules Committee about the rules does not apply in the case of a housing administration.

Restrictions on other insolvency procedures

262 Clauses 98 to 102 prevent a housing administration being frustrated by prior orders of various kinds being granted before the Secretary of State or the Regulator of Social Housing have been given an opportunity to apply for a housing administration order, or by other steps being taken when a housing administration order has been made or an application is outstanding.
Restrictions on other insolvency procedures

Clause 98: Winding-up orders

263 This section applies, and sets out how the court should act in certain circumstances, if a person other than the Secretary of State petitions for the winding-up of a registered provider that is:

- a company;
- a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014; or
- a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011.

264 Subsection (2) provides that the court is not to exercise its powers on a winding up petition unless:

- notice of the petition has been given to the Regulator of Social Housing; and
- a period of at least 28 days has elapsed since that notice was given.

265 Subsection (4) provides that the Regulator of Social Housing must give the Secretary of State a copy of any notice given under subsection (2).

266 The notice and 28 day period are intended to avoid a winding up order being granted before the Secretary of State and the Regulator of Social Housing have been given an opportunity to seek a housing administration order.

267 Subsection (5) clarifies that references in this section to the court’s powers on a winding up petition are to:

- its powers under section 125 of the Insolvency Act 1986 (other than its power of adjournment); and
- its powers under section 135 of the Insolvency Act 1986 (for example to appoint a provisional liquidator).

Clause 99: Voluntary winding up

268 This section prevents a registered provider passing a resolution for voluntary winding up without permission of the court and sets out the conditions on which the court could give permission to allow the voluntary winding up of the registered provider.

269 Subsection (4) stipulates that the court is not to grant permission unless:

- notice of the application has been given to the Regulator of Social Housing; and
- a period of at least 28 days has elapsed since that notice was given.

270 If an application for a Housing Administration Order is subsequently made before permission is granted, subsection (5) allows the court to exercise its powers under clause 95 to make a housing administration order (instead of granting permission).

Clause 100: Making of ordinary administration orders

271 This section applies if a person other than the Secretary makes an ordinary administration order in relation to a private registered provider that is:
272 It sets out how the court should act in such circumstances.

273 Subsection (2) states that the court must dismiss the application for ordinary administration if a housing administration order is in force in relation to the registered provider, or has been made in relation to the registered provider but is not yet in force.

274 If a housing administration order has not been made, subsection (3) requires that, on hearing the ordinary administration application, the court must not exercise its powers under paragraph 13 of Schedule B1 to the Insolvency Act 1986 (other than its power of adjournment) unless:

- notice of the application has been given to the Regulator of Social Housing;
- a period of at least 28 days has elapsed since that notice was given; and
- there is no application for a housing administration order which is outstanding.

275 Paragraph 13 of Schedule B1 relates to the powers of the court on hearing an ordinary administration application (for example, to make an administration order, dismiss the application etc).

Clause 101: Administrator appointments by creditors

276 This section deals with circumstances where secured creditors, directors or other applicable officers of the registered provider seek to appoint an administrator under paragraphs 14 or 22 of Schedule B1 to the Insolvency Act 1986 (powers to appoint administrators).

277 Subsection (2) states that a person may not take any step to make such an appointment when:

- a housing administration order is in force in relation to the registered provider,
- a housing administration order has been made in relation to the registered provider but is not yet in force, or
- an application for a housing administration order in relation to the registered provider is outstanding.

278 Subsection (3) sets out that in any other case, an appointment of an administrator takes effect only if each of the conditions in subsection (4) are met. The conditions are:

- that notice of the appointment has been given to the Regulator of Social Housing, accompanied by a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the Insolvency Act 1986;
- that a period of 28 days has elapsed since that notice was given;
- that there is no outstanding application to the court for a housing administration
order in relation to the registered provider; and

- that the making of an application for a housing administration order in relation to the registered provider has not resulted in the making of a housing administration order which is in force or is still to come into force.

279 Subsection (6) makes it clear that paragraph 44 of Schedule B1 to the Insolvency Act 1986 (interim moratorium) does not prevent or require the permission of the court for the making of an application for a housing administration order at any time before the appointment takes effect.

**Clause 102: Enforcement of security**

280 This section prevents a person taking any step to enforce security over property of a registered provider unless:

- notice of the intention to do so has been given to the Regulator of Social Housing;
- and
- a period of at least 28 days has elapsed since the notice was given.

281 In the case of a foreign company, subsection (3) clarifies that the reference to the property of the registered provider is to its property in the U.K.

**Financial support for registered providers in housing administration**

**Clause 103: Grants and loans where housing administration order is made**

282 This section sets out the conditions on which the Secretary of State can make grants or loans to a registered provider in housing administration.

283 Subsection (1) enables the Secretary of State to make grants or loans to the registered provider of amounts that the Secretary of State considers appropriate for achieving the objective of the housing administration.

**Clause 104: Indemnities where housing administration order is made**

284 This section sets out that if a housing administration order has been made in relation to a registered provider, the Secretary of State may agree to indemnify specified relevant persons, for example the housing administrator, his employees, partners, fellow employees (see subsection (6)) in respect of liabilities incurred or loss and damage sustained in connection with the carrying out of the housing administrator’s functions.

285 Subsection (3) requires the Secretary of State to lay a statement before Parliament as soon as practicable after agreeing an indemnity under this clause.

286 Subsection (5) provides that the Secretary of State can only agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as “relevant persons”, but can agree to indemnify persons who subsequently become “relevant persons” for example by becoming an employee of the housing administrator.

287 Subsection (6) defines the meaning of “relevant person” for the purposes of this clause namely:

- the housing administrator;
- an employee of the housing administrator;
• a partner or employee of a firm of which the housing administrator is a partner;
• a partner or employee of a firm of which the housing administrator is an employee;
• a partner of a firm of which the housing administrator was an employee or partner at a time when the order was in force;
• a body corporate which is the employer of the housing administrator;
• an officer, employee or member of such a body corporate; and
• a Scottish firm which is the employer of the housing administrator or of which the housing administrator is a partner.

Clause 105: Indemnities: repayment by registered provider etc
288 This section applies where a sum is paid out by the Secretary of State in consequence of an indemnity agreed to under clause 104 in relation to the housing administrator of a registered provider.

289 Subsection (2) allows the Secretary of State to determine the amounts of any repayment the registered provider must make.

290 If a sum has been paid out under an indemnity agreed under this clause 104, subsection (5) requires the Secretary of State to lay a statement relating to that sum before Parliament as soon as practicable after the end of the financial year in which the sum is paid out; and, where there is an obligation on the registered provider to repay the relevant sums, after the end of each subsequent financial year until the registered provider has discharged the liability (including interest).

Clause 106: Guarantees where housing administration order is made
291 This clause enables the Secretary of State to give guarantees in relation to a registered provider in housing administration.

292 Subsection (1) states that the Secretary of State may guarantee while a housing administration order is in force:
• the repayment of any sum borrowed by the registered provider while that order is in force;
• the payment of interest on any sum borrowed by the registered provider while that order is in force; and
• the discharge of any other financial obligation of the registered provider in connection with the borrowing of any sum while that order is in force.

293 Subsection (3) requires the Secretary of State to lay a statement before Parliament as soon as practicable after giving a guarantee under this section.

Clause 107: Guarantees: repayment by registered provider etc
294 This section applies where a sum is paid out by the Secretary of State under a guarantee in relation to a registered provider

295 If sums are paid out by the Secretary of State under a guarantee given under clause 106 subsection (2) requires the registered provider must pay the Secretary of State:
such amounts in or towards repayment as the Secretary of State may direct; and

interest on amounts outstanding at such rates the Secretary of State may direct.

296 If a sum has been paid out under a guarantee given under clause 106 subsection (4) requires
the Secretary of State to lay a statement relating to that sum before Parliament as soon as
practicable after the end of the financial year in which the sum is paid out; and after the end of
each subsequent financial year until the registered provider has discharged the liability
(including interest).

Supplementary provisions

Clause 108: Modification of this Chapter under the Enterprise Act 2002

297 Under sections 248, 254 and 277 of the Enterprise Act 2002 the Secretary of State has power to
make consequential amendments to the administration regime and to apply it to foreign
companies. This clause provides that those powers include the power to make such
consequential modifications of this Chapter as the Secretary of State considers appropriate.

Clause 109: Registered societies: ordinary administration procedure etc

298 This clause extends the powers in section 118 of the Co-operative Benefit Societies Act 2014 (to
apply provisions about company arrangements and administration to registered societies) to
registered societies that are registered providers of social housing.

Clause 110: Amendments to housing moratorium consequential amendments

299 This clause introduces Schedule 6 which makes amendments to the housing moratorium
provisions in the Housing and Regeneration Act 2008 and consequential amendments.

Clause 111: Interpretation of Chapter

300 This clause is self-explanatory.

Clause 112: Application of Part to Northern Ireland

301 This section contains provisions about the application of this Part to Northern Ireland.

Schedule 5: Conduct of housing administration: companies

302 This Schedule contains provisions applying the provisions of Schedule B1 to the Insolvency
Act 1986, and certain other enactments, to a housing administration (see clause 97). Schedule
B1 of the Insolvency Act 1986 sets out the framework for administrations conducted under that
Act. Schedule 6 is divided into three parts:

Part 1 - Modifications of Schedule B1 to the 1986 Act

303 This part makes modifications to a number of paragraphs of Schedule B1 to adapt them to the
housing administration regime established by Chapter 5 of the Act. It makes general
modifications e.g. where Schedule B1 uses the term “administrator” that is to be read as
“housing administrator”, and further specific modifications where a simple substitution of
words is not sufficient.

Part 2 - Further modifications of Schedule B1 to the 1986 Act: foreign companies

304 This Part makes further modifications to Schedule B1 to adapt that Schedule as it applies to
foreign companies. In particular, clause 92(4) provides that a housing administration in
respect of a foreign company only affects that company’s U.K. affairs, business and property.
This Part makes modification to Schedule B1 to give effect to that limitation.

Part 3 - Other modifications

305 This Part makes further modifications, both general and specific to provisions elsewhere in the Insolvency Act and in other legislation that refers to administrations. Specific modifications are made to the provisions of the Insolvency Act 1986 relating to company voluntary arrangements so that these do not interfere with the conduct of a housing administration.

306 Paragraph 30 grants the Secretary of State a power to amend Part 2 of Schedule 5 by adding further modifications to the provisions of insolvency law having effect in the case of foreign companies.

307 Paragraph 44 grants the Secretary of State a power to amend Part 3 of Schedule 5 by adding further modifications of insolvency law where the Secretary of State considers the modifications appropriate in relation to the housing administration regime in Chapter 5.

Schedule 6: Amendments to housing moratorium and consequential amendments

308 This Schedule contains provisions amending the moratorium provisions for register providers in the Housing and Regeneration Act 2008 to align them with the new housing administration provisions. Paragraph 3 list the ways in which a moratorium can be triggered. The relevant period of the moratorium is also amended (Paragraph 4) to 28 calendar days beginning on the day on which the notice is given.

Chapter 6: Secure Tenancies Etc.

Clause 113: Secure tenancies etc: phasing out of tenancies for life

309 This clause introduces Schedule 7, which makes changes to the Housing Act 1985 and the Housing Act 1996 in relation to the granting of secure, introductory, demoted and family intervention tenancies.

