Delegated Powers & Regulatory Reform Committee

11th Report of Session 2006–07

Building Societies (Funding) and Mutual Societies (Transfers) Bill

Local Government and Public Involvement in Health Bill

Government amendments:

Greater London Authority Bill

Government response:

Pensions Bill

Regulatory reform:


Draft Regulatory Reform (Game) Order 2007

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session with the terms of reference “to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate level of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under the Regulatory Reform Act 2001; and to perform, in respect of such documents and orders and subordinate provisions orders laid under that Act, the functions performed in respect of other instruments by the Joint Committee on Statutory Instruments”.

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- The Lord Brett
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Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of the Delegated Powers and Regulatory Reform Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020-7219 3103 and the fax number is 020-7219 2571. The Committee's email address is dprr@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. Following the passage of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act and the Committee became the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 expanded the order-making power to include regulatory reform and the Committee, renamed the Delegated Powers and Regulatory Reform Committee, took on the scrutiny of regulatory reform proposals under that Act. The Committee will scrutinise regulatory reform orders under the successor to the 2001 Act, the Legislative and Regulatory Reform Act 2006.
Eleventh Report

BUILDING SOCIETIES (FUNDING) AND MUTUAL SOCIETIES (TRANSFERS) BILL

1. This private member’s bill, brought from the Commons, has Government support and HM Treasury has provided a memorandum for the Committee on the delegated powers in the bill, printed at Appendix 1. The bill deals with building societies’ funding, the distribution of building societies’ assets on dissolution or winding up and the transfer of its business by a mutual society (i.e. a building society, a friendly society or an industrial and provident society). The bill was subjected to extensive Government amendment at Committee stage in the Commons and there remains less detail in the bill than might have been the case had this bill been introduced by the Government (suggested by the memorandum at paragraph 6). The bill contains several significant Henry VIII powers (at clauses 1(1), 1(2), 2 and 3) but each, in our opinion, is sufficiently circumscribed and subject to the appropriate level of parliamentary scrutiny. There is nothing in the bill which we wish to draw to the attention of the House.

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL

2. This 17-Part bill covers various topics related to local government. It contains numerous delegated powers, which are the subject of a memorandum from the Department for Communities and Local Government, printed at Appendix 2. There are further delegations, or significant changes to existing powers, at clauses 117(6) and (7), 121 (new section 21A(11), 151 (new section 139BA(1) and (3)) and 186 (new section 57C(7)).

Directions for single tier of local government – clause 2

3. Clause 2 enables the Secretary of State to direct a principal authority to make a proposal for a single tier of local government. Although the department have addressed this power in their memorandum, we have not considered it because we do not consider that this power to direct has a legislative character within our terms of reference.

Structural and boundary change – clauses 7, 10 to 13 and 15

4. Clauses 1 to 6 set out a procedure for proposals for change from two tiers to a single tier of local government, as described in paragraphs 16 to 38 of the Explanatory Notes. The Secretary of State is empowered, by clause 7(1)(a) and (b), to implement the proposal, or an alternative proposal from the Boundary Committee for England, in either case with or without modifications. The implementation is by order subject to affirmative procedure.
5. Clauses 8 and 9 set out a procedure for a review of local government areas by the Boundary Committee, following which the Committee may recommend boundary changes. A change might be the alteration of a local government area boundary, the abolition of a local government area or the constitution of a new area, but certain particular recommendations are prohibited by clause 8(4). The Secretary of State is empowered by clause 10(1)(a) to implement the recommendation, with or without modifications. The implementation, as with clause 7, is by order subject to affirmative procedure.

6. Clauses 11 to 13 and 15 set out matters which may be included in orders under clause 7 or 10. The matters include some which are very significant indeed, but all are subject to the limitation that they must be for the purpose of implementing a proposal or recommendation. The matters include:
   - constituting or abolishing local government areas;
   - establishing a county council, district council or London borough council;
   - dissolving an existing local authority;
   - transferring functions from a county council to a district council and vice versa;
   - altering the membership, etc. of public bodies in an affected area (subject to special provision for police areas at clause 13(4));
   - dealing with electoral matters such as number of members, electoral areas, election and retirement of councillors and election of a mayor and executive (see clause 12(1)).

7. An order will need to include some or all of this to achieve proper implementation of a proposal or a recommendation. The extent of the powers in the bill are also in many respects similar to the existing statutory provisions in Part 2 of the Local Government Act 1992. Under that Act, the Electoral Commission makes recommendations to the Secretary of State for structural or boundary changes and the Secretary of State may give effect to them, with or without modifications, by order subject to affirmative procedure. We have considered these provisions carefully: the principle of effecting structural or boundary change by order is well established and we do not consider its continuance inappropriate.

8. An order under clause 7 or 10 will be local in nature and would therefore attract the hybrid instruments procedure in this House, which gives those whose private interests are adversely affected the opportunity to petition against the order. Clause 239(9) disappplies that procedure, as is already the case for orders under section 17 of the 1992 Act. **This is not inappropriate, but we draw the disapplication to the attention of the House, so that the House might satisfy itself that the alternative consultation procedure is adequate (see, for example, clause 6(4) about alternative proposals by the Boundary Commission).**

**Election dates — clause 60**

9. Section 37 of the Representation of the People Act 1983 prescribes the first Thursday in May as the ordinary day of local elections, though the Secretary of State may change this by order made before February in the preceding year. Clause 60 amends the 1983 Act to enable the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) by order to
change the ordinary dates of local elections, as described in paragraph 78 of the memorandum, so that they are the same as the date of a European Parliamentary election, where the years coincide. The orders are subject to affirmative procedure which, in the case of orders by the Welsh Ministers, means affirmative in the National Assembly for Wales (NAW) (and not, as implied by paragraph 75 of the memorandum, affirmative at Westminster). As there is no option but to specify the same date as that for the European Parliamentary election, this is not inappropriate.

**Appointed parish councillors — clause 78**

10. Clause 78(4) inserts a new section 16A into the Local Government Act 1972, enabling a parish council to appoint councillors and clause 78(2) provides for the chairman and vice-chairman to be elected members. All matters relating to the numbers and term of office of, and participation in decision-making by, appointed councillors are left to regulations by the Secretary of State subject to negative procedure. The limited nature of parish councils’ responsibilities makes much of their regulation appropriate to the negative procedure but the composition of a council is important. 1972 Act (as amended by clause 78(3)) specifies the minimum number of elected councillors and the memorandum has not sufficiently justified the use of the negative procedure for a power which can be used to alter significantly the composition of the council. In particular, the balance between elected and appointed councillors could be crucial to the functioning of the council, as could the voting rights of appointed members and the purposes for which they may be treated as elected members. **As a minimum, any exercise of the power which permits a majority of the members to be appointed, or which enables an appointed member to be treated as an elected member for the purpose of the chairmanship or vice-chairmanship, should be subject to affirmative procedure.**

**Parishes: community governance review — clause 88**

11. The bill confers power in places on a local authority to legislate by order which is not a statutory instrument and has no specific requirements as to procedure, publicity etc. Examples are at clauses 53 and 77. Clause 88 also confers such a power to give effect to the recommendation of a community governance review. Recommendations which might be made in a review include the establishment of a new parish, aggregating parts of parishes, amalgamating parishes, abolishing parishes, whether a new parish should have a parish council and what electoral arrangements should apply to the parish council. An order made by the principal council may, in particular, vary or revoke any order under clause 7, clause 10 or section 17 of the 1992 Act. These are orders which are subject to affirmative procedure and are statutory instruments.

12. Whether a community governance review should be implemented at local or central level is a matter of policy for the House. If the House accepts the principle that the principal council should be fully empowered to implement the recommendations, then it would be unusual for there to be any parliamentary control over the council’s orders. The memorandum notes that such orders might be controversial (paragraph 137 of the memorandum) and it is for the House to decide whether it is content for the controversy to be dealt with at a local level.
13. Giving effect to recommendations is, as the memorandum suggests, likely to
give rise to a need to vary orders made centrally which were expressly approved by both Houses. This raises certain issues, but we do not see any realistic alternative if full power is to be given to the principal councils and the Secretary of State is to have no involvement in the decision. **It is however inappropriate for an order of the council which varies or revokes an indexed and numbered statutory instrument to be subject to no formal requirements as to procedure or publicity (paragraph 136 of the memorandum): there should be appropriate, legally-enforceable publicity arrangements.**

Local area agreements — clause 106(7)

14. There is a Henry VIII power at clause 106(3) subject only to negative procedure. The power is explained at paragraphs 155 to 157 of the memorandum, it is appropriately limited and we do not consider it inappropriate.