Schedule 7: Secure tenancies etc: phasing out of tenancies for life

310 This Schedule amends the Housing Act 1985 and the Housing Act 1996 to phase out lifetime tenancies. Currently a secure tenant can live in a property for life. In future, secure tenancies will generally have to be for a fixed term and will not automatically be renewed.

311 Paragraph 4 inserts new sections 81A to 81C into the Housing Act 1985. Local authorities may generally only grant secure tenancies for a fixed term of between 2 and 5 years and a tenant may request a review of the landlord’s decision as to the length of the fixed term. If a landlord tries to grant a lifetime tenancy or a tenancy shorter than 2 or longer than 5 years, the tenancy defaults to a 5 year fixed term.

312 Existing lifetime tenants must be given a further lifetime tenancy if they are required to move by the landlord and the landlord has discretion to grant a lifetime tenancy in other circumstances to be set out in regulations.

313 If a local authority takes on a property with a tenant who has a periodic tenancy or one that is less than 2 years or more than 5, the tenancy becomes a non-secure tenancy and the local authority must offer the tenant a new fixed term tenancy of between two and five years.

314 Paragraph 11 inserts new sections 86A to 86F into the Housing Act 1985 which deal with the process for reviewing, renewing and terminating fixed term tenancies.
315 A landlord must carry out a review between 9 and 6 months before the end of the fixed term to decide whether to grant a new tenancy in the same or a different dwelling house or to end the tenancy without offering another one. Where appropriate, the local authority must provide advice on buying a home or other housing options. The landlord must notify the tenant of the outcome of the review and the tenant may ask the landlord to reconsider a decision to terminate the tenancy.

316 Local authorities may not issue a demoted tenancy within 1 year and 9 months of the end of a fixed term tenancy, to allow time to carry out the review. A demoted tenancy is a tool to tackle anti-social behaviour; it puts the tenant on notice to improve their behaviour and lasts for 12 months at the end of which the tenancy reverts to its original type.

317 If the landlord does not grant a new tenancy at the end of the old one, or seek possession of the property, the default position is that a new 5 year tenancy arises automatically at the end of the tenancy. This does not prevent the landlord from recovering possession of the property but ensures that the tenancy does not become a lifetime tenancy at the end of the term.

318 New section 86E of the Housing Act 1985 provides for the process by which a landlord may recover possession of a property at the end of the fixed term. A tenant may terminate a fixed term tenancy on giving 4 weeks’ notice.

319 The right to improve and to be compensated for improvements do not apply to a fixed term secure tenancy.

320 Paragraphs 18 to 22 make corresponding changes to the Housing Act 1996 to allow local authorities to continue to offer introductory tenancies. These are trial tenancies where the trial period lasts for 12 months, extendable to 18 months. A landlord may not extend the trial period within 9 months of the end of the tenancy. This is to allow for a review to take place.

Clause 114: Succession to secure tenancies and related tenancies
321 This clause introduces Schedule 8, which makes changes to the Housing Act 1985 and the Housing Act 1996 in relation to succession to secure, introductory and demoted tenancies.

Schedule 8: Succession to secure tenancies and related tenancies
322 This Schedule amends the Housing Act 1985 to make the rules governing succession to secure tenancies granted before 1 April 2012 the same as those for tenancies granted from that date.

323 Spouses, civil partners, and those living together as husband and wife continue to have a statutory right to succeed to a lifetime tenancy.

324 The statutory rights of other family members to succeed to a secure tenancy granted before 1 April 2012 are changed. Certain listed family members currently have the right to succeed to a lifetime tenancy if they live with a lifetime tenant for 12 months or more. The changes made by this Schedule mean that in future they will not have an automatic right to succeed. Instead, local authorities will have discretion to grant them succession rights. Where the deceased tenant had a lifetime tenancy, persons other than spouses and partners who qualify to succeed cannot be given a lifetime tenancy and must be given a five year fixed term tenancy.

325 The Housing Act 1996 is amended to make corresponding changes to the rules governing succession to introductory and demoted tenancies.

326 These changes do not apply where the tenant has died before the Schedule comes into force.
Part 5: Housing, Estate Agents and Rentcharges: Other Changes

Accommodation needs in England

Clause 115: Assessment of accommodation needs

327 Clause 115 makes amendments to Section 8 of the Housing Act 1985 and revokes section 225 and 226 of the Housing Act 2004.

328 Section 8 of the Housing Act 1985 requires every local housing authority to consider housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation.

329 Section 225 of the Housing Act 2004 requires that every local housing authority must, when carrying out a review under section 8 of the Housing Act 1985, carry out an assessment of the accommodation needs of Gypsies and Travellers who reside in or who resort to their area. Gypsies and Travellers are defined by the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) Regulations 2006 S.I. 2006/3190.

330 Section 226 of the Housing Act 2004 enables the Secretary of State to issue guidance on the carrying out of needs assessments for Gypsies and Travellers and the preparation of strategies to meet those needs and the process by which guidance must be laid before Parliament. The Gypsy and Traveller Accommodation Needs Assessment October 2007 was issued under section 226 of the Housing Act 2004.

331 The amendments move away from separate definitions in housing legislation to make clear that when authorities are carrying out a review of housing needs that it considers the needs of all the people residing in or resorting to their district, without any references to Gypsies and Travellers. The clause revokes sections 225 and 226 of the Housing Act 2004 (and the secondary legislation and guidance made under them).

332 Subsection (1) adds two subsections to section 8. The first makes clear that the duty under section 8 includes considering the needs of people residing in or resorting to their district for caravan sites and places where houseboats can be moored. The second defines “caravan” and “houseboat”.

333 Subsection (2) revokes sections 225 and section 226 from the Housing Act 2004.

Housing regulation in England

Clause 116: Licences for HMO and other rented accommodation: additional tests

334 This clause amends the fitness test applied to persons who apply for licences to let residential accommodation in a house in multiple occupation under Part 2, and in premises subject to selective licensing under Part 3, of the Housing Act 2004. It adds additional criteria to the tests under each Part, namely that applicants should be entitled to remain in the United Kingdom, and should not be insolvent or bankrupt. The clause also clarifies that past failure to comply with duties concerning the immigration status of prospective tenants may be taken into account, and that regulations specifying information to accompany applications may require supporting evidence. The aim of the provisions is to further identify potential rogue landlords and property agents and prevent licences being granted to them.

Clause 117: Financial penalty as alternative to prosecution under Housing Act 2004

These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)
This clause introduces Schedule 6, which amends the Housing Act 2004 to allow financial penalties to be imposed as an alternative to prosecution for certain offences.

Schedule 9: Financial penalty as alternative to prosecution under Housing Act 2004

This Schedule makes amendments to the Housing Act 2004 to provide that a financial penalty may be imposed by a local authority as an alternative to prosecution in relation to certain offences under that Act. These are:

- where a person has failed to comply with an improvement notice that has become operative, such as that their conduct would amount to an offence under section 30 of the Housing Act 2004;

- where a person has control of or manages an HMO which is required to be licensed under Part 2 of that Act but is not so licensed; where a person has control of or manages an HMO which is licensed under Part 2 of that Act and that person knowingly permits another person to occupy the house, with the result of the house being occupied by more households or persons than is authorised by the licence; and where a person is a licence holder or person on whom restrictions or obligations under a licence are imposed and that person fails to comply with any condition of the licence (offences under section 72 of that Act);

- where a person has control of or manages a house which is required to be licensed under this Part 3 of the Housing Act 2004 but is not so licensed; and where a person is a licence holder or a person on whom restrictions or obligations under a licence are imposed and that person fails to comply with any condition of the licence (offences under section 95 of that Act);

- where a person has contravened an overcrowding notice such that their conduct amounts to an offence under section 139(7) of the Housing Act 2004; and

- where a person has failed to comply with management regulations in respect of a house in multiple occupation (an offence under section 234(3) of the Housing Act 2004).

A local authority has discretion to decide whether to impose a financial penalty or to pursue a prosecution in individual cases. However, a local authority may not impose a financial penalty if the person has already been convicted of an offence in relation to the conduct or criminal proceedings for the offence have commenced and have not been concluded. If a local authority has imposed a financial penalty on a person, that person may not then be convicted of an offence for that same conduct.

Where a financial penalty is imposed, only one such penalty may be imposed in respect of the same conduct. The amount of the financial penalty shall be determined by the local authority but must not exceed £30,000. The Secretary of State may make regulations providing how local authorities are to deal with financial penalties recovered and amending the amount of the maximum financial penalty to reflect changes in the value of money.

New Schedule 13A to the Housing Act 2004 sets out the procedure to be followed when imposing a financial penalty as an alternative prosecution. Before imposing a financial penalty on a person under new section 249A of the Housing Act 2004, the local authority must give that person notice of their intention to do so. The notice must be given within a period of 6 months, beginning with the first day on which the authority has evidence of the conduct to
which the penalty relates. The notice must set out the amount of the financial penalty, the reasons for proposing to impose the penalty and information about the right to make representations.

340 A person who is given a notice of intent may make representations to the local authority and must do so within 28 days beginning with the day after the day on which the notice was given. After the end of the period for representations, the local authority must decide whether or not to impose a financial penalty and if it decides to do so, it must decide the amount of the penalty.

341 If the local authority decides to impose a penalty, it must give the person a final notice imposing the penalty. The final notice must require payment of the penalty within 28 days, beginning with the day after the notice was given and must set out certain information, including the amount of penalty, how to pay, the rights of appeal and consequences of failing to comply with the notice.

342 A local authority may at any time withdraw a notice of intent or a final notice. The authority may also reduce the amount specified in a notice of intent or a final notice. The person must be notified in writing of any such withdrawal or reduction.

343 A person to whom a final notice is given may appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of the penalty. If a person makes an appeal, the final notice is suspended until the appeal is determined or withdrawn. Following an appeal, the First-tier Tribunal may confirm, vary or cancel the final notice. The final notice may not be varied so as to increase the financial penalty by more than the amount than the local authority could have imposed.

344 If a person fails to pay all or part of the financial penalty, the local authority may recover the penalty or part of it on the order of the county court, as if it were payable under an order of that court.

345 A local housing authority must have regard to any guidance issued by the Secretary of State about the exercise of its functions under Schedule 13A or section 249A of the Housing Act 2004.

Clause 118: Offence of contravening an overcrowding notice: level of fine

346 This clause deals with the contravention of an overcrowding notice under section 139 of the Housing Act 2004. The maximum fine that can currently be imposed on conviction is set at level 4 (£2,500). This amendment brings the fine up to an unlimited fine thereby removing the restriction on the level of fine that may be imposed.

Housing information in England

Clause 119: Tenancy deposit information

347 This clause introduces new section 212A into the Housing Act 2004. Section 212A allows a local housing authority in England to obtain specified information held by tenancy deposit scheme administrators in order to carry out its functions under Parts 1 to 4 of that Act. This information will assist local housing authorities to identify privately rented housing and to target enforcement action towards the minority of landlords that fail to comply with the relevant statutory requirements.

348 So, for example, where multiple deposits are registered against a single address which does not hold an HMO licence a local housing authority will be able to investigate the property to identify whether any action needs to be taken under Part 2 of the Housing Act 2004.
349 Section 212A(3) provides for the charging of costs associated with providing the specified information.

350 The clause restricts the manner in which the data may be used by a local housing authority to the purposes as set out in Parts 1 to 4 of the Housing Act 2004 and the purpose of investigating whether an offence has been committed under any of those Parts in relation to the premises. This is to ensure that the use of the data accords with data protection principles. The clause provides that the purposes for which the data may be used can be amended by way of regulations made under the affirmative procedure.