Modification of enactments: Wales — clause 117

15. Section 6 of the Local Government Act 2000 enables the Secretary of State by order to amend any enactment (whenever passed) which requires a local authority to prepare a plan or strategy. These orders are subject to a super-affirmative procedure (sections 9 and 105(6)). Section 7 confers a similar, but much more limited power, on the NAW. In particular, the power extends only to enactments specified in an order by the Secretary of State, and not to all enactments whenever passed. Orders under section 7 were originally subject to NAW procedures.

16. Clause 117(6), which is not addressed in the memorandum, amends section 7 so as to confer the power on the Welsh Ministers, rather than the NAW. This is in keeping with the Government of Wales Act 2006. Clause 117(6) also widens the power so that it is the same as that conferred, in relation to England, on the Secretary of State (i.e. a power to amend any enactment whenever made). Clause 117(7) makes the orders by the Welsh Ministers subject to affirmative procedure at the NAW. But it does not, as a consequence of widening the power, apply a super-affirmative procedure at the NAW such as is to be found at clause 143(2) in relation to best value (see new section 17B). There thus appears to be a higher level of scrutiny at Westminster for orders by the Secretary of State than there is at the NAW for orders by the Welsh Ministers. **We draw this anomaly to the attention of the House.**

Procedure for byelaws — clause 130

17. Section 236 of the Local Government Act 1972 sets out a default procedure for byelaws, applicable where the byelaw enabling power prescribes no special procedure. The procedure provides, in particular, for the byelaws not to have effect until confirmed by a confirming authority (e.g. the Secretary of State). Clause 130 enables regulations subject to affirmative procedure to prescribe an alternative procedure. Paragraphs 192 to 194 of the memorandum explain how this power is proposed to be used. Although this power is significant, we do not consider it inappropriate.
Reports on performance — clause 158

18. There are Henry VIII powers subject only to negative procedure at new section 47A(5) and (6) of the Audit Commission Act 1998, inserted by clause 158(1), explained at paragraph 237 of the memorandum. We do not consider them inappropriate.

Ethical standards officers: disclosure — clause 192(4)

19. Section 62 of the 2000 Act gives ethical standards officers powers to require information in connection with an investigation. Somebody failing, without reasonable excuse, to comply with a requirement may be prosecuted. Section 63 restricts disclosure of information obtained by ethical standards officers under section 62. The circumstances in which disclosure may be made are set out in the Act.

20. Clause 192(4) (new paragraph (j) of section 63(1)) enables the Secretary of State, by order subject to negative procedure, to specify additional persons to whom disclosure may be made and the purposes for which it may be made. There is no limitation on the persons or the purposes and the memorandum (paragraph 247) does not justify the provision. We consider that orders authorising further disclosure of information obtained in the exercise of compulsory powers should be subject to affirmative procedure unless limited in some way (e.g. to those performing statutory or public functions).

Adjudication panel — clause 196

21. Section 66 of the 2000 Act enables regulations subject to negative procedure to provide for the way in which matters referred to a monitoring officer are dealt with. The regulations may, in particular, enable an authority’s standards committee, following its consideration of a monitoring officer’s report, to take action prescribed by the regulations.

22. Clause 196 inserts a new section 66A, which builds on section 66, into the 2000 Act. Section 66A enables the regulations:
   - to enable the standards committee, where it considers that action it could take is insufficient, to refer the case to the president of the Adjudication Panel for England for a decision by members of the panel;
   - to deal with the appointment, composition and procedure of the panel;
   - to specify what action may be taken against the person;
   - to confer a right of appeal.

The Adjudication Panel and the case tribunals drawn from members of the Panel are the subject of Chapter 4 of Part 3 of the 2000 Act.

23. Clause 196 confers an open-ended power as to how the more serious cases are intended to be dealt with. We do not agree with the Government’s justification for proposing the negative procedure: that the contents of the regulations will be “mainly procedural, ancillary or incidental” (paragraph 257 of the memorandum) We consider the instruments specifying what action is to be taken should be subject to the affirmative procedure, whereas truly procedural matters can appropriately be subject to negative resolution.
Case tribunals — clause 199

24. Section 79 of the 2000 Act is about the decisions of case tribunals of the Adjudication Panel. It specifies that where the tribunal decides there has been a breach of the code of conduct, it must decide whether the breach warrants suspension or disqualification. The Act sets out maximum periods of suspension and disqualification.

25. Clause 200 limits section 79 to Wales. Clause 199 inserts a new section 78A which deals with England. Section 78A does not set out the full extent of the types of sanction that may be imposed. Instead, it enables regulations (subsections (4) and (5)) subject to negative procedure to authorise action which may be taken. Action can include, but is not limited to, censure, suspension “for a limited period” or disqualification (maximum 5 years). We consider that the affirmative procedure would be more appropriate because the list of sanctions is not exhaustive.

Entities controlled by local authorities — clause 213

26. Clause 213(1) enables the Secretary of State, by order subject to negative procedure, to require, prohibit or regulate the taking of specified actions by entities connected with a local authority. Clause 213(3) confers a similar power on the Welsh Ministers (subject to negative procedure at the NAW). The orders in either case may require, prohibit or regulate the taking of specified actions by a local authority in relation to an entity connected with the authority or by certain members or officers of the local authority. This power is wider than those which a Secretary of State currently has in relation to companies under the control of a local authority; indeed, it is difficult to discern the Government's policy from the clause. Accordingly, we consider that this power should be subject to the affirmative procedure.

27. The scope of the power is limited to “actions by entities connected with a local authority”. “Entity” is defined in subsection (8) as an entity, whether or not a legal person, and “connected” is defined in subsection (7). The latter gives limits to the power, but subsection (6) provides that an order may identify a description of entity for the purposes of the order not only by reference to a document in existence when the order is made, but also by reference to that document as it has effect from time to time (i.e. with future amendments) or in a re-issued form. While this avoids the need to amend the order when the document is revised, it in effect delegates to the producers of the document the power (subject to no parliamentary scrutiny) to change not simply what must be done under an order but the very description of entity to which the order applies at all. This is inappropriate. If, as the memorandum (paragraph 276) suggests, the purpose of subsection (6) is to allow ambulatory references to a particular document (the Code of Practice on Local Authority Accounting) then we recommend that the provision should be so limited and should not allow ambulatory references to any document whatsoever.

Clauses 214(4), 218(3) and 219(3)

28. A similar point to that on clause 213(6) also applies to these provisions.
Wales — clause 234 and Schedule 17

29. The provision in clauses 234 and Schedule 17 is explained at paragraphs 341 to 346 of, and Annex A to, the memorandum. It is in line with the Government of Wales Act 2006 under which the “Fields” in Schedule 5 may be filled with matters either by primary legislation or by Order in Council. Whether the particular matters listed in Schedule 17 to this bill should be the subject of enhanced legislative competence for the NAW is a matter of policy for the House.

GREATER LONDON AUTHORITY BILL – GOVERNMENT AMENDMENTS FOR REPORT STAGE

30. We reported on this bill in our 7th Report (HL Paper 85) and published the Government’s response in our 10th Report (HL Paper 113). The Government have now invited us to consider amendments for Report, printed on sheet HL Bill 71(e). The Department for Communities and Local Government has provided a supplementary memorandum, printed at Appendix 3 and there is nothing in the amendments which we wish to draw to the attention of the House.

PENSIONS BILL – GOVERNMENT RESPONSE

31. We reported on this bill in our 9th Report (HL Paper 100) and the Government have now responded by way of a letter to the Chairman from Lord McKenzie of Luton, Parliamentary Under-Secretary of State at the Department for Work and Pensions, printed at Appendix 4.

DRAFT REGULATORY REFORM (FINANCIAL SERVICES AND MARKETS ACT 2000) ORDER 2007

32. This draft Order, laid before the House on 24 May for second stage scrutiny under the Regulatory Reform Act 2001, is in the same form (save for drafting improvements) as the first stage proposal for a draft Order laid on 18 December 2006 which, in our 5th Report (HL Paper 44), we considered met the requirements of the 2001 Act and was appropriate to be made under it. Accordingly, we recommend that this draft Order is in a form satisfactory to be submitted to the House for affirmative resolution.
DRAFT REGULATORY REFORM (GAME) ORDER 2007

33. This draft Order, laid before the House on 4 June for second stage scrutiny under the Regulatory Reform Act 2001, is in the same form (save for drafting improvements) as the first stage proposal for a draft Order laid on 11 December 2006 which, in our 5th Report (HL Paper 44), we considered met the requirements of the 2001 Act and was appropriate to be made under it. Accordingly, we recommend that this draft Order is in a form satisfactory to be submitted to the House for affirmative resolution.
APPENDIX 1: BUILDING SOCIETIES (FUNDING) AND MUTUAL SOCIETIES (TRANSFERS) BILL

Memorandum by HM Treasury

1. This memorandum relates to the Building Societies (Funding) and Mutual Societies (Transfers) Bill as brought from the House of Commons on 30 April 2007. It identifies the provisions in the Bill for delegated legislation, and explains their purpose and the particular form of Parliamentary control of delegated legislation selected.