351 A local housing authority may also share the data with other bodies providing services to it in the discharge of statutory functions under Parts 1 to 4 of the Housing Act 2004.

**Clause 120: Use of information obtained for certain other statutory purposes**

352 This clause amends section 237 of the Housing Act 2004 to provide that the Secretary of State may make regulations, under the affirmative procedure to change the list of purposes for which a local authority may use the data that it has obtained in exercise of its functions under section 134 of the Social Security Administration Act 1992 or Part 1 of the Local Government Finance Act 1992. Such data may currently be used by a local authority in exercise of its functions under Parts 1 to 4 of the Housing Act 2004.

**Enforcement of estate agents legislation**

**Clause 121: Estate agents: lead enforcement authority**

353 Subsections (1) and (2) insert into the Estate Agents Act 1979 new section 24A. Section 24A(1) makes the Secretary of State the lead enforcement authority for the purposes of the Estate Agents Act 1979. Section 24A(2) gives the Secretary of State the power to make arrangements for a trading standards authority to carry out the functions of the lead enforcement authority.

354 New section 24A(3)(a) makes clear that the Secretary of State may make payment to a trading standards authority to carry out the functions of the lead authority. Section 24A(3)(b) provides that any arrangements made by the Secretary of State are not permanent.

355 Subsection (3) amends section 33(1) Estate Agents Act 1979 so that the lead enforcement authority is defined as the Secretary of State or a trading standards authority who is carrying out the functions of the lead enforcement authority pursuant to arrangements made under section 24A of the Estate Agents Act 1979.

356 Subsection (4) amends paragraph 13(9) of Schedule 5 to the Consumer Rights Act 2015 to provide the Department of Enterprise, Trade and Investment in Northern Ireland and the Secretary of State with powers in relation to the production of information which could be used to carry out the functions of the lead enforcement authority.

**Enfranchisement and extension of long leaseholds**

**Clause 122: Enfranchisement and extension of long leaseholds: calculations**

357 This introduces Schedule 7 which makes amendments to the Leasehold Reform Act 1967 (“the 1967 Act”) and to the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”).

**Schedule 10: Enfranchisement and extension of long leaseholds: calculations**
Paragraph 1 amends Schedule 1 to the 1967 Act in relation to the right of the tenant of a house to acquire the freehold so that the price payable for a minor superior tenancy is calculated in accordance with regulations made by the Secretary of State. It also allows transitional provision to be made in the regulations. The amendments apply to cases where the relevant time (as defined in section 37(1)(d) of the 1967 Act) is before this Act is passed but on or after 11 July 2015.

Paragraph 2 introduces the following amendments to the 1993 Act.

Paragraphs 3 and 4 amend section 100 and Schedule 6 to the 1993 Act so that the value of a minor intermediate leasehold interest for the purpose of collective enfranchisement in the case of tenants of flats is calculated in accordance with regulations made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. The regulations will not be subject to any procedure in both the Houses of Parliament and the National Assembly for Wales. The amendments apply to cases where the relevant time (as defined in section 1(8) of the 1993 Act) is before this Act is passed but on or after 11 July 2015.

Paragraph 5 amends Schedule 13 to the 1993 Act so that the value of a minor intermediate leasehold interest in relation to the individual right of a tenant of a flat to acquire a new lease is calculated in accordance with regulations made by the Secretary of State or the Welsh Ministers. The amendments apply to cases where the relevant time (as defined in section 39(8) of the 1993 Act) is before this Act is passed but on or after 11 July 2015.

Rentcharges

Clause 123: Redemption price for rentcharges

Subsections (2) and (3) of clause 123 amend sections 9 and 10 of the Rentcharges Act 1977 (the 1977 Act). They require that the price to be paid by a rent payer on the redemption of a rentcharge be calculated in accordance with regulations made by the Secretary of State.

Subsection (4) enables transitional provision to be made in any regulations that are made under the 1977 Act.

Subsection (5) ensures that the amendments made by the clause apply to applications for rentcharge certificates which are made before Royal Assent and for which instructions for redemption have not been served under section 9(4) of the 1977 Act before that date. It also ensures that the amendments apply to any redemption application which is made after Royal Assent.

Clause 124: Procedure for redeeming English rentcharges

Subsection (1) of clause 124 introduces amendments which are to be made to the Rentcharges Act 1977 (the 1977 Act).

Subsection (2) inserts section 7A (power to make procedure for redeeming English rentcharges) into the 1977 Act which: gives the Secretary of State a power to make provision in regulations allowing an owner of land affected by a rentcharge in England to redeem it; lists the categories of rentcharge which are excluded from redemption under the new procedure and specifies the provision that can be made in regulations in relation to that procedure.

Subsection (3) makes consequential amendments to section 8 (application for redemption certificate) of the 1977 Act so that the existing procedure continues to apply in relation to Wales and where an apportionment order under section 20(1) of the Landlord and Tenant Act 1927 and section 7(2) of the 1977 Act is conditional upon the redemption of an apportionment part.
of a rentcharge.

368 Subsection (4) amends section 12 (regulations) of the 1977 Act so as to require regulations setting out the new procedure to be made by statutory instrument and for that instrument to be subject to the affirmative procedure.

369 Subsection (5) makes a minor change to the definition of “redemption certificate” in section 13(1) (interpretation) of the 1977 Act.

370 Subsections (6) to (8) make consequential amendments to section 8 and 11 of the Leasehold Reform Act 1967 where these relate to the existing procedure.

Part 6: Planning in England

Neighbourhood Planning

Clause 125: Designation of neighbourhood areas

371 This clause amends section 61G of the 1990 Act (meaning of “neighbourhood area”). That section provides for local planning authorities in England to designate neighbourhood areas within which neighbourhood planning activities may take place. A local planning authority may only designate a neighbourhood area where a relevant body (a parish council, where there is one, or an organisation or body which is, or is capable of being, designated as a neighbourhood forum) has applied to the authority for an area specified in the application to be designated. The authority must designate at least some of the area applied for (unless all of the area applied for is already designated).

372 The amendment enables the Secretary of State to make regulations requiring a local planning authority to designate all of the area applied for if the application meets prescribed criteria or has not been determined within a prescribed period (subject to prescribed exceptions).

Clause 126: Timetable in relation to neighbourhood development orders and plans

373 This clause amends the 1990 Act and the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to prescribe time periods within which local planning authorities must undertake key neighbourhood planning functions.

374 Paragraph 12 of Schedule 4B to the 1990 Act sets out what a local planning authority must do on receipt of a report by an independent examiner of a proposal for a neighbourhood development order or plan. The key decision is whether a referendum should be held on the proposal. If the authority propose to make a decision which differs from that recommended by the examiner, paragraph 13 of Schedule 4B requires prescribed persons to be consulted. The authority may also refer the issue to independent examination. New paragraph 13A of Schedule 4B, inserted by subsection (1) of this clause, enables the Secretary of State to prescribe in regulations time limits for authorities to decide whether to hold a referendum and for other actions under paragraphs 12 or 13.

375 Clause 126 also amends section 61E of the 1990 Act and section 38A of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to prescribe a date by which a local planning authority must make a neighbourhood development order or plan that has been approved in each applicable referendum (unless the authority considers that making the order or plan would not be compatible with any EU obligation or Convention right).

Clause 127: Making neighbourhood development orders and plans: intervention powers
376 Clause 127 inserts new paragraphs 13B and 13C into Schedule 4B to the 1990 Act.

377 New paragraph 13B enables the Secretary of State, at the request of a parish council or neighbourhood forum responsible for neighbourhood planning in an area, to intervene in a local planning authority’s decision whether to hold a referendum on a neighbourhood development order or plan proposal.

378 This power is exercisable in three circumstances: where a local planning authority has failed, by the date prescribed under the new paragraph 13A (inserted by clause 126) to decide whether to hold a referendum; where the authority do not follow the recommendations of the independent examiner of the proposal; or where the authority make a modification to the proposal that was not recommended by the examiner (other than to secure compliance with EU obligations or Convention rights, or to correct an error).

379 Where the power is exercised, the Secretary of State may direct the authority to make arrangements for a referendum or to refuse the proposal. The Secretary of State may also direct the authority to extend the area in which the referendum is (or referendums are) to take place and to publish a map of that area. New paragraph 13B also makes provision for notification and consultation of prescribed persons, and possible further examination, where the Secretary of State proposes to direct the authority not to act in accordance with the examiner’s recommendations. Where the Secretary of State directs an authority to arrange a referendum, the authority may only modify the proposal to secure compliance with EU obligations or Convention rights, or to correct errors.

380 New paragraph 13C enables the Secretary of State to make regulations for the procedure to be followed by those requesting intervention, and by the Secretary of State in considering and responding to any such request, and when intervening in response to a request.

**Clause 128: Local planning authority to notify neighbourhood forum of applications**

381 Clause 128 inserts a new paragraph 8A into Schedule 1 to the 1990 Act. The new provision requires a local planning authority, at the request of a neighbourhood forum in their area, to notify the forum of planning applications in the neighbourhood area for which the forum is designated. This would extend to neighbourhood forums a right afforded to parish councils by paragraph 8 of Schedule 1.

**Local Planning**

**Clause 129: Power to direct amendment of local development scheme**

382 Clause 129 amends section 15(4) of the Planning and Compulsory Purchase Act 2004. The existing provision enables the Secretary of State, or the Mayor of London if the local planning authority are a London borough, to direct the authority to amend their local development scheme (which sets out the development plan documents that the authority intend to produce and the timetable for their production). The amendment to section 15(4) is intended to ensure that directions made under the power can relate to the subject matter of documents specified in a scheme. This addresses concern that the current wording may be open to an unnecessarily narrow interpretation.

**Clause 130: Power to give direction to examiner of development plan document**

383 Clause 130 inserts a new subsection (6A) of section 20 of the Planning and Compulsory Purchase Act 2004. Section 20 requires local planning authorities to submit development plan documents to the Secretary of State for independent examination and sets out the purpose of the examination and the recommendations that the person appointed to carry out the
These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)

384 New subsection (6A) enables the Secretary of State to direct the appointed person to ‘suspend’ the examination, to consider specified matters, to hear from specified persons, or to take other specified procedural steps. Directions are given by notice to the appointed person.

Clause 131: Intervention by Secretary of State

385 Clause 131 amends section 21 of the Planning and Compulsory Purchase Act 2004 (intervention by the Secretary of State).

386 Subsections (4) to (9) of section 21 enable the Secretary of State to direct that a development plan document (or any part of it) is submitted to the Secretary of State for approval and make provision for what is to happen to a document following an intervention.

387 Clause 131 amends subsection (5) of section 21 and inserts a new subsection (5A) to make clear what is to happen where the Secretary of State withdraws (or partially withdraws) a direction.

388 Clause 131 also inserts a new subsection (11) of section 21 to require a local planning authority to reimburse the Secretary of State for any expenditure incurred in relation to an intervention that is specified in a notice to the authority.

389 Clause 131 also inserts a new section 21A of the Planning and Compulsory Purchase Act 2004 that enables the Secretary of State to issue a ‘holding direction’ to a local planning authority not to take any step in connection with the adoption of a development plan document while the Secretary of State considers whether to intervene under section 21. The document has no effect while a direction is in force, which is until it is withdrawn by the Secretary of State or until a direction under section 21 is given.

Clause 132: Secretary of State’s default powers

390 Clause 132 substitutes a new section 27 of the Planning and Compulsory Purchase Act 2004. Section 27 applies where the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document. Under the existing power; the Secretary of State may prepare or revise (as the case may be) the document and approve it as part of the development plan for the authority’s area.

391 The new section retains the current powers but also enables the Secretary of State to direct a local planning authority to prepare or revise a document, to submit that document to independent examination, to publish the recommendations of the person appointed to carry out the examination, and to consider whether to adopt the document. Existing requirements for the Secretary of State to give reasons for exercising these default powers, and for a local planning authority to reimburse the Secretary of State for expenditure incurred in connection with their exercise, are retained.

Clause 133: Default powers exercisable by Mayor of London or combined authority

392 Clause 133 inserts a new section 27A into the Planning and Compulsory Purchase Act 2004, which introduces a new Schedule A1 to that Act (set out in Schedule 11 to the Bill).

Schedule 11: Default powers exercisable by Mayor of London or combined authority:

Schedule to be inserted in the Planning and Compulsory Purchase Act 2004

393 Schedule 11 sets out the new Schedule A1 to the Planning and Compulsory Purchase Act 2004. These provisions enable the Secretary of State to invite the Mayor of London or a combined authority to prepare a development plan document for a local planning authority that are a London borough or a constituent authority of the combined authority (as the case may be).
The power may be exercised in the same circumstances as the power under the section 27 of the Planning and Compulsory Purchase Act 2004 (as substituted by clause 132); where the Secretary of State thinks that the local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of the document. The Mayor or combined authority would be responsible for preparing the document and having it examined. They may then approve the document (or approve it subject to modifications recommended by the inspector) or direct the local planning authority to consider adopting it. The Schedule also enables the Secretary of State to intervene in the preparation of a document by the Mayor or a combined authority.

**Clause 134: Costs of independent examinations held by Secretary of State**

Clause 134 amends section 303A of the 1990 Act to enable the Secretary of State to recover from the relevant local planning authority the costs of the independent examination of a development plan document prepared by the authority or by the Secretary of State under section 27 of the Planning and Compulsory Purchase Act 2004.

**Planning in Greater London**

**Clause 135: Planning powers of the Mayor of London**

The Mayor of London has existing powers under the 1990 Act to ‘call in’ for his own decision certain planning applications of potential strategic importance for Greater London or to direct a local planning authority to refuse planning permission. The Secretary of State prescribes in secondary legislation which applications are subject to these powers (see the Mayor of London Order 2008 (S.I. 2008/580), as amended by the Mayor of London (Amendment) Order 2011 (S.I. 2011/550)).

Clause 135 amends sections 2A and 74(1B) of the 1990 Act to enable the Secretary of State to prescribe these applications by reference to the Mayor’s spatial development strategy under Part 8 of the Greater London Authority Act 1999 or London borough development plan documents adopted or approved under Part 2 of the Planning and Compulsory Purchase Act 2004.

Clause 135 also enables the Secretary of State, by development order, to enable the Mayor to direct a London borough to consult the Mayor before granting planning permission for development described in the direction. Similar directions are currently given by the Secretary of State under existing powers and are used, in conjunction with the Mayor’s power to direct refusal of planning applications in prescribed circumstances, to restrict development that might have an impact on wharves on the River Thames or key London ‘sightlines’. In July 2015, the Government announced in its Productivity Plan, “Fixing the Foundations: Creating a more prosperous nation”, that it would proceed with devolution to the Mayor of planning powers over wharves and sightlines. These amendments allow for the making of secondary legislation with a view to giving effect to that commitment.

**Permission in principle and local registers of land**

**Clause 136: Permission in principle for development of land**

New section 58A: Permission in principle

Clause 136 inserts into Part 3 of the Town and Country Planning Act 1990 new section 58A. This section sets out that permission in principle may be granted for development of land in
England. It also refers to section 70 of the 1990 Act as amended by the Bill, under which an application for technical details consent (as defined in that section - see paragraphs 409 to 412 below) has to be determined in accordance with permission in principle. The result would be the grant of full planning permission.

Section 59A Development Orders Permission in Principle

400 Section 59A makes provision for permission in principle to be granted in two ways, on allocation in plans and registers and on direct application to the local authority.

Permission in principle on allocation through plans and registers

401 Section 59A(1)(a) will enable permission in principle to be granted for housing led development on sites chosen and allocated by local authorities, parish and neighbourhood groups within 'qualifying documents'. The intention is for the qualifying documents to be Development Plan Documents, Neighbourhood plans and the brownfield register (see commentary on clause 137).

402 A development order will set out the 'particulars' that can be granted permission in principle. The aim of permission in principle is to give up-front certainty on the core matters underpinning the basic suitability of a site for a particular development and allow matters of detail to be agreed subsequently. Therefore, the Government’s intention is that the particulars will be limited to location, uses (which must be housing led) and the amount of development. If local authorities, parish and neighbourhood groups choose to allocate land in such a document, it satisfies the requirements of the development order as to the particulars and it indicates that the land in question is suitable for permission in principle, the development order will grant the land permission in principle.

403 Section 59A(4)(a) provides that permission in principle will be granted at the time when a qualifying document is adopted or made or revised to allocate land with permission in principle by the local authority. Permission in principle is not necessarily brought to end when the qualifying document is reviewed or revised (see section 59A(4)(b)).

Permission in principle on application to the local authority

404 Section 59A(1)(b) allows applicants to apply directly to their local authority for permission in principle and gives the Secretary of State the power to set out, in a development order, the process that local authorities must follow in handling an application. The Government’s intention is to limit this option to applications for minor development (i.e. development that is not major development or householder development as defined by Article 2 of The Town and Country Planning (Development Management Procedure)(England) Order 2015). The intention is to amend the Development Management Procedure Order 2015 to set out the process that applicants and local authorities must follow in granting permission in principle.

Technical Detail Consent

405 A permission in principle (where granted on allocation or application) must be followed by an application for technical details consent before full planning permission is granted.
59A(6) provides that a development order may set out the process that must be followed for an application for technical details consent. The Government intends to consult on the details of the application process for technical detail consent in due course.

General

406 Section 59A(5) provides that the development order will set out how long permission in principle is valid for and that it may also contain transitional arrangements where permission in principle expires.

407 Section 59A(7) requires the local planning authority to hold a register of all permissions in principle for land in their area whether they are generated on allocation in local plans and registers or granted on application.

408 Section 59A(8) gives the Secretary of State the power to issue statutory guidance that local authorities must have regard to in relation to a grant of permission in principle.

Section 70: new subsections (1A) and (2ZZA) to (2ZZC)

409 Clause 136 also amends section 70 of the Town and Country Planning Act 1990. Section 70 sets out how a local planning authority must determine planning applications. Clause 136 will insert new subsection (1A) into section 70, allowing the local planning authority, on receiving an application for permission in principle, to either grant or refuse it. There is no power for the local planning authority to grant permission in principle subject to conditions. The reason for this is that the Government’s view is that conditions are not required at the ‘in principle’ stage and should be reserved for the technical details consent stage.

410 Clause 136 inserts new subsections (2ZZA), (2ZZB) and (2ZZC) into section 70. New subsection (2ZZB) defines technical details consent as an application for planning permission that relates to, and is in accordance with, the permission in principle in force on the land. Where a fee is payable the expectation is that it will be set at a level that is consistent with similar types of existing applications in the planning system.

411 New subsection (2ZZA) provides that in determining an application for technical details consent the local authority is not able to re-open or reconsider the ‘principle of the development’ (which, as expressed above, the Government intends to limit to use, location and amount of development). It does not mean that permission in principle removes the need for technical details to be considered properly against the National Planning Policy Framework and local policy. Technical details consent may be refused by the local planning authority, if the detail proposed is not acceptable. A local planning authority may, in granting planning permission at the technical details stage, include such conditions as they consider appropriate.

412 Subsection 70(2ZZC) provides that the duty to determine a technical details consent in accordance with the permission in principle under section 70(2ZZA) does not apply where a prescribed period has passed and there has been a material change of circumstance since it was granted. The Government will consult about the appropriate duration of permission in principle in due course.

Schedule 12: Permission in principle for development of land: minor and consequential amendments

413 This Schedule is self-explanatory.

Clause 137: Local planning authority to keep register of particular kinds of land

414 This clause inserts a new section 14A into the Planning and Compulsory Purchase Act 2004. The new section will enable the Secretary of State to make regulations requiring a local
planning authority in England to compile and maintain a register of particular kinds of land
either wholly or partly within that authority’s area. The Secretary of State intends to use the
power to require local planning authorities which are responsible for deciding applications for
housing development, usually the district council, to each compile a register of previously
developed land in their area, commonly known as “brownfield land”, which is suitable for
housing development. The power might also be used to require local planning authorities to
prepare other registers of land, for example, a register of small sites which would help promote
self-build and custom housebuilding.

415 Subsection (1) allows the Secretary of State both to prescribe the description of land (subsection
(1)(a)) and to prescribe any criteria which the land must meet for entry in the register
(subsection (1)(b)). The criteria prescribed by the Secretary of State could for example include
that the land must be available already or in the near future for housing development, that it
must not be affected by physical or environmental constraints that cannot be mitigated and
that it must be capable of supporting five dwellings or more.

416 Under subsection (2) the Secretary of State might, for example, require the register of
brownfield land to be kept in two parts: the first part could list brownfield land suitable for
housing which meets certain prescribed criteria, and the second part could list land from the
first part of the register which the local planning authority considers is suitable for a grant of
permission of principle (see clause 136) and which has additionally been through a process of
consultation.

417 In addition, regulations made under subsection (3) may provide that the local planning
authority is permitted to include land in the register which does not meet all of the specified
criteria, that is, land which would otherwise be excluded from the register. In the example
above, the Secretary of State might exercise this power so that a local planning authority could
enter land in the register where it considered it was suitable for housing development but it
was only capable of supporting four dwellings or fewer. When exercising any of its functions
under regulations made under new section 14A, the local planning authority will need to have
guard to the development plan, national policies and advice and any guidance issued by the
Secretary of State for the purposes of the regulations, see subsection (7). Therefore for
example, if a piece of brownfield land had been designated for employment purposes in the
local plan, the local planning authority would not enter it in the register as being suitable for
housing.

418 Subsection (4) sets out what the regulations may specify in relation to the register. For
example, the Secretary of State may specify that certain descriptions of land are not to be
entered in the register (subsection (4)(b)). This power could be used to provide that land
which already has planning permission for new housing is to be excluded from the second part
of the register as not being suitable for a grant to permission in principle.

419 Subsection (4)(c) provides that the Secretary of State may allow for some discretion on the part
of the local planning authority to exclude land from the register where they would otherwise
be obliged to enter it in the register. The Secretary of State might provide for example that the
local planning authority could exercise their discretion in exceptional circumstances such as
where development of the land would be particularly controversial and the authority
considers that development decisions should be made through the usual planning application
route.

420 The Secretary of State may also specify in the regulations, certain types of information for
inclusion into the register alongside the entries (subsection (4)(e)). For example, the site
reference, address, size, an estimate of the maximum number of dwellings that the site would
be likely to support, and it’s planning status.
421 Subsection (5) allows the Secretary of State to specify a description of land, in the regulations, by reference to a description of land in national policies and advice contained in guidance. For example, the regulations could refer to the definition of previously developed land within the National Planning Policy Framework.