Background and purpose of the Bill

2. The Bill is a private member’s Bill presented by Sir John Butterfill MP. It has Government support, and the Bill as it now stands is the result of Government amendments introduced at committee stage.

3. The Bill has three aims. First, to increase the proportion of wholesale funding building societies may use. At present, building societies must raise at least 50 per cent of their funds from shares held by individual members of the society. The Bill will allow the Treasury to change that requirement, so that societies may raise up to 75 per cent of their funding from wholesale sources. This will give societies access to cheaper funding and create a more level playing field with banks. However, the retention of at least 25 per cent individual member funding will mean that this source of funding will remain significant.

4. Second, to alter the position on the distribution of assets on dissolution or winding up of a building society, to give shareholding members of the society equality with creditors. At present, creditors have priority over members in a winding up. The change to the funding limit will increase the risk to members in an insolvency, as any available funds will first be used to satisfy a larger pool of (wholesale) creditors. The change will therefore improve the position of building society members.

5. Third, to make it easier for a mutual society (building society, friendly society or industrial and provident society) to transfer its business to a subsidiary of another mutual society. A subsidiary for these purposes is a company controlled by another mutual society. The Bill will allow the Treasury to modify the statutory provisions which apply to such transfers, to make them less onerous. This will make it easier for mutual societies to acquire other mutuals, and to develop group structures. The changes will ensure that certain safeguards, such as members’ rights and safeguards against demutualization, remain in place.

6. Although the aims and principles are clearly set out in the Bill, the changes to the relevant legislation to give full effect to the policy will be made by the Treasury in secondary legislation. This approach will allow the Treasury to consult building societies and other mutual societies before making any significant changes to the legislation. As some of the changes will affect provisions that are fundamental to mutual societies, such as the funding limit and principal purpose for building societies, and protection against demutualization for all mutual societies, the Government considers that consultation is essential. The Building Societies Association, which supports the Bill, has welcomed this opportunity for wider consultation. As this is a private Member’s Bill, there has been no opportunity for pre-legislative consultation.

7. The powers in clauses 1 to 3 include “Henry VIII” powers to amend primary legislation. As the consequences of those amendments will be quite significant, the
Government considers that Parliament should have a further say before the powers are exercised. So the order-making powers in the Bill are exercisable under the affirmative resolution procedure, except where they are used to amend secondary legislation only or as specified in clause 4.

Clause 1: Funding limit for building societies

Powers conferred on: HM Treasury

Powers exercised by: Order made by statutory instrument

Parliamentary procedure: affirmative resolution

Henry VIII powers: clause 1(2)

8. Subsection (1) gives the Treasury the power, exercisable by order, to provide that the percentage in section 7(1) of the Building Societies Act 1986 (the funding limit) has effect as if the reference to 50% were a reference to a greater amount, up to a maximum of 75%. The order may increase the percentage only, and once increased the percentage may not be reduced. The order may also prohibit a society from applying the increased percentage unless it has passed an appropriate resolution. The power cannot be used unless there is an order in force under new s.90B (see below), in relation to the distribution of assets on dissolution and winding up. The power is exercisable under the affirmative resolution procedure.

9. Subsection (2) gives the Treasury a power to amend section 5(1)(a) of the 1986 Act so as to alter the extent to which loans are required to be funded by the society’s members. It also gives the Treasury a power to make consequential, saving, supplementary or transitional provision. This includes provision amending specified sections of the Act, concerning the functions of the Financial Services Authority, amalgamations and societies’ memoranda. The affirmative resolution procedure applies.

10. The purpose of the subsection (1) power is to allow the wholesale funding limit for building societies to be raised. Delegated legislation is considered to be appropriate here as it will give the Treasury the opportunity to consult societies and other interested parties on what the revised figure should be, and on what (if any) resolution should be required. It also allows the Treasury to increase the figure again in the future without needing a new Act of Parliament. The limits on the power protect the position of members, by requiring the insolvency provisions to be changed, and of building societies, by ensuring that the funding limit cannot be reduced, as that would cause financial uncertainty.

11. There is a precedent in section 6 of the 1986 Act, which concerns the lending limit for building societies, and provides that loans secured on residential property must constitute at least 75% of the society’s net assets. Section 6(6) allows the Treasury to substitute this percentage, within a specified limit, by order subject to the affirmative resolution procedure. The provision was inserted by the Building Societies Act 1997.¹

12. The subsection (2) power will be used to ensure that provisions in the 1986 Act concerning the purpose or principal purpose of building societies, which at present

¹ The Committee reported on the 1997 Bill in its 22nd report of the 1996-97 session (HL Paper 71, 19th March 1997).
require that a society’s loans are funded “substantially” by its members, are consistent with the revised funding limit. If an order is made under clause 1(1), and a society takes advantage of the new funding limit, it might be argued that the society’s loans are no longer funded “substantially” by its members, as required by section 5(1). This issue will be dealt with by amending the “substantially” requirement. The provisions identified in new section 5(12) all refer to the “principal purpose” requirement in section 5, and will need to be amended in a similar way to section 5.

13. Other consequential, transitional or saving provision might, for example, deal with the issue of whether societies’ memoranda need to be amended to reflect the new principal purpose requirement. It is unlikely that this or any other consequential or saving provision would need to amend primary legislation, but it cannot be ruled out at this stage.

14. Delegated legislation is considered appropriate here because the provisions of the 1986 Act relating to the principal purpose are fundamental to the nature and characteristics of building societies, and the Government’s view is that they should not be amended without giving societies and other interested parties a say.

15. The powers in this clause are exercisable under the affirmative resolution procedure. The Government considers that, as changes to the funding limit and the principal purpose affect fundamental provisions of building societies legislation, it is appropriate for Parliament to have another say before any substantive changes are made.

Clause 2: Power to alter priorities on dissolution and winding up

*Power conferred on: HM Treasury*

*Power exercised by: Order made by statutory instrument*

*Parliamentary procedure: affirmative resolution*

*Henry VIII power: new s.90B, subsection (1) and (5)*

16. The clause inserts new section 90B into the Building Societies Act 1986. Subsection (1) gives the Treasury the power to make provision to ensure that, on the winding up or dissolution by consent of a society, any assets available to satisfy the society’s liabilities to creditors or to shareholders are applied in satisfying those liabilities pari passu. Such provision may make amendments of the 1986 Act, and may make consequential, supplementary, transitional and saving provision (subsection (5)). The order may also add any category of liability to the categories exempted under subsection (2).

17. The purpose of the power is to give shareholding members equality with creditors in the distribution of assets, on the winding up of a building society. The same principle may also be applied to dissolution by consent. The power is limited by excluding certain categories of liabilities to creditors and to shareholders, to ensure that only ordinary shareholding members are given equality with the general pool of unsecured creditors. Some of those categories are identified in subsections (2) and (3), and others will be identified in the order. Consequential, transitional and supplementary provisions will ensure that the rights of creditors in respect of debts entered into before commencement of the order are unaffected by the change, and deal with any other consequential or transitional issues which may arise.
18. The Government considers that the use of subordinate legislation to implement this part of the policy is appropriate. It will give the Government the opportunity to consult building societies, the Insolvency Service and others before any substantive changes are made. It will also give the Government more time to ensure that the appropriate detailed legislative changes are identified and made. And it will provide a more appropriate vehicle for detailed legislation on transitional provisions and special classes of creditors.

19. Henry VIII powers are essential to this clause, as the policy cannot be implemented without modifying the insolvency provisions in the Building Societies Act 1986. In particular, amendments to Schedule 15, which amends the application of the Insolvency Act 1986 to building societies, will be needed. The power is widely drawn, to allow amendments to any provision of the Act, and to allow consequential amendments, so that any necessary changes which have not yet been identified can be made.

20. The affirmative resolution procedure applies. As this will be a significant change to insolvency law as applied to building societies, the Government’s view is that Parliament should have an opportunity to scrutinise the order before it is made. That will also allow Parliament to consider the transitional arrangements protecting the position of creditors. The affirmative resolution procedure is also consistent with clause 1, and as the powers in clauses 1 and 2 will be exercised at the same time, it is appropriate to apply the same Parliamentary procedure.

Clause 3: Transfers to subsidiaries of other mutuals

Powers conferred on: HM Treasury

Powers exercised by: Order made by statutory instrument

Parliamentary procedure: affirmative resolution where amending or modifying primary legislation, otherwise negative resolution

Henry VIII powers: subsections (1), (8) and (11)

21. Subsection (1) gives the Treasury the power to modify provisions in the legislation identified in subsection (10), to facilitate, or in consequence of, a transfer of business from a mutual society to the subsidiary of another mutual society. “Modifications” include omissions, alterations and additions (subsection (8)). The order may make provision relating to membership rights (subsection (2)) and may confer functions on the Financial Services Authority (subsection (3)). The Treasury also has a power to amend subsection (11), which defines “subsidiary”.