422 The Secretary of State might use the power in subsection (6) to require a local planning authority to provide particular information to him in order to measure their progress towards compiling a register.

423 Clause 137(2) amends section 33 of the Planning and Compulsory Purchase Act 2004. Under that section, the Secretary of State has the power to direct that Part 2 of that Act should not apply to the area of an urban development corporation. The amendment will allow the Secretary of State additionally to disapply by direction any particular regulations made under new section 14A. If a direction were made disapplying Part 2 from the area of an urban development corporation, so that it did not have to prepare a local plan, it might not be appropriate for the urban development corporation to have to prepare a register of brownfield land under regulations made under section 14A. In addition, there might be circumstances in the future in which it is decided that Part 2 of the Planning and Compulsory Purchase Act 2004 and certain regulations made under section 14A should apply to an urban development corporation, but not all of those regulations

Planning permission etc

Clause 138: Approval condition where development order grants permission for building

424 This clause amends an existing power in section 60 of the Town and Country Planning Act 1990 under which planning permission may be granted by a development order subject to conditions or limitations. Planning permissions granted by development order are known as “permitted development rights”.

425 Subsection (2A) of section 60 already makes provision for development orders to require the approval of the local planning authority or the Secretary of State for a change of use, or in respect of matters relating to that new use. For example, in relation to a change of use which might generate extra traffic and be noisier than the existing use, the local planning authority may be given the opportunity to approve a transport strategy prepared by the developer, and a plan to address noise impacts.

426 New subsection (1A) of section 60 makes similar provision for permitted development rights in respect of building operations (as listed under section 55(1A) under the 1990 Act). It enables development orders to require the approval of the local planning authority or the Secretary of State for any matters related to the building operations or the use of the land following those building operations. This enables certain aspects of the permitted development right to be delegated to the local planning authority, so that local conditions and sensitivities can be taken into account.

Clause 139: Planning applications that may be made directly to Secretary of State

427 This clause expands sections 62A and 62B of the Town and Country Planning Act 1990 under which: (a) local planning authorities may be designated for not adequately performing their function of determining applications for major development; and (b) the developer may choose to make an application for major development directly to the Secretary of State where the authority has been designated.

428 The amendments allow the Secretary of State to designate a local authority for its performance
in determining applications for categories of development described in regulations made by
him (which could now include a separate category of non-major development). The
developer may then choose to make an application for development of that description directly
to the Secretary of State. The amendments also allow the Secretary of State to provide that
certain applications may not be made directly to him under section 62A. For example, if a
local planning authority was designated for its performance in determining non-major
applications, it may be appropriate for certain minor applications to continue to be dealt with
at a local level.

Subsection (4) is an unrelated amendment which simply removes reference to conservation
area consent, as this was abolished in England by the Enterprise and Regulatory Reform Act
2013.

Clause 140: Local planning authorities: information about financial benefits

Clause 140 inserts a new section 75ZA into the Town and Country Planning Act 1990 to ensure
that potential financial benefits of certain development proposals are made public when a local
planning authority is considering whether to grant planning permission.

The majority of decisions on planning applications are taken under delegated authority by an
officer of a local planning authority, with the more controversial or larger developments being
considered by a committee or sub-committee. Where a committee is considering an
application, it will normally be assisted by a report prepared by an officer (and made public)
which includes a recommendation as to how an application should be determined. The new
section 75ZA requires local planning authorities to make arrangements for officers’ reports to
planning committees, or to the authority itself, containing such a recommendation to include a
list of financial benefits which are likely to be obtained by the authority as a result of the
proposed development if it is carried out.

The financial benefits to be listed include local finance considerations (which will include sums
payable under the Community Infrastructure Levy, and grants or other financial assistance
provided by central government) or any other benefit which is set out by the Secretary of State
in secondary legislation. A financial benefit must be recorded regardless of whether it is
material to an authority’s decision on a planning application, but the officer will need to
indicate their opinion as to whether the benefit is material or not. The section does not in any
way change those matters that are capable of being material to planning decisions.

The Secretary of State has power to require a financial benefit to be recorded where it is
payable to another person (including a body) rather than to the authority making the planning
determination. The Secretary of State also has power to set out in regulations any further
information about a financial benefit which must be recorded in a planning report. This
might include, for example, an estimate of the amount of the benefit in question.

Clause 141: Planning applications: setting of fees

Clause 141 amends section 303 of the Town and Country Planning Act 1990 (fees for planning
applications etc), so that regulations made under it that would, at present, require the hybrid
procedure in Parliament would be subject to the usual affirmative procedure instead.

Under section 303, the Secretary of State may make regulations which allow a local planning
authority to charge a certain fee when a planning application is made to them. The fee varies
depending on the type and complexity of the planning application. Such regulations are
usually subject to the affirmative procedure in Parliament, which requires that they are
debated and voted upon before they can come into force. However, if changes were to be
made to the level of fees charged by only some authorities rather than all authorities, then at present it is likely that the regulations concerned would be treated as a 'hybrid instrument' and would be subject to an extended Parliamentary procedure. This clause would mean that all fees regulations made under this section would follow the normal affirmative procedure.

**Planning obligations**

**Clause 142: Resolution of disputes about planning obligations**

436 Section 106 of the Town and Country Planning Act 1990 enables someone with an interest in land to enter into a planning obligation enforceable by the local planning authority. Such obligations are usually entered into in conjunction with an application for planning permission. The negotiation of such obligations can become protracted. This clause inserts a new section and Schedule into the 1990 Act to introduce new procedures aimed at resolving issues connected with the negotiation of such obligations.

**Schedule 13: Resolution of disputes about planning obligations: Schedule to be inserted in the Town and Country Planning Act 1990**

**Appointment of a person to help resolve disputes**

437 This Schedule requires the Secretary of State to appoint someone to resolve issues that are holding up the completion of planning obligations.

438 The duty to make an appointment arises where certain conditions are met. There must be an existing planning application. The local planning authority must be likely to grant planning permission if satisfactory planning obligations are entered into. There must usually be a request from the local planning authority or from the applicant.

439 The Secretary of State can also make regulations setting out:

- who, other than the local planning authority and applicant, could make a request for the appointment of a person;
- the timing and form of requests;
- that a person can be appointed if outstanding issues have not been resolved within set timeframes (regardless of whether there is a request);
- further detail about appointments, including about when a request cannot be made and about when a request could be refused;
- what qualifications or experience the appointed person must have; and
- any fees payable.

440 There are temporary restrictions on the steps that can be taken in relation to the application until the dispute resolution process concludes.

**The appointed person**

441 The local planning authority and the applicant must co-operate with the appointed person and comply with any reasonable requests. Regulations can also enable the appointed person to award costs if one of those parties fails to comply or behaves unreasonably.

442 The appointed person must produce a report that sets out:
• the unresolved issues and the steps taken to resolve them;
• the terms agreed, or where the terms have not been agreed, recommendations as to what terms would be appropriate;

443 The appointed person must take into account any template or model terms published by the Secretary of State. Regulations can also set out other details about what the appointed person must and must not take account of.

444 The local planning authority must publish the report in line with any requirements set out in regulations. Regulations may also provide a process for making revisions to a report.

445 An appointed person may be appointed to consider two or more planning applications at the same time if the same or similar issues arise under them. In such circumstances a single report may be produced.

After the appointed person’s report

446 After the appointed person issues a report, a local planning authority must comply with the obligations in this Schedule.

447 Where planning obligations are entered into in line with the report, then the local planning authority must not refuse permission for reasons relating to the appropriateness of the planning obligations.

448 The parties may agree different terms, but they will only have a limited period to do so. The period will be set out in regulations.

449 Where no obligations are entered into with a set period, the application must be refused. This is to ensure that the matters come to a conclusion quickly.

450 Regulations can also set out restrictions on the local planning authority’s ability to ask for additional obligations at this time. Any such restrictions would be designed to ensure that the report is given proper effect by the local planning authority. Regulations can also set out:

• periods for determining planning applications after a report is issued;
• circumstances or cases where the consequences in this Schedule don’t apply; and
• any further steps required to be taken by the appointed person, the local planning authority or the applicant in connection with the report.

451 Where an appeal is lodged, the person determining the appeal must have regard to the report but is not bound by it.

Clause 143: Planning obligations and affordable housing

452 This clause inserts a new section 106ZB into the 1990 Act.

453 Subsection 1 and 2 provide the Secretary of State with the power to make regulations which restrict, or impose other conditions on, the enforceability of planning obligations which relate to the provision of affordable housing.

454 For example regulations may restrict or place conditions on the enforceability of planning obligations which provide for affordable housing on sites of a certain size, or where the development is of a specific nature (such as providing a certain type of housing). This does not prevent parties from entering into planning obligations relating to affordable housing provision on these sites, but it will limit the remedy available should these obligations be
breached.

455 The conditions or restrictions may also be varied based on the type of affordable housing.

456 Subsection 3 sets out the definition of “affordable housing”. This includes a general category of new dwellings in England which are made available for people whose needs are not adequately served by the commercial housing market, as well as starter homes which are defined in Part 1 of the Bill.

457 The Secretary of State may amend the definition of “affordable housing” through regulations.

Nationally significant infrastructure projects

Clause 144: Development consent for projects that involve housing

458 Clause 144 provides the Secretary of State with the power to grant development consent for housing which is related to an application for a nationally significant infrastructure project. Clause 144 also provides that the Secretary of State must consider factors set out in guidance when determining whether to grant consent for housing.

459 Guidance produced by the Department for Communities and Local Government will set out details of the amount of housing that may be granted consent within a development consent order. This will include housing which is functionally linked to the infrastructure project (for example, housing that is required for workers during the construction phase of an infrastructure project or for key workers during the operation phase). It will also allow the Secretary of State to grant consent or housing where there is no functional link but there is a close geographical link between the housing and the infrastructure project.

460 Subsection (2) amends section 115(1) of the Planning Act 2008 so that related housing development may be granted development consent. Subsection (3) makes a clarifying amendment to section 115 and consequential on the wording of the inserted subsection (4B). Subsection (4) adds a new subsection (4B) to section 115 that defines related housing development as development in England which is on the same site, next to, or close to any part of the development for which development consent is required, or is otherwise associated with that development or any part of it. It also adds a new subsection (4C) which restricts the granting of consent for related housing development to infrastructure projects in England. Subsection (5) makes a consequential amendment to section 115 to apply section 33 to related housing development. Subsection (6) provides that the Secretary of State must have regard to guidance when determining an application that seeks to include housing.

Powers for piloting alternative provision of processing services

Clause 145: Processing of planning applications by alternative providers

461 Clause 145 allows the Secretary of State to introduce, by regulations, pilot schemes to test the benefits of introducing competition in the processing of applications for planning permission.

462 At the moment applicants for planning permission are required to submit their application to the local planning authority for the area where the proposed development is to take place. In the pilot schemes, applicants would be able to choose to submit their application for processing to either the local planning authority or one of a number of alternative designated persons.

463 Subsection 2(a) makes clear that responsibility for determining a planning application will remain with the local planning authority. Where an applicant chooses to submit an
application to an alternative designated person in a pilot scheme, then it will be solely for them to process the application and make a recommendation to the local planning authority on how, in their professional opinion, the application might be determined. Subsection 2(b) makes clear that any pilot schemes introduced by the Secretary of State will be for a time limited period.