22. The purpose of the power is to make appropriate changes to the transfer provisions to make transfers of this type easier. For example, the order might change the type of resolution required, or reduce the percentage of members required to vote on such a transfer. It may also make changes “in consequence of” such a transfer. That is intended to cover safeguards against demutualization, such as preventing the subsidiary from selling its shares or transferring its business within a specified period. Section 101 of the Building Societies Act 1986 contains a similar safeguard. Provisions on membership rights will give members of the transferring society equivalent rights after the transfer, and confer similar rights on new customers of the subsidiary. Functions conferred on the Financial Services Authority might include a power to give a direction that, in certain circumstances, certain safeguards will not apply or will be waived (see for example s.101(4) of the 1986 Act).
23. The purpose of the power in subsection (11) is to allow the degree of control that a mutual society is required to have over the subsidiary receiving the transfer to be adjusted if it is considered appropriate or necessary. The degree of control specified in subsection (11) is already more onerous than the normal degree of control for subsidiaries of mutual societies (see for example section 13 of the Friendly Societies Act 1992). This is to ensure that the new, lighter procedure for transfers only applies where a mutual society has complete control over the transferee subsidiary, in terms of both voting rights and appointment of the board. It may later be considered appropriate to change these requirements to make them more onerous (e.g. to require a 75% majority of voting rights) or less onerous (e.g. to provide that control of voting rights or control of the board is sufficient).

24. Delegated legislation is considered appropriate as it will allow the Treasury to consult on several options for the detailed implementation of the policy. This will include issues such as which of the transfer requirements should be changed and how, and the details of the safeguards against demutualization and protection of membership rights. Delegated legislation will also be a more suitable vehicle for the detailed modifications of the transfer provisions, and for consequential and transitional provisions. Giving the Treasury a power to make modifications will also make it possible to make further modifications in the future, if circumstances change or the original modifications do not adequately deliver the policy objectives, without needing a new Bill.

25. Subsections (1) and (11) confer Henry VIII powers on the Treasury. The subsection (1) power is confined to the provisions in the Building Societies Act 1986, Friendly Societies Act 1992 and Industrial and Provident Societies Act 1965 (and associated subordinate legislation) set out in subsection (10). It is likely that the implementing order will modify the application of those provisions to transfers referred to in subsection (1), rather than make textual amendments of them. However, in some cases textual amendments may be necessary, for example consequential amendments to provide that certain sections do not apply in cases where the Bill and the implementing order apply. As for subsection (11), as the degree of control over the subsidiary is set out in that subsection, the policy of allowing the degree of control to be changed can only be achieved by giving the Treasury a power to amend that subsection.

26. The Government considers that the affirmative resolution procedure is appropriate for modifications of primary legislation made under this clause, as those modifications will make significant changes to the primary legislation governing mutual societies and should be subject to further Parliamentary scrutiny. However, the Government considers that if the power in subsection (1) is used only to amend subordinate legislation made under the transfer provisions, the negative resolution procedure would be appropriate. If for example an order under subsection (1) modified transfer regulations made under section 102 of the Building Societies Act 1986, and the Government later wanted to revise those regulations in their entirety, it would be inappropriate to use the affirmative resolution procedure for modifications made under subsection (1), but the negative resolution procedure for other modifications.
Clause 4: Transfers to subsidiaries: distribution of funds

Powers conferred on: HM Treasury

Powers exercised by: Order made by statutory instrument

Parliamentary procedure: affirmative resolution where amending or modifying primary legislation, otherwise negative resolution

27. Subsection (1) provides that an order made under clause 3 may give effect to clause 4. Subsection (3) provides that a distribution of funds which exceeds limits prescribed by the Treasury must be approved by the transfer resolution and, in the case of the holding mutual, by a resolution specified by the Treasury. A distribution which does not exceed those limits must be approved only by the resolution of the transferring mutual or of the holding mutual. Subsection (4) requires the Treasury to authorise distributions of funds by mutual societies in transfers to which an order under clause (3) applies, and to specify limits.

28. The purpose of the clause is to create a less onerous procedure for distributions of funds in transfers to subsidiaries of other mutuals, in particular for building societies. Section 100(9) of the Building Societies Act 1986 limits the right to a distribution of funds to shareholding members of two or more years’ standing. The Government would like to change this for transfers under the new procedure, to apply a procedure similar to that which applies to distributions of funds in mergers between building societies (section 96(4) and (5) of the 1986 Act). Under that procedure, a distribution which exceeds prescribed limits must be approved by resolutions of each of the societies involved in the merger.

29. Subsection (1) relates to the order-making power under clause 3(1), and gives the Treasury the option of applying the clause 4 procedure. This will allow a consultation before a decision is taken to use the new procedure. Subsection (4) is similar to section 96(5) of the 1986 Act. The purpose is to allow the Treasury to set limits, above which both societies must approve the distribution of funds, and to ensure that the procedure applies to all relevant distributions of funds. The power in subsection (3) allows the Treasury to specify what kind of resolution the holding mutual should pass to approve a distribution which exceeds the prescribed limits, as it would not otherwise have to pass a resolution in these circumstances.

30. Delegated legislation is considered appropriate for the clause 3 power, to which subsection (1) relates, for the reasons given in paragraph 24. It is considered appropriate for the power in subsection (3)(a) (to specify a resolution) as there will be a consultation on what kind of resolution should be required, and it might be desirable to vary that in the future in the light of experience. It is appropriate for the applicable limits to be specified in an order as they may need to be varied from time to time. There is a direct precedent in section 96(5) of the 1986 Act. The requirement on the Treasury to make an order (if the section is given effect) ensures that there will be effective limits in place.

31. It is possible that an order made under clause 3 giving effect to clause 4 would modify primary legislation, for example by providing that section 100(9) of the 1986 Act does not apply where the clause applies. But any such amendments would be consequential, and the main purpose of subsection (1) is to allow some flexibility as to whether the procedure is used at all.

32. The affirmative resolution procedure applies to any order under clause 3 which modifies the provisions referred to in clause 3(10), for the reasons given in
paragraph 26. The powers in clause 4(3)(a) and 4(4) will not be used to amend primary legislation, so an order made under those powers will be subject to negative resolution procedure, unless it contains other provisions which require the affirmative resolution procedure (see clause 3(6), applied by 4(7)). Section 96(5) and (7) of the 1986 Act provide a direct precedent for the negative resolution procedure for the clause 4(4) power. The negative resolution procedure is considered appropriate for clause 4(3)(a) as it concerns the technical issue of what kind of resolution of the holding society should be required.

**Clause 5: short title, commencement and extent**

*Power conferred on: HM Treasury*

*Power exercised by: Order made by statutory instrument*

*Parliamentary procedure: none*

33. Subsection (2) confers a standard commencement power on the Treasury. It is possible that different provisions will be commenced on different days, for example clauses 1 and 2 could be commenced together and clauses 3 and 4 together.

HM Treasury

May 2007
APPENDIX 2: LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH BILL

Memorandum by the Department for Communities and Local Government

Introduction

1. This memorandum identifies provisions for delegated powers in the Local Government and Public Involvement in Health Bill (“the Bill”). The Bill gives effect to the Government’s proposals for reform of the Local Government system in England and for reform of the current arrangements for patient and public involvement in the provision of health and social care services. It also gives effect and a commitment given to enhance the legislative competence of the National Assembly for Wales in the field of local government.

2. The Bill in relation to England contains 86 individual provisions for delegated powers. The majority are new powers and most of the delegated powers are exercisable by the Secretary of State by statutory instrument. There are 15 provisions which contain power to amend primary legislation. Details of the new powers for the National Assembly for Wales in the Bill are outlined at Annex A.

3. For each delegated power, the memorandum explains:
   - The purpose of the delegated power;
   - Why matters are to be provided for by delegated powers;
   - The way in which the power is expected to be used;
   - The procedure selected for each power and why it has been chosen.

Abbreviations and acronyms

4. The following abbreviations and acronyms are used in this memorandum:
   - ACA 1998 – the Audit Commission Act 1998;
   - The Assembly – the National Assembly for Wales;
   - BFI – Benefit Fraud Inspectorate;
   - GOWA 2006 – the Government of Wales Act 2006;
   - LGA 1972 – the Local Government Act 1972;
   - LGA 1999 – the Local Government Act 1999;
   - LGA 2000 – the Local Government Act 2000;
   - LGA 2003 – the Local Government Act 2003;
   - LGHA 1989 – the Local Government and Housing Act 1989;
   - LGRA 1997 – the Local Government and Rating Act 1997;
   - NHSA 2006 – the National Health Service Act 2006;
   - PJA 2006 – Police and Justice Act 2006;
Background

5. In July 2004 an initial discussion document ‘The future of local government - developing a 10 year vision’ was published by the Office of the Deputy Prime Minister (now Communities and Local Government) to launch the debate on the future of local government between Central Government, Local Government and other stakeholders under the heading local:vision. Between July 2004 and February 2006 numerous discussion and consultation documents under this heading were published setting out ideas for discussion and consultation.

6. The Local Government White Paper Strong and Prosperous Communities, published on 26 October 2006 was a response to the local:vision consultation. The LG&PIH Bill follows from that White Paper.

7. The Department of Health instigated a review of patient and public involvement in the provision of health services in August 2005. In January 2006 the Department published the White Paper ‘Our health, our say, our care: a new direction for community services”. Following publication of the White Paper, an Expert Panel was established in February 2006 in order to consider the evidence that had been gathered. The Expert Panel published its findings in July 2006.

8. On 13 July 2006 the Department published its report “A Stronger Local Voice” setting out the proposed changes. Since then there have been extensive discussions with stakeholders.

The Delegation of Powers

9. In deciding whether subordinate legislation is the appropriate vehicle for any particular provision, CLG and other relevant Government Departments have been guided by the following criteria:

   • the desirability of not putting detailed provisions on the face of the Bill;
   • the need to ensure flexibility in responding to changing circumstances; and
   • decentralising power to the most appropriate level

Overview

10. The Bill contains 17 Parts, these are:

   Part 1 - Structure and Boundary change;
   Part 2 - Elections;
   Part 3 - Executive Arrangements for England;
   Part 4 - Parishes;
   Part 5 - Co-operation of English Authorities with Local Partners etc.;
   Part 6 – Byelaws;
   Part 7 - Best Value;
   Part 8 - Local Services: Inspection and Audit;
   Part 9 – The Commission for Local Administration in England;
   Part 10 – Ethical Standards
   Part 11 – Joint Waste Authorities
   Part 12 - Entities controlled etc. by local authorities
Part 13 - The Valuation Tribunal for England;
Part 14 - Patient and Public Involvement in Health and Social Care;
Part 15 - Powers of National Assembly for Wales;
Part 16 – Miscellaneous; and
Part 17 - Final provisions.

It also contains eighteen Schedules. These are:

Schedule 1 Structural and boundary change: consequential amendments
  - Part 1 – Amendments of Local Government Act 1992,
  - Part 2 – Other amendments;
Schedule 2 Elections: consequential amendments;
Schedule 3 Supplementary vote system: consequential amendments;
Schedule 4 New arrangements for executives: further amendments;
Schedule 5 New arrangements for executives: transitional provision
  - Part 1 - Old-style leader and cabinet executive,
  - Part 2 - Mayor and council manager executive;
Schedule 6 Parishes: further amendments;
Schedule 7 Byelaws: further amendments;
Schedule 8 Amendments consequential on removing parish councils etc from best value;
Schedule 9 Best value: Minor and consequential amendments
  - Part 1 - Part 1 of Local Government Act 1999,
  - Part 2 - Other minor and consequential amendments;
Schedule 10 Consequential amendments relating to the change of name of the Audit Commission;
Schedule 11 Benefits Fraud Inspectorate: transfer schemes;
Schedule 12 Schedule to be inserted in Audit Commission Act 1998;
Schedule 13 The Commission for Local Administration in England: minor and consequential amendments
  - Part 1 - Part 3 of Local Government Act 1974,
  - Part 2 - Other minor and consequential amendments;
Schedule 14 Consequential amendments relating to entities controlled etc by local authorities;
Schedule 15 The Valuation Tribunal for England;
Schedule 16 Consequential amendments relating to the creation of the Valuation Tribunal for England;
Schedule 17 Powers of the National Assembly for Wales; and
Schedule 18 Repeals.

11. Further descriptions of the relevant Parts are given in the commentary on delegated powers below, and also in the revised Explanatory Notes that accompany the Bill.
The Bill

Part 1 - Structure and Boundary change in England

12. Part 1 of the Bill provides for the process of making structural and boundary change to local government areas in England. It provides for a means by which an area where there are two-tiers of local government can be reorganised so that there is a single tier of local government. It also provides for a process by which the boundaries of local government areas can be altered. A two-tier area is an area where some local authority functions are undertaken by a county council and some by a district council. A single tier area is an area in which all local authority functions are undertaken by a single (unitary) authority.

Clause 2: Invitations and directions for proposals for a single tier of local government

13. Clause 2 confers on the Secretary of State a power to direct authorities in shire areas to come forward with proposals for structural change. The direction making power has been narrowed by Government amendment and may now only be used from commencement of clause 2 until 25 January 2008. This means that it will only be used in relation to the present round of restructuring.

14. The flexibility of a delegated power is required which will allow the Secretary of State to direct authorities to put forward proposals for unitary structures where he believes it to be in the interests of effective and convenient local government. This is to ensure that the Secretary of State will receive proposals from certain areas, where the authorities concerned would not otherwise respond to an invitation. This is important where the Secretary of State wishes to improve the outcomes for communities in an area and remove the confusion, duplication and inefficiency that can exist in two-tier areas.

15. As this is a direction-making power, it is not subject to any Parliamentary procedure.

Clause 7: Implementation of Proposals by order

16. Clause 7 confers on the Secretary of State a power by order to implement with or without modification-

- a proposal for structural change that he receives in response to an invitation or a direction under clause 2, or
- an alternative proposal for structural change as received from the Boundary Committee under clause 5 following a request for advice from the Secretary of State.

17. The flexibility of a delegated power is required as the Secretary of State may choose not to implement all proposals received; further the detail of implementation will differ in each case. Unless all authorities affected by the proposal have made it jointly, before making any order to implement a proposal, the Secretary of State must consult every other authority affected by the proposal and any other person he believes to have an interest (see clause 7(3)). Where the proposal has been submitted jointly, he may consult any other person he believes to have an interest (see clause 7(5)). Where he has requested advice on a proposal from the Boundary Committee, he must wait until after the end of six weeks from the date of the request before making any order (Clause 7(2)).
18. The orders will be subject to the affirmative resolution procedure. This is appropriate as the Department accepts that restructuring is an issue which warrants close scrutiny by Parliament. The powers to make restructuring orders in the LGA 1992 (section 17 of that Act) also provided for the affirmative procedure in the case of structural change.

Clause 10: Implementation of recommendations by order

19. Clause 10 confers on the Secretary of State a power to implement with or without modification a recommendation from the Boundary Committee for boundary change either on the Committee’s own initiative or following a request for advice from the Secretary of State. The clause also allows the Secretary of State to seek further information from the Boundary Committee before implementing recommendations.

20. Subject to the limits in clause 8(4), an order under this clause may implement a recommendation of the Boundary Committee to do any of the following: alter the boundary of a local government area, abolish a local government area and/or constitute a new local government area. The limits in clause 8(4) have been included since the Secretary of State considers that such matters are better dealt with through the invitation for structural change procedure in clauses 1 to 7.

21. The flexibility of a delegated power is required as the Secretary of State may choose not to implement all recommendations for boundary change received; further the detail of implementation will differ in each case.

22. Before the Boundary Committee makes a recommendation, it must publish a draft of the recommendation and take steps to ensure that persons who may be interested are informed of the draft recommendation and the period within which representations may be made about it to the Committee (clause 9(3)). If the Boundary Committee then makes any recommendation to the Secretary of State, it must inform any person who made such a recommendation of the recommendation made and that further representations may be made to the Secretary of State for four weeks beginning with the date on which the Boundary Committee sent its recommendations to the Secretary of State (clause 9(4)).

23. Before making an order under clause 10, the Secretary of State must wait until after the end of six weeks from the date that the recommendation was sent to it by the Boundary Committee. This is to allow those persons that wish to, an opportunity to make representations to the Secretary of State and for the Secretary of State to consider them.

24. The orders will be subject to the affirmative resolution procedure. The Department accepts that this is the appropriate procedure as orders effecting boundary change may in themselves be matters of interest to local communities and to Parliament. Further, such orders may include provision which makes consequential changes to primary legislation or to secondary legislation which was itself subject to the affirmative resolution procedure, (see clause 15(2) and (3) discussed below.)

Clause 11: Implementation orders: provision that may be included

25. Clause 11 provides that an order under section 7 or 10 may include any of the matters mentioned in subsections (3) or (4). These matters include-

- the constitution of a new local government area, the abolition of any existing local government area and provision in relation to the boundary of any local government area (clause 11(3)); and
• the name of any local government area, the name of any local authority and electoral matters within the meaning of clause 12 (clause 11(4)).