464 Clauses 146 to 148 set out what may be included in regulations that introduce pilot schemes.

**Clause 146: Regulations under section (Processing of planning applications by alternative providers): general**

465 Clause 146 provides that regulations introducing pilot schemes may set out how the schemes should operate. This includes:

- setting out the local authority areas where the pilots will take place;
- the eligibility of persons to be designated participants in the pilot schemes, how they will be designated, performance standards to be met and being clear how conflicts of interest and the investigation of complaints are to be dealt with;
- the actions and procedures that must be followed by local planning authorities, designated persons an applicants during the pilot schemes.

**Clause 147: Regulations under section (Processing of planning applications by alternative providers): fees and payments**

466 Clause 147 provides that regulations may set out how fees will be set, published and charged by designated persons and local planning authorities in pilot areas, and for the refunding of fees in specific circumstances. It would also enable the Secretary of State to intervene where he considers that excessive fees are being charged.

**Clause 148: Regulations under section (Processing of planning applications by alternative providers): information**

467 Clause 148 provides that regulations may set out what information is to be shared between designated persons and local planning authorities and restricting the use to which the information shared may be put. It also enables the Secretary of State to set out what information must be shared with him, for example, to evaluate how the pilots are progressing.

**Urban development corporations**

**Clause 149 and Clause 150: Designation of urban development areas: procedure and Establishment of urban development corporations: procedure**

468 Clauses 149 and 150 make two changes in relation to orders establishing urban development areas and urban development corporations in England.

- First, they impose new consultation requirements.
- Secondly, they change the parliamentary procedure for making orders.

469 Orders are currently subject to the affirmative procedure but the clauses change this to the negative procedure. These changes put on a permanent footing the temporary changes that were made by sections 46 and 47 Deregulation Act 2015 (which were limited to orders laid before Parliament on or before 31 March 2016).
Clause 151: Sections 149 and 150: consequential repeals
470 This clause is self-explanatory.

Part 7: Compulsory Purchase Etc

Right to enter and survey land

Clause 152: Right to enter and survey land
471 Any acquiring authority which is considering using its compulsory purchase powers may need to enter the land to survey and value it before it decides to make a compulsory purchase order. For example, the authority may need to find out if there are any underground structures or contaminated land which might hamper a proposed scheme. Currently, only some acquiring authorities (such as local authorities, urban development corporations, and the Homes and Communities Agency) have the power to enter land in such circumstances.

472 Clauses 152 to 159 introduce a new general power of entry for survey and valuation purposes which will be available to all acquiring authorities in connection with a proposal to acquire land. Clause 152 provides that an acquiring authority may authorise a person to enter and survey land in connection with a proposal to acquire land. An authorisation may relate to the land which is the subject of the proposal or to other land.

473 The authorised person may not use force unless this is authorised by a warrant.

Clause 153: Warrant authorising use of force to enter and survey land
474 Clause 153 provides that a justice of the peace may only issue a warrant authorising a person to use force if satisfied that another person has prevented or is likely to prevent entry, and that it is reasonable to use force.

Clause 154: Notice of survey and copy of warrant
475 Clause 154 requires acquiring authorities to give owners and occupiers of the land at least 14 days’ notice of entry so they may make any necessary arrangements. The notice must explain whether the survey will involve certain activities such as searching or boring and, if so, what is proposed. It must also inform the owners / occupiers of their right to compensation in respect of any damage done in exercise of the power.

476 The notice must also include a copy of any warrant obtained. If the authority obtains a warrant after giving notice, it must separately give a copy of the warrant to every owner or occupier of the land.

Clause 155: Enhanced authorisation procedures etc. for certain surveys
477 Clause 155 sets out particular requirements where the land to be surveyed is held by statutory undertakers or includes a street. If the survey is to be carried out on land held by a statutory undertaker and the undertaker objects because it would seriously interfere with the carrying on of its undertaking, the consent of the appropriate Minister is needed before the authority can enter the land.

478 Clause 155 also refers to additional procedures in the Water Industry Act 1991 and the Water Resources Act 1991 that need to be followed when the power of entry is exercised on behalf of a water undertaker, the Environment Agency or the Natural Resources Body for Wales.
**Clause 156: Right to compensation after entry on or survey of land**

479 Clause 156 makes provision for compensation to be recovered from the acquiring authority for any damage done as a result of the exercise of the power of entry.

**Clause 157: Offences in connection with powers to enter land**

480 Clause 157 sets out details of offences in connection with the power of entry. An offence is committed if a person without reasonable excuse obstructs another person in the exercise of the power. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

481 In addition, a person exercising the power of entry commits an offence if the person obtains and discloses confidential information other than for the purposes for which the person was exercising the power. A person who commits such an offence is liable on summary conviction to a fine and on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both.

**Clause 158: Right to enter and survey Crown land**

482 Clause 158 provides that clauses 152 to 157 apply in relation to Crown land if the authorised person has the permission of the appropriate authority. The meaning of “Crown land” and “the appropriate authority” is set out in section 293 of the Town and Country Planning Act 1990.

**Clause 159: Amendments to do with sections 152 to 158**

483 Clause 159 introduces Schedule 14 which clarifies how existing powers of entry will interact with the new general power of entry in clause 152.

**Schedule 14: Right to enter and survey land: consequential amendments**

484 Schedule 14 amends existing powers of entry so that, in future, the new general power of entry will apply for the purposes of survey and valuation in connection with a proposal to acquire an interest in or a right over land instead. Where the new general power covers all the purposes of the existing power, the existing power has been repealed. Where the existing power is wider in scope than the new general power, the existing power has been disapplied only for the purposes for which the new general power will be available in the future.

485 Some of the existing powers which have been repealed also allow entry in connection with any claim for compensation in respect of an acquisition. The new general power of entry in clause 15/2 does not cover this purpose. However, the amendment made by paragraph 6 of Schedule 14 to the Bill clarifies that the power of entry in section 11(3) of the Compulsory Purchase Act 1965 can be used for this purpose.

**Confirmation and time limits**

**Clause 160: Timetable for confirmation of compulsory purchase order**

486 The confirmation stage of a compulsory purchase order comprises a number of discrete steps. At present, once a compulsory purchase order has been submitted to the confirming authority the process can be lengthy and the timescales for a decision unclear.

487 Clause 160 inserts new sections 14B and 14C into the Acquisition of Land Act 1981. Section 14B requires the Secretary of State to publish one or more timetables setting out the steps to be taken by confirming authorities in confirming a compulsory purchase order. Section 14C provides that the Welsh Ministers may also publish one or more timetables in relation to steps...
to be taken by them in confirming a compulsory purchase order.

488 The clause requires the Secretary of State/Welsh Ministers to publish an annual report to Parliament/ the Welsh Assembly setting out the extent to which confirming authorities have complied with any applicable timetable.

Clause 161: Confirmation by inspector

489 Compulsory purchase orders must be submitted by the acquiring authority to the relevant Minister for confirmation. Where an order has been objected to, an Inspector is appointed to hold a public inquiry or consider the case through written representations. The Inspector then submits a report and recommendation to the relevant Minister who makes the decision on the order.

490 Clause 161 inserts a new section 14D into Acquisition of Land Act 1981. This enables a confirming authority to appoint an Inspector to act instead of it in relation to the confirmation of a compulsory order to which section 13A of the Acquisition of Land Act 1981 applies. The Inspector has the same functions as the confirming authority under Part 2 of the Acquisition of Land Act 1981.

491 The clause also introduces provision for a confirming authority to revoke its appointment of an Inspector at any time until a decision is made.

Clause 162: Time limits for notice to treat or general vesting declaration

492 Clause 162(1) substitutes section 4 of the Compulsory Purchase Act 1965 with a new provision. Substituted section 4 clarifies the time limit for exercising compulsory powers where the notice to treat procedure is to be followed. A notice to treat may not be served after the end of the period of 3 years beginning on the day on which the compulsory purchase order becomes operative. This has already been established by case law (Salisbury (Marquis) v G. N. Ry (1852) 17 Q.B. 840; approved in Tiverton, etc Ry v Loosemore (1884) 9 App.Cas. 480).

493 Clause 162(2) inserts a new section 5A into the Compulsory Purchase (Vesting Declarations) Act 1981. New section 5A clarifies that a general vesting declaration may not be executed after the end of the period of 3 years beginning with the day on which the compulsory purchase order becomes operative. This ends any uncertainty on this issue created by the inconsistent decisions of Westminster City Council v Quereschi (1990) 60 P. & C.R. 380 and Co-operative Insurance Society Limited v Hastings BC (1993) 91 L.G.R. 608.

Vesting declarations: procedure

Clause 163: Notice of general vesting declaration procedure

494 Clause 163 introduces Schedule 15 which changes the notice requirements for general vesting declarations.

Schedule 15: Notice of general vesting declaration procedure

495 Schedule 15 repeals section 3 and section 5(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 so that a preliminary notice of intention is no longer required before a general vesting declaration may be executed. Instead, a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 must be included in the confirmation notice under section 15 of the Acquisition of Land Act 1981 (see paragraph 2 of Schedule 15). An invitation to any person who would be entitled to claim compensation if a general vesting declaration were made to give the acquiring authority information about the person's name, address and interest (using a prescribed form) must also be included in a
confirmation notice.

Clause 164: Earliest vesting date under general vesting declaration

496 Clause 164 amends section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 so as to extend the minimum period after which land may vest in an acquiring authority after the service of the notices required by section 6 of the Act. This extends the notice period for taking possession under the general vesting declaration procedure to a minimum of 3 months, from the current minimum of 28 days.

Possession following notice to treat etc

Clause 165: Extended notice period for taking possession following notice to treat

497 Subsection (2) amends section 11 of the Compulsory Purchase Act 1965 so as to extend the notice period for taking possession under the notice to treat/notice of entry procedure to a minimum of 3 months, from the current minimum of 14 days.

498 Subsection (3) inserts a new section 11A into the Compulsory Purchase Act 1965. Section 11A(1) provides that a notice of entry ceases to have effect if, before entering on taking possession of the land, the acquiring authority becomes aware of an owner, lessee or occupier to whom they have not given a notice to treat. This may occur where a new interest in land comes to light after notice of entry has been given, but before possession is taken. If the acquiring authority serves a notice to treat on the recently discovered owner, lessee or occupier, the acquiring authority may serve a new notice of entry on all the owners, lessees and occupiers of the land. New section 11A(3) provides for a shorter notice period in these circumstances provided the recently discovered person is not in occupation of the land. That period will be a minimum of 14 days, or until the end of the period specified in the last notice of entry, whichever is the longer.

Clause 166: Counter-notice requiring possession to be taken on specified date

499 Where an acquiring authority does not enter and take possession on the date specified in a notice of entry served under section 11(1) of the Compulsory Purchase Act 1965, the delay can cause uncertainty and have a number of adverse effects for the occupier. There may, for example, be a continuing liability to pay rent or insure the land and property that is the subject of the compulsory purchase order.

500 Clause 166 inserts a new section 11B into the Compulsory Purchase Act 1965. New section 11B enables a person in possession of the land to serve a counter notice requiring the acquiring authority to take possession of the land on a specified date. The date specified in the counter-notice must not be less than 28 days after the date the counter notice is served and must not be before the end of the period specified in the notice of entry under section 11(1) or any extended period that the person has agreed with the acquiring authority.

Clause 167: Agreement to extend notice period for possession following notice to treat

501 Clause 167 inserts new subsections (1D) and (1E) into section 11 of the Compulsory Purchase Act 1965. The new subsections make clear that an acquiring authority may extend the period specified in a notice of entry by agreement with each person on whom it was served.