26. Clause 11(6) provides that the power under clause 7 includes power to make provision that there should be a single tier of local government for an area which includes all or part of the area specified in the proposal but which could not itself have been proposed by a local authority. This is to enable the Secretary of State to implement, for example, a proposal from a local authority for the establishment of a unitary county council for the area, but on expanded boundaries. The Secretary of State might wish to do this should there be both a proposal from a local authority for a single tier of local government for its area, and a recommendation from the Boundary Committee that the boundary of that particular local government area be moved so that the area is expanded.

Clause 12: Provision relating to membership etc of authorities

27. Clause 12 enables the Secretary of State to make provision, in an order under clause 7 or 10, in relation to the membership of authorities. It enables the Secretary of State, for example, to appoint existing councillors to be members of a new authority for a transitional period. This is to allow a ‘shadow authority’ to make decisions preparatory to it taking on its full range of functions as the new local authority.

28. The Secretary of State may also make provision for the election of councillors to the new authority. This is necessary in case the Electoral Commission is unable to carry out an electoral review of the area and put in place electoral arrangements (under Part 2 of the LGA 1992) before the new authority takes on its full range of functions. A later order of the Electoral Commission as to electoral arrangements for the authority may revoke any provision of an order made by the Secretary of State.

Clause 13: Implementation orders: further provision

29. Clause 13 enables an order under clause 7 or 10 to include any other incidental, consequential, transitional or supplementary provision. Such provision may relate either to other provisions of the same order or to provisions of a previous order. This means that the Secretary of State could, for example, establish a new authority in one order and appoint members to it to take decisions during the shadow period and then, in a second order, put in place electoral arrangements for the authority, having first consulted with the members of the shadow authority.

30. Clause 13(4) provides that if the Secretary of State exercises his power to alter the boundary of a police area in consequence of implementing a proposal for structural change or a recommendation for boundary change, he must ensure that a district, London borough, or unitary county is not divided between two or more police areas. Similar provision was made by section 17(6) of the LGA 1992.

Clause 14: Regulations for supplementing orders

31. Clause 14 enables the Secretary of State by regulations of general application to make consequential, incidental, transitional or supplementary provision in consequence of an order under clause 7 or 10, or to give full effect to such orders.

32. This power is necessary as it is not yet known which authorities may be affected as a result of an order under clause 7 or 10 and therefore what sort of overarching regulations might be needed. However, it is expected that the regulations will be used to make provision as provided for in clause 15(1). (Clause 15 is to be read with clause 14, see clause 14(2)). For example, the regulations may include provision
dealing with the transfer of functions, property, rights and liabilities from a local authority to another local authority, where their areas are the same or overlap and with respect to the transfer of staff, compensation for loss of office and pensions.

33. The regulations will be subject to the negative resolution procedure except where they include provision as provided for in clause 15(2) and (3) below. The negative procedure is appropriate as the regulations will not be likely to require close scrutiny by Parliament. The negative procedure was applied for similar regulations made under section 19 of the LGA 1992, which this provision replaces.

Clause 15: Incidental etc provision in orders or regulations

34. Clause 15(1) provides that incidental, consequential, transitional or supplementary provision under clauses 13 and 14 may include particular matters.

35. Clause 15 (2) enables the Secretary of State to amend primary or secondary legislation, in statutory instruments made under clause 7, 10 or 14, for any incidental, consequential, transitional or supplementary purpose. Clause 17 (discussed below) also includes the power to make provision under clause 15(2) and (3).

36. As mentioned above, the affirmative procedure is prescribed for orders made under clause 7 and 10. Where regulations made under clause 14 include provision under clause 15(2) and (3), they will be subject to the affirmative resolution procedure where those provisions amend or repeal primary legislation. They will also be subject to the affirmative procedure where they include provision which amends or revokes secondary legislation which was itself subject to the affirmative procedure.

Clause 17: Residuary Bodies

37. Clause 17 confers on the Secretary of State a power to establish a residuary body for the purpose of taking over any property, rights, liabilities or functions of an authority dissolved as a result of an order under clause 7 or 10.

38. There is no current intention to use this order-making power, as it is not known if it will be necessary to establish a residuary body. The flexibility of a delegated power is required as it is not yet known which, if any, authorities may be dissolved, the implementation arrangements that proposals may contain and if they require a residuary body.

39. This will allow the Secretary of State to put in place the necessary organisational, constitutional and representational arrangements for an independent body to take charge of any property, rights, liabilities or functions of an authority that will be dissolved. This may be necessary where, for example, agreement cannot be reached between an authority and its successor authorities about how its property should be divided.

40. This clause also confers on the Secretary of State power to make consequential, transitional or supplementary provision for in particular,

- legal proceedings commenced by or against any body to be continued by or against a body to whom functions, property, rights or liabilities are transferred;
- the transfer of staff, compensation for loss of office, pensions and other staffing matters;
- treating any body to whom a transfer is made for some or all purposes as the same person in law as the body from whom the transfer is made.
41. The order will be subject to the negative resolution procedure unless provision is made in such an order under clause 15(2) and (3) as is provided for by clause 17(5). If such provision is included, the order will be subject to the affirmative procedure where such provision either amends or repeals primary legislation or amends or revokes secondary legislation which was itself subject to the affirmative resolution procedure.

Clause 18: Staff Commissions

42. Clause 18 confers on the Secretary of State a power to establish one or more staff commissions. The purpose of the staff commission is to consider staffing arrangements, and any problems that may arise as a result of orders under this part. It can also provide advice to the Secretary of State on the necessary safeguarding of the interests of such staff. The clause also confers a power to wind up any staff commission established under this clause.

43. This clause also allows the Secretary of State to direct the staff commission with respect to their procedure and also to direct any local authority that is affected by this order to provide information as requested by the staff commission, implement advice given by the staff commission and/or to pay the staff commission their expenses where they have been undertaking work as requested by the authority.

44. There is no current intention to use this order-making power, as it is not known at this stage if there are any issues that would necessitate a staff commission. However, it is considered necessary to retain flexibility to respond to changing circumstances. A delegated power for the Secretary of State is the most suitable means of providing this flexibility. Any use of this power will be subject to the negative resolution procedure. This is an appropriate procedure as the setting up of a staff commission is not likely to be something which will require close scrutiny by Parliament. The negative procedure is the procedure which was used in relation to the establishment of staff commissions under section 23 of the LGA 1992, which this clause replaces.

Clause 20: Correction of orders

45. Clause 20 confers on the Secretary of State a power to correct an order where he is satisfied that there has been a mistake that cannot be rectified by a subsequent order made under section 14 of the Interpretation Act 1978 (c.30) (power to amend.)

46. It is necessary to have this flexibility as the difficulty with restructuring orders is that certain provisions can be spent shortly after they are commenced which means that they cannot later be amended under the usual rules. In particular, when making restructuring orders, the Secretary of State is reliant on accurate and complete information being provided by the authorities affected by the order. The power may be used where it later transpires that the order was made on the basis of information supplied by a public body which was in fact incomplete or inaccurate. A similar power was provided by section 26(6) of the LGA 1992.

47. The order will be subject to the affirmative resolution procedure which is appropriate as it may be used to correct restructuring and boundary change orders which are themselves subject to the affirmative procedure.

Clause 24: Authorities dissolved by orders: control of disposals, contracts and reserves

48. Clause 24 confers on the Secretary of State a power to direct a relevant authority to seek written consent before disposing of land where the consideration exceeds £100,000, and before entering into a capital contract or a non capital contract
where the consideration exceeds the relevant amount specified in the Bill (£1,000,000 for capital contracts and £100,000 for non-capital contracts). Consent is also required before a relevant authority includes an amount of financial reserves above a certain limit in its budget requirement for council tax purposes.

49. A relevant authority is an authority which is to be dissolved as a result of an order under clause 7 or 10 and which is specified in the direction. The flexibility of a devolved power is required as it is not yet known which authorities, if any are to be dissolved. Further, different provision is likely to be relevant in different cases.

50. The purpose of the direction-making power is to ensure that authorities do not dispose of valuable assets or enter into contracts which bind successor authorities or use up reserves without the consent either of the Secretary of State or of the successor authority. It is for the Secretary of State to specify that he is the person to give any consent, or such authority or other body as he considers appropriate.

51. As this is a direction-making power, it is not subject to any Parliamentary procedure.

Clause 29: Power to amend

52. Clause 29 confers on the Secretary of State a power to amend the amounts specified in clause 24 and the date in clause 27.

53. Clause 27 provides that, for the purpose of deciding whether the financial limits in clause 24 have been exceeded, certain other disposals and contracts must be taken into account. In relation to disposals of land, these are disposals made after 31 December 2006 (i.e. before the direction is made). In relation to contracts, they are contracts entered into by the authority after the 31 December 2006 (i.e. before the direction is made) which are either with the same contractor as the contract in question, or which relate to the same or a similar description of subject matter as the contract in question.

54. The purpose of clause 24 is to limit the amount of unnecessary disposals or expenditure (including future commitments) of those authorities that are to be dissolved as a result of structural change. To fix the maximum levels for disposals in primary legislation, without the capacity to amend, would be an unsatisfactory position. Flexibility is required as it is not possible to predict how changing circumstances may alter the levels which may be considered a sensible maximum. For example, changing land values may affect the limits.

55. It would also be unsatisfactory not to have flexibility over the date after which disposals and contracts will be taken into account for the purpose of deciding whether the limits in clause 24 have been reached. At present, the date is 31 December 2006. This will clearly not be appropriate for any future restructuring, for example where the Secretary of State issues an invitation to local authorities following a boundary review.

56. As use of the power will effect a direct amendment to primary legislation an affirmative resolution procedure is therefore appropriate and is specified.

Part 2 - Elections

57. Clause 32 enables a district council which is subject to a scheme for partial council elections to resolve to become subject to a scheme for whole council elections instead. Clause 32 enables a district council which is subject to a scheme for whole council elections and has at any time since its creation been subject to a scheme for partial council elections to resolve to become subject once again to a scheme for
partial council elections. A scheme for partial council elections is a scheme for either elections by halves (i.e. elections held every two years with one-half of councillors being elected at each election) or elections by thirds (i.e. elections held in three out of four years with one-third of councillors being elected at each election). A scheme for whole council elections is one under which ordinary elections are held every four years with all councillors being elected at each election.

58. There is no requirement for a change under these provisions to be approved and implemented by the Secretary of State. Previously, any change would need to have been made by the Secretary of State by order.

59. Part 2 of the Bill also removes the requirement that the number of councillors returned to a ward of a metropolitan district must be divisible by three, gives a principal council a power to change the name of any electoral area in their area by resolution and allows a principal council to make a request to the Electoral Commission in connection with the provision of single-member electoral areas.

Clauses 33, 38 & 40: Resolution for whole-council elections: requirements; Resolution for elections by halves: requirements; Resolution for elections by thirds: requirements

60. A resolution that a council is to be subject to a scheme for ordinary elections which differs from its existing scheme must be made during a permitted resolution period.

61. Clauses 33(5), 38(5) and 40(5) define the permitted resolution periods where the council wishes to move to a scheme for whole council elections or to a scheme for partial council elections. The Secretary of State has power by order under clauses 33(6), 38(6) and 40(6) to extend these periods so that they end on a later date than would otherwise be the case.

62. There is currently no intention for the Secretary of State to make an order in this respect but the flexibility of a power is required as it may be necessary to give district councils wishing to change their scheme of elections more time to pass the required resolution. In particular, the permitted resolution periods for changing governance arrangements are the same as for changing schemes for elections although there are additional requirements attaching to any proposal for the former, such as the obligation in some cases to hold a referendum. Where an authority is proposing to operate a leader and cabinet executive (England), the type of elections it holds will have a bearing on that decision, as the term of office of the leader will be four years in an authority which holds whole council elections but may be less if the authority holds elections by halves or elections by thirds.

63. Any order is subject to the affirmative resolution procedure for the reason that the order will have the effect of amending primary legislation.

Clause 44: Electoral commission to make order for new electoral scheme

64. Clause 44 requires the Electoral Commission, regardless of whether or not it has directed the Boundary Committee under section 13(3), to provide by order for the council’s transition to a new scheme of partial council elections (according to the process set out in clauses 45 to 50).

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2 A similar power to extend the permitted resolution period in relation to changes in governance arrangements can be found in section 33Q(6) of the Local Government Act 2000 which is inserted by clause 39 of the Bill.
65. The requirement to make the provision in secondary legislation is intended to provide the Electoral Commission with the flexibility to meet the individual needs of each council.

66. Any orders made will not be subject to any Parliamentary procedure. This is in keeping with the position in respect of orders made by the Electoral Commission under section 17 of the LGA 1992 which make provision in relation to the electoral arrangements of local authorities.

**Clause 53: Power of council to alter years of ordinary elections of parish councillors**

67. The Bill decentralises the powers relating to parish councils. The paragraphs on Part 4 contains more information on this issue. One aspect of this process is the conferring on district councils of a power to change the years in which the ordinary elections of parish councillors are held. Previously, such provision could previously be made by the Secretary of State and the Electoral Commission.

68. By virtue of clause 53, a district council may provide by order for the elections in question to be held in years in which ordinary elections of district councillors for the ward in which the relevant parish (or part of the parish) is situated.

69. The order can include transitional provision for the retirement of existing parish councillors at times which differ from those applying immediately before the order comes into force and for the retirement of some parish councillors elected after the order comes into force before the end of their normal term of four years. We have not prescribed any procedure for the district council to follow as to do so seems unnecessary.

70. There is a precedent for this power in sections 10 and 11 of the LGA 1972 and section 16 and 17 of the LGRA 1997 which also enable district councils to make provision by order which is concerned with parishes and parish councils. We consider the power conferred by clause 53 to fit in neatly with that tradition.

71. The aligning of the years of elections of parish councillors and district councillors is a local matter and not one which is likely to be of interest to Parliament. As such we do not consider that an order which provides for this should be subject to parliamentary scrutiny.

**Clause 54: Amendment of existing provisions about schemes for ordinary elections**

72. Section 86 of the LGA 2000 is amended by clause 54(4). The Secretary of State continues to have power to provide for a principal council in England to hold whole council elections, but she no longer has power to provide for the council to hold elections by halves or by thirds.

73. There is currently no intention for the Secretary of State to exercise the power for the reason that county councils, London borough councils and a number of district councils already hold whole council elections and district councils that do not do so now have a power to resolve to hold elections of this type if they wish (see clause 32). The power is retained as in the future the Secretary of State may consider it appropriate to provide for a principal council to hold whole council elections. The circumstances we have in mind are if the majority of local authorities in England have resolved to move to whole-council elections in the interests of effective and convenient local government the Secretary of State may wish to change the remaining authorities.
74. The power continues to be exercisable by order. Any order is to continue to be subject to the negative resolution procedure.

Clause 60: Power to change date of local elections to date of European parliamentary general election

75. Clause 60 inserts new sections into the Representation of the People Act 1983 to enable the Secretary of State in England, and the Welsh Ministers in Wales, to combine local government and Greater London Authority (GLA) elections with European Parliamentary general elections in future years, when the two types of elections coincide.

76. The clause gives the Secretary of State and Welsh Ministers the power to move the date of local government and GLA elections so they are on the same date as the European Parliamentary general election. This provision is being made by order because in some years in which European Parliamentary general elections take place it may not be appropriate to move the ordinary day of local government elections, and it is therefore important to consult stakeholders on each occasion to ensure that the change of date is appropriate. For example, if local government, GLA and European Parliamentary elections are all due to coincide, the view might be taken that it will be too confusing for voters to have to vote in several different types of elections on the same day.

77. Any order is subject to the affirmative resolution procedure in both Houses of Parliament, in recognition of the fact that the exercise of a power to move the date of local elections should be subject to a high level of scrutiny, and because the power to make incidental, supplementary or consequential provision or savings provisions under this section includes a power to modify or disapply primary legislation.

Part 3 - Executive Arrangements for England

78. Part 3 is intended to provide for stronger, more accountable local leadership. This Part and Schedules 3 to 5 make new provision for the operation of executive arrangements for England which include the following:

(a) changes to the forms of executive available to authorities operating executive arrangements in England, including the replacement of the leader and cabinet executive with a strengthened leader and cabinet model;

(b) a requirement for authorities in areas of a certain size which are operating alternative arrangements to operate executive arrangements instead;

(c) a requirement for any authority which is operating a mayor and council manager executive to operate a different form of executive; and

(d) a simpler system for changing governance arrangements.

79. Part 3 builds on Part 2 of the LGA 2000 which required most authorities to operate executive arrangements. The objective of the policy underlying the LGA 2000 was to ensure greater efficiency, transparency and accountability of authorities by the creation of an executive that would be responsible for most of the decision-making within an authority. These arrangements were intended to ensure that decisions could be taken more quickly and efficiently than in the old committee system, and that those responsible for decision-making could be held to account in public by overview and scrutiny committees.
Clause 64: Changing governance arrangements

80. Clause 64 inserts new sections 33A to 33Q, which are concerned with governance arrangements, into the LGA 2000.

New section 33J: New form of executive or move to executive

81. New section 33C(2) requires an authority which is operating alternative arrangements, and which had a resident population of 85,000 or more on 30th June 1999 to start operating executive arrangements by the day of their annual meeting in 2009 (see new section 33P(2)).

82. By virtue of new section 33J(5), the authority must resolve to change its governance arrangements by 31 December 2008 or such later day as may be specified by the Secretary of State by order.

83. It seems unlikely that the Secretary of State will exercise the power to extend the period during which the resolution must be passed. This is because the requirement in 33J(5) comes into force on Royal Assent in relation to authorities of the type concerned leaving insufficient time to make the order.