Clause 168: Corresponding amendments to the New Towns Act 1981

502 Clause 168 makes corresponding changes to those made by clauses 165 to 167 in relation to the New Towns Act 1981.
Clause 169: Abolition of alternative possession procedure following notice to treat

Clause 169 is a tidying up measure. It introduces Schedule 16 to the Bill.

Schedule 16: Abolition of alternative possession procedure following notice to treat

Schedule 16 abolishes the alternative procedure for taking possession of land under section 11(2) of, and Schedule 3 to, the Compulsory Purchase Act 1965. This procedure is no longer used.

Clause 170: Extended notice period for taking possession following vesting declaration

Clause 170 amends section 9 of the Compulsory Purchase (Vesting Declarations) Act 1981 so as to extend the minimum notice period for taking possession from 14 days to three months. This replicates the change made by clause 165(2)(b) to the minimum notice period to be provided in a notice of entry under section 11(1) of the Compulsory Purchase Act 1965.

Compensation

Clauses 171: Making a claim for compensation

Clause 171 inserts a new section 4A into the Land Compensation Act 1961 to provide a power for the Secretary of State to make regulations to impose further requirements about the notice claimants must give the acquiring authority detailing the compensation sought by them. These regulations may make provision about the form and content of the notice, and the time at which the notice must be given. They may also permit or require a specified person to design a form to be used in making a request and may require the acquiring authority to supply copies of the form to be used.

Clause 172 through 175: Making a request for advance payment of compensation; Power to make and timing of advance payment; Interest on advance payments of compensation; Repayment of advance payment where no compulsory purchase

The purpose of advance payments is to put the claimant in a financial position, so far as is possible and as early as is possible, so that they can re-order their affairs with the minimum of disruption. In the majority of cases the claimant will find it necessary either to move house, if their home is acquired, or to move to other business premises in order to avoid closure of their business. Currently an advance payment will only be paid when, or after, possession is taken by the acquiring authority.

Clauses 172 through 175 make changes to the advance payments system to facilitate clearer claims and earlier payments. They also require the payment of interest if the acquiring authority fails to make a payment on time.

To help enable acquiring authorities to make a faster and earlier advance payment clause 172(2) amends section 52(2) of the Land Compensation Act 1973 to provide greater clarity as to the information that must be included in a request for an advance payment. New section 52(2A) provides that within 28 days of receiving a request an acquiring authority must request further information from the claimant (if necessary) so that there is greater certainty about the timing of the process.

Clause 172(3) inserts a new section 52ZD into the Land Compensation Act 1973 to give a power for the Secretary of State to make regulations detailing the form and content of the claimant’s request for an advance payment or a request to make a payment to a mortgagee under section 52ZA(3) or 52ZB(3). The regulations may also require acquiring authorities to supply the claimant with copies, at specified stages of the process, of a form to be used when making any
such request.

511 Clause 173(2) amends section 52 of the Land Compensation Act 1973 to facilitate earlier advance payments by: allowing an acquiring authority to make an advance payment at any time after a request has been submitted and the compulsory acquisition has become authorised; and requiring that an advance payment must be made within two months of the day the authority receives a request for the payment, the day on which the acquiring authority receives any further information required under section 52(2A)(b), the day on which the claimant is given notice to treat, or the day on which the authority make a vesting declaration, whichever is the later.

512 Clause 174(2) and (3) amends section 52A of, and inserts a new section 52B to, the Land Compensation Act 1973 to provide for the payment by the acquiring authority of interest if it fails to make an advance payment when it is due. Interest will be payable on the amount of the advance payment that should have been paid, and from the date it should have been paid, until payment has been made in full. New section 52B(4) requires the Treasury to make regulations to specify the rate of interest that will be payable.

513 Clause 175(2) and (3) inserts new subsections (5A) and (8A) to section 52 and section 52ZC respectively of the Land Compensation Act 1973 to provide for repayment of any advance compensation where the authority does not end up taking possession of the land.

Disputes

Clause 176: Objection to division of land

514 Land needed for development projects often cuts across parts of landowners’ property. In such cases, acquiring authorities would only seek to compulsorily purchase the relevant parts required. This may result in “material detriment” to the claimant’s retained land, where the retained land will be less useful or less valuable to some significant degree.

515 Where claimants wish to challenge the acquiring authority’s proposal to take only part of their land, because of the material detriment that will be suffered to their retained land, they can serve a counter-notice on the acquiring authority requesting that they purchase the entire property. The acquiring authority can either withdraw, decide to take all the land or refer the matter to the Upper Tribunal (Lands Chamber) for determination.

516 Currently the procedure for claiming “material detriment” differs depending on whether an acquiring authority uses a notice to treat or a general vesting declaration to exercise its compulsory purchase powers. Where a general vesting declaration has been executed, the procedure for serving a counter-notice is set out in Schedule 1 to the Compulsory Purchase (Vesting Declarations) Act 1981. A reference to the Upper Tribunal will prevent entry onto land being taken until the issue of material detriment is resolved.

517 Where a notice to treat has been served, divided land is covered by section 8 of the CompulsoryPurchase Act 1965. There is no statutory procedure for serving a counter-notice; the procedure has been established by case law (see Glasshouse Properties Ltd v Secretary of State for Transport (1993) 66 P&CR 285).

518 Clause 176(1) introduces Schedule 17 to the Bill.

519 Clause 176(2) introduces Schedule 18 to the Bill.

520 The intention is to harmonise (as far as possible) the approach to the treatment of material detriment under the vesting declaration and notice to treat procedures and to allow the
acquiring authority to enter and take possession of the land they are authorised to take, before any dispute about material detriment has been determined by the Upper Tribunal.

**Schedule 17: Objection to division of land following notice to treat**

**Part 1 - Amendments to Compulsory Purchase Act 1965**

521 Part 1 of Schedule 17 inserts a new Schedule 2A into the Compulsory Purchase Act 1965, which sets out the process for serving counter notices requiring the purchase of land not in the notice to treat.

522 Part 1 of Schedule 2A sets out detailed provisions in relation to when a counter-notice can be served, the effect of the counter-notice on the notice of entry, the options available to the acquiring authority to respond to the counter-notice and the effects of accepting a counter-notice or referring it to the Upper Tribunal. Part 1 applies in circumstances where the acquiring authority has served a notice to treat but not taken possession of the land before any counter-notice is served.

523 Where the acquiring authority has taken possession of part of the claimant’s land unlawfully (for instance, because they have not served a notice to treat) the procedure in Part 2 of Schedule 2A applies instead.

524 Part 3 of Schedule 2A deals with the determination of counter-notice referred to the Upper Tribunal by the acquiring authority, the factors that must be taken into account in the determination and the effect of a determination that more land should be acquired.

**Part 2 - Consequential amendments**

525 The remainder of Schedule 17 sets out consequential amendments.

**Schedule 18: Objection to division of land following general vesting declaration**

**Part 1 - Amendments to Compulsory Purchase (Vesting Declarations) Act 1981**

526 Schedule 18 makes similar provision to Schedule 17 for counter-notices following the making of a general vesting declaration. This is achieved principally through the substitution of a new Schedule 1 to the Compulsory Purchase (Vesting Declarations) Act 1981.

527 Where the acquiring authority refers the counter-notice to the Upper Tribunal and the counter-notice was served before the original vesting date, paragraph 12(2) of new Schedule 1 allows the authority to serve notice on the owner specifying a new vesting date for the land proposed to be acquired. This allows for the vesting of the land the authority is authorised to take before the Upper Tribunal has made a determination.

**Part 2 - Consequential amendment**

528 Part 2 of Schedule 18 makes a consequential amendment to section 5A of the Land Compensation Act 1961.

**Clause 177: Power to quash decision to confirm compulsory purchase order**

529 Once a compulsory purchase order has been confirmed, any person who disputes the validity of the order or any of its provisions can challenge the order through an application to the High Court under section 23 of the Acquisition of Land Act 1981.

530 Clause 177 amends section 24 of the Acquisition of Land Act 1981 to clarify that the court has the power to quash the decision to confirm the compulsory purchase order as well as the power to quash the whole or any provision of the order itself. Where the compulsory purchase order itself is found to be sound but there is an error in the decision to confirm the
order, the court may decide to quash the decision alone. This means the order will go back to the confirming Minister for reconsideration.

**Clause 178: Extension of compulsory purchase time limit during challenge**

531 Once a compulsory purchase order becomes operative (see section 26 of the Acquisition of Land Act 1981), acquiring authorities have three years to exercise their compulsory purchase powers. Where the validity of an order is challenged under section 23 of the Acquisition of Land Act 1981, acquiring authorities will usually wait until a final decision has been reached on the challenge, leaving them less time to implement the order.

532 Clause 178 inserts a new section 4A into the Compulsory Purchase Act 1965 and a new section 5B into the Compulsory Purchase (Vesting Declarations) Act 1981 to extend the time period allowed to implement a compulsory purchase order where an application is made under section 23 of the Acquisition of Land Act 1981. The extended period will be for either (a) a period equivalent to the period from the date an application is made under section 23 until it is finally determined or withdrawn or (b) one year, whichever is the shorter period. Where an appeal is brought, an application is not finally determined until the appeal is finally determined or withdrawn.

**Power to override easements and other rights**

**Clause 179: Power to override easements and other rights**

533 Easements and restrictive covenants on land can complicate the design of schemes and cause delay in their implementation. Local planning authorities and agencies with regeneration powers have statutory powers to override these rights when undertaking development (subject to the payment of compensation).

534 Clause 179 introduces a new power which extends the existing powers to override easements and restrictive covenants under the Town and Country Planning Act 1990 and other legislation to acquiring authorities, such as statutory undertakers, which do not already have those powers.

535 Clause 179 enables a person to interfere with easements and other rights (except where the right is a “protected right”) when undertaking building or maintenance works on, or using, land which has been vested in or acquired by a “specified authority”. The main conditions / limitations on the use of the power are set out in clause 179(2) and (5). There must be planning consent for the building or maintenance work / use of the land and the “specified authority” must be able to acquire the land compulsorily for the purpose of the building or maintenance work / the purpose of erecting or constructing any building, or carrying out any works, for the use.

536 The land must also have become vested in or acquired by a “specified authority” (or been appropriated for planning purposes by a local authority) after clause 179 comes into force or be “other qualifying land” (as defined in clause 181(1)). The provisions in respect of “other qualifying land” ensure that authorities that already have the statutory power to override easements etc. will be able to exercise the new general power in the same way after commencement. The existing powers will be repealed by Schedule 19.

**Clause 180: Compensation for overridden easements etc**

537 Clause 180 requires the payment of compensation where rights are overridden and provides for compensation to be calculated on the same basis as compensation payable under sections 7 and 10 of the Compulsory Purchase Act 1965.

*These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87)*
Clause 181: Interpretation of sections 179 and 180

538 Clause 181 defines the terms used in sections 179 and 180. This includes a “specified authority”, which is defined so as to limit it to an acquiring authority that is a public body or has statutory functions.

Clause 182: Amendments to do with sections 179 and 180

539 Clause 182 introduces Schedule 19 to the Bill.

Schedule 19: Amendments to do with sections 179 and 180

540 Schedule 19 makes amendments that are consequential on clauses 179 and 180. It repeals existing powers to override easements and other rights which will be replaced by the new power in clause 179.