84. Any order is subject to the affirmative resolution procedure as it will amend primary legislation.

New section 33P: Alternative arrangements: move to executive arrangements

85. Under new section 33P(3) where it appears to the Secretary of State that the authority will fail to comply with new section 33C(2), he may by order specify the executive arrangements which are to apply. Any order under new section 33P(3) can only specify executive arrangements involving the operation of a leader and cabinet executive (England).

86. There is only one authority which falls into this category. There is currently no reason to think that the authority will not comply with clause 33P(2), but nevertheless a default power is prudent. If the power is used detailed provision will be required and so it is more appropriate to make the necessary provision by order, rather than on the face of the Bill.

87. Any order is subject to the negative resolution procedure. This is appropriate given the procedural nature of the power.

New section 33Q: Permitted resolution periods

88. Where an authority is not required to cease operating alternative arrangements, any resolution to effect an alternative arrangement must be made within a permitted resolution period (clause 33J(4)). Those periods are defined in new section 33Q(5). New section 33Q(6) enables the Secretary of State to extend by order these permitted resolution periods so that they end on a later date.

89. The flexibility of a delegated power is required as it may be necessary to give local authorities wishing to change their governance arrangements more time to do so, particularly, in light of the requirements as to consultation and the holding of referendums on their proposals in certain cases.

90. There is currently no intention for the Secretary of State to use the power in question. Any order is to be subject to the affirmative resolution procedure for the reason that the order made under it will have the effect of amending clause 33Q.
Clause 65: Referendum following petition

91. Clause 65 amends section 34 of the LGA 2000 which is concerned with the Secretary of State’s power to make regulations requiring an authority to hold a referendum where it receives a petition complying with the provision of the regulations. The power is amended so that regulations can be made which require a referendum to be held on whether the authority should operate a form of executive which involves a mayor and cabinet executive, an elected executive or an executive of a form prescribed in regulations under section 11(5). This is to take account of the elected executive model which is introduced by the Bill.

92. This power is necessary as the provision relating to referendums is likely to be detailed and it is therefore undesirable to put it on the face of the Bill.

93. The regulations will be subject to the negative resolution procedure. This procedure is appropriate as the regulations will not be likely to require close scrutiny by Parliament. The negative resolution procedure already applies to regulations made under section 34.

Clause 67: Elected executives

94. Clause 67 inserts new section 40A into the LGA 2000 which makes provision in relation to elected executives. Subsection (2) of the new section allows the Secretary of State to make regulations which allow for a member of the elected executive to be treated as a member or councillor of the authority for the purposes of any enactment specified in the regulations. This is along the lines of the provision made in respect of elected mayors in section 39(5) of the LGA 2000.

95. Given this precedent, it seems appropriate to make provision for this purpose in relation to an elected executive in regulations. As for elected mayors, the regulations will also be subject to the negative resolution procedure and are unlikely to require close Parliamentary scrutiny.

Clause 70: Time of elections etc

96. Clause 70 amends section 41 of the LGA 2000. The effect of this amendment is to allow the Secretary of State to make provision by regulations about the election of a new elected executive if vacancies arise in the membership of the current elected executive of an authority.

97. The amendment to section 41 is necessary because of the special nature of an elected executive which is a new type of executive. This particular model is specified in relation to authorities in England in new subsection (3A) of section 11 of the LGA 2000. It consists of a team of between 2 and 9 individuals all of whom will have been directly elected to office by the local government electors in the area of the authority concerned.

98. A contrast can be drawn between this model and the mayor and cabinet executive of whom only the mayor will have been directly elected to office. We already have a general power to deal with vacancies arising in the office of elected mayor or elected power. However, we also need a more specific power to enable regulations to be made which provide for a fresh election for a new elected executive to be held in certain cases, such as where the elected leader dies, resigns or is removed from office. The amendment to section 41 gives us this power.

99. It is because provisions dealing with the election of, and vacancies arising in, an elected executive are likely to be detailed that they are to be made in secondary legislation rather than on the face of the Bill.
100. The regulations will be subject to the negative resolution procedure. This is appropriate in view of the nature of the power and we note that this procedure already applies to regulations made under section 41.

*Clause 72: Leader and cabinet executives (England)*

101. Clause 72 inserts new sections 44A to 44H into the LGA 2000. Those new sections are concerned with the new leader and cabinet executive (England).

102. New section 44H enables the Secretary of State by regulations to provide for the term of office of an executive leader of a leader and cabinet executive (England) and for the filling of vacancies in the office of the executive leader of a leader and cabinet executive (England). The provisions of sections 44A to 44E operate subject to any such provision.

103. Again, provision about such matters is likely to be detailed. For this reason it is appropriate to provide for it to be made in secondary legislation rather than on the face of the Bill.

104. Any regulations are subject to the negative resolution procedure. The procedure is therefore the same as that which applies to regulation-making powers that can be used to provide for matters such as terms of office and the filling of vacancies in relation to other forms of executive, such as an elected mayor or elected executive, under section 41 of the LGA 2000, as amended by the Bill.

*Schedule 5: New arrangements for executives: transitional provision*

105. Schedule 5 to the Bill makes transitional provision in relation to an authority which operates either an old-style leader and cabinet executive or a mayor and council manager executive. An authority operating one of these forms of executive is required by Parts 1 and 2 to cease to do so and to start operating a form of executive that is permitted by section 11 of the LGA 2000 (as amended by clause 62).

**Part 1: Old-style leader and cabinet executive**

*Change in form of executive*

106. Paragraph 3(1) of Part 1 of Schedule 5 requires an authority which is operating an old-style leader and cabinet executive to change its governance arrangements so as to operate a different form of executive. Again a resolution during a permitted resolution period is required to achieve this (paragraph 3(2) and (3)). Again the Secretary of State has a power by order under paragraph 3(4) to extend the permitted resolution periods so that they end on later dates.

107. The flexibility of a delegated power is required as it may be necessary to give the authority more time to make its resolution, particularly, in light of the requirements as to consultation and the holding of referendums on their proposals in certain cases.

108. There is currently no intention for the Secretary of State to use the power in question. Any order made is to be subject to the affirmative resolution procedure for the reason that the order made under it will have the effect of amending paragraph 3.

*Failure to change form of executive: automatic change*

109. The Secretary of State has a power under paragraph 4(3) of Part 1 of Schedule 5 to specify executive arrangements by order where the authority does not change its
governance arrangements as required by paragraph 3 of that Part. Any order can only specify executive arrangements involving the operation of a leader and cabinet executive (England).

110. There is currently no reason to think that authorities will not make the necessary changes, but nevertheless a default power is prudent. If the power is used, detailed provision will be required and so it is more appropriate to make the necessary provision by order, rather than on the face of the Bill.

111. Any order is subject to the negative resolution procedure. This is appropriate given the procedural nature of the power.

**Part 2: Mayor and council manager executive**

**Change in form of executive**

112. Paragraph 8(1) of Part 2 of Schedule 5 requires an authority which is operating a mayor and council manager executive to change its governance arrangements so as to operate a different form of executive. The authority must pass a resolution by the permitted resolution period ending 31 December 2008 (paragraph 8(3) to comply with this requirement). The Secretary of State again has power by order under paragraph 8(4) to extend this period so that it ends on a later date.

113. The flexibility of a delegated power allows the authority to be given more time to make its resolution, if necessary, particularly, in light of the requirements as to consultation and the holding of referendums on their proposals in certain cases.

114. There is currently no intention for the Secretary of State to use the power in question. Any order made is to be subject to the affirmative resolution procedure for the reason that the order made under it will have the effect of amending paragraph 3.

**Failure to change form of executive**

115. Where the authority does not comply with the requirement in paragraph 8(1), the Secretary of State has power under paragraph 11(3) of Part 1 of Schedule 5 to specify executive arrangements by order. Any order can only specify executive arrangements involving the operation of a leader and cabinet executive (England).

116. There is currently no reason to think that authorities will not make the necessary changes, but nevertheless a default power is prudent. If the power is used detailed provision will be required and so it is more appropriate to make the necessary provision by order, rather than on the face of the Bill.

117. Any order is subject to the negative resolution procedure. This is appropriate given the procedural nature of the power.

**Part 4 - Parishes**

118. Part 4 and Schedule 6 are concerned with new powers for alternative styles to be used by parishes and groups of parishes, the appointment of persons to be councillors of a parish council, the extension of the well-being power to eligible parish councils and powers for principal councils to carry out community governance reviews in their areas and to implement any recommendations resulting from those reviews.
Clause 77: Grouping: alternative styles

119. Clause 77(2) inserts new section 11A into the LGA 1972. The new section enables an order made under section 11 of the LGA 1972 by an authority which forms a new group to make provision for the parishes in that group either to share one of a number alternative styles, the styles