Part 8: Public Authority Land

Clause 183: Engagement with public authorities in relation to proposals to dispose of land

541 The purpose of this clause is to ensure that when public bodies are developing proposals to sell land they engage with the local authority and other appropriate public authorities to ensure local policy considerations are taken into account before land is sold.

542 This clause therefore contains a duty that applies to Ministers of the Crown when developing a proposal to dispose of land. The duty requires a Minister of the Crown to engage on an ongoing basis with a) each local authority in whose area the land is situated, and b) any public authority, or public authority of a description, specified in regulations made by the Minister for the Cabinet Office (‘MCO’).

543 This clause also gives a power to the MCO to specify additional public authorities which are subject to a duty to engage when developing a proposal to dispose of land, and to specify which public authorities they must engage with. Regulations made by the MCO may also specify land, or descriptions of land, which a minister of the Crown or other specified public authority can develop proposals to sell without complying with the duty to engage.

544 Any person who is subject to a duty under this clause must have regard to guidance given by the MCO about how to comply with the duty. The guidance could, for example, specify what themes and commercial issues the engagement should cover and what level of engagement is appropriate in different cases.

545 This clause extends to England, Wales and Scotland. However, the MCOs power to specify public authorities that must carry out engagement whilst developing a proposal to sell land (and to specify those authorities which must be engaged with) is limited in Scotland and Wales. In relation to Scotland the power may only be used to specify Her Majesty’s Revenue and Customs or a body to which paragraph 3 of Part 3 of Schedule 5 to the Scotland Act applies. Bodies to which paragraph 3 applies include for example Her Majesty’s armed forces.

546 In relation to Wales, the power may not be used to impose duties on an authority which has functions that are exercisable only in relation to Wales and relate to a matter which the Welsh Ministers have power to deal with, or which the National Assembly for Wales can legislate about.

Clause 184: Duty of public authorities to prepare report of surplus land holdings
547 This clause is a transparency measure intended to make public if (and if so why) public authorities are holding surplus land. This clause therefore contains a duty on relevant public authorities to publish a report containing details of surplus land which they hold in England, Wales or Scotland.

548 For these purposes surplus land is land which the authority has determined is surplus and has been retained for longer than two years after the date of that determination; or, in the case of land which is used wholly or mainly for residential purposes, for longer than six months after the date of that determination. Reports must set out why the body has not disposed of any surplus land.

549 This clause gives the Secretary of State power to specify which public authorities (or which kinds of public authority) must prepare a report. However, in relation to land in Scotland the power may only be used to specify Her Majesty’s Revenue and Customs or a body to which paragraph 3 of part 3 of Schedule 5 to the Scotland Act applies. Bodies to which paragraph 3 applies include for example Her Majesty’s armed forces.

550 In relation to land in Wales, the power may not be used to impose duties on an authority which has functions that are exercisable only in relation to Wales and relate to a matter which the Welsh Ministers have power to deal with, or which the National Assembly for Wales can legislate about.

551 In determining whether land is surplus to requirements, and in carrying out other functions under this clause, a relevant public authority must have regard to guidance given by the Secretary of State. The guidance could cover for example how to determine whether land is held pending use for a different purpose (for example housing development or urban regeneration) or is instead surplus to requirements.

552 This clause also gives the Secretary of State power to provide in regulations that land counts as surplus as soon as a public authority determines that it is, i.e. without applying the timescales above. Regulations may also exclude specified land or descriptions of land from the duty to report. They may also make further provision about reports such as what must be included in a report and the form and timing of reports.

Clause 185: Power to direct bodies to dispose of land

553 The purpose of this clause is to enable the Secretary of State to direct certain public authorities to dispose of land. To achieve that this clause amends section 98 of the Local Government, Planning and Land Act 1980.

554 The existing section 98 contains a power for the Secretary of State to direct a public authority to dispose of land where the Secretary of State considers the land is not being sufficiently used for that authority’s functions. This clause adds a further power of direction to section 98 so that the Secretary of State can direct any relevant public authority to dispose of land. The power can only be exercised in circumstances specified by the Secretary of State in regulations. This regulation-making power could be used, for example, to specify that a direction can be made where land is not being sufficiently used for a public authority’s requirements. The Secretary of State could also specify in regulations that the new power of direction can be exercised in circumstances that differ from those in which the existing power of direction can be exercised.

555 For these purposes a relevant public authority is anybody to which section 98 applies and which is required to prepare a report on surplus land under clause 184 (section 98 applies to bodies which are listed in Schedule 16 to the 1980 Act and the Secretary of State can amend Schedule 16 by Order). This could be a different set of public authorities to those that the Secretary of State can direct to sell land under the existing power of direction contained in section 98.
The new power of direction is subject to the same conditions as the existing power of direction in section 98. A direction can only be made after the authority concerned has had an opportunity to make representations. If representations are received then a direction cannot be made unless the Secretary of State considers the disposal can be made without serious detriment to the performance of the authority’s functions.

**Clause 186: Reports on improving efficiency and sustainability of buildings owned by local authorities**

557 This clause is intended to ensure local authorities are focused on improving the efficiency and sustainability of their estate; and that progress towards that objective is made transparent. It contains a duty on local authorities which is similar to the duty contained in the Climate Change Act 2008 requiring the MCO to publish a report in respect of the central government civil estate.

558 The new duty requires local authorities listed in Schedule 20 to prepare an annual report containing a buildings efficiency and sustainability assessment. All the authorities listed in Schedule 20 are local authorities in England. Such an assessment must set out the progress made by the authority towards improving the efficiency and contribution to sustainability of the buildings that are part of the authority’s estate. In particular, reports must include an assessment of the authority’s progress towards reducing the size of the authority’s estate and ensuring that buildings which are part of the authority’s estate fall within the top quartile of energy performance. If a building that does not fall within the top quartile of energy performance becomes part of a local authority’s estate in the year to which a report relates, the report must explain why the building has nevertheless become part of the estate.

559 This clause gives the MCO a power to specify in regulations kinds of building that must be treated as being, or as not being, part of an authority’s estate for the purpose of preparing a report. In carrying out its functions under this clause, any local authority must have regard to guidance issued by the MCO. The guidance could make detailed provision about the form and content of the report. The power also leaves the MCO flexibility to address technical questions about how contributions to efficiency or sustainability should be assessed in the report.

**Schedule 20: Authorities specified for purposes of section 186**

560 This Schedule is self-explanatory.

**Clause 187: Reports on improving efficiency and sustainability of buildings in military estate**

561 This clause is intended to ensure the Government is focused on improving the efficiency and sustainability of the central government military estate; and that progress towards that objective is made transparent.

562 This clause amends section 86 of the Climate Change Act 2008, which requires the MCO to report annually on the progress made in the year towards improving the efficiency and contribution to sustainability of the central government civil estate. It extends that duty to the military estate. For this purpose “the military estate” means central government buildings used for the purpose of Her Majesty’s armed forces which are not part of the civil estate.

563 This clause gives the MCO a power to specify by Order buildings of a description which are not part of the military estate for the purpose of preparing a report. This could for example be used to exclude from a report buildings, which are only held on a very short-term basis.
Part 9: General

Clause 188: Power to make transitional provision
Clause 189: Power to make consequential provision
Clause 190: Regulations: general
Clause 191: Extent
Clause 192: Commencement
Clause 193: Short title

564 Clauses 188 to 193 are self-explanatory.

Commencement

565 The provisions about extent, commencement and short title of this Bill, together with the powers conferred by the Bill to make secondary legislation to make saving, transitory or transitional provision in connection with the coming into force of any provision of the Bill, will come into force on the day on which it is passed. Clauses 67 to 77, clauses 122, 123, Schedule 10, clauses 125, 126, 135, 138(1), 141, clauses 145 to 148, and clauses 149 to 151 will come into force on the day on which this Bill is passed. Clause 115 and clauses 136(1) to 136(3), 137 and 139 will come into force at the end of the period of two months beginning on the day on which this Bill is passed. Other provisions of this Bill come into force on such day as the Secretary of State may by regulations appoint.

Financial implications of the Bill

566 An impact assessment has been prepared for the whole Bill and is available at [www.gov.uk](http://www.gov.uk). This covers the implications on private sector bodies and local authorities which derive from this Bill. It does not cover the potential financial and economic implications from new housing and planning policies announced by Government which are not delivered directly by this Bill.

567 On the voluntary Right to Buy and the sale of vacant high value local authority housing we expect fiscal neutrality between these two policy areas as Government will receive, via a formula calculation, receipts from the sale of vacant high value housing to support the extension of Right to Buy to housing association tenants. With agreement local authorities will be able to retain an element of the receipts for house building locally in addition to some resources to cover estimates of transaction and debt costs.

568 The High Income Local Authority Tenant policy will mean that additional rents paid by some tenants will be provided, via local authority landlords, to the Government as income.

569 Some clauses of the Bill set duties on local authorities, and Government is currently assessing these to determine whether new burdens will be created. Government will also consider potential additional costs on Departments. The Bill is not expected to have any other direct impact on public sector manpower.

570 The Bill has been drafted to limit the regulatory impacts on business. However, a small number of policies in the Bill will impact business and are in scope of the better regulation framework. Clauses on nationally significant infrastructure projects, permission in principle, approval conditions and High Income Social Tenants have been assessed as deregulatory and
will deliver net benefits to business. The Private Rented Sector package falls into the low cost regulation category (less than £1 million per annum). Compulsory purchase and starter homes policies both have a regulatory impact. Outline costs and benefits for these policies are included in the Bill IA and separate assessments for scrutiny by the Regulatory Policy Committee are being prepared and will be published in due course.

**Parliamentary approval for financial costs or for charges imposed**

571 A money resolution to cover increased expenditure under the Bill and increased expenditure under other Acts was passed on 2 November 2015. A ways and means resolution was also passed on 2 November 2015.

**Compatibility with the European Convention on Human Rights**

572 Greg Clark, Secretary of State for Department for Communities and Local Government, has stated that in his view the provisions of the Housing and Planning Bill are compatible with the Convention rights. Baroness Williams, Parliamentary Under Secretary of State for Communities and Local Government, has also stated that in her view the provisions of the Housing and Planning Bill are compatible with the Convention rights.

**Related documents**

573 The following documents are relevant to the Bill and can be read at the stated locations:

- Self-build and Custom Housebuilding Act 2015, March 2015
  [http://services.parliament.uk/bills/2014-15/selfbuildandcustomhousebuilding.html](http://services.parliament.uk/bills/2014-15/selfbuildandcustomhousebuilding.html)

  [https://www.conservatives.com/manifesto](https://www.conservatives.com/manifesto)

- Queen’s Speech 2015, May 2015

- Summer Budget 2015, July 2015

- *Fixing the foundations: Creating a more prosperous nation*, July 2015
Annex A - Territorial extent and application

The Bill applies mainly to England only, with some exceptions. The table below sets out the extent and application[1] of each provision in the Bill.

This table also contains the view of the Government of the United Kingdom about whether each provision in this Bill would be within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly[2].

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<th>Wales</th>
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1 For consistency with standing order 83J of the Standing Orders of the House of Commons, the analysis of the application of each provision disregards any minor or consequential effects.

2 References in Annex A to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of standing order 83J of the Standing Orders of the House of Commons.

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These Explanatory Notes relate to the Housing and Planning Bill as brought from the House of Commons on 13 January 2016 (HL Bill 87).

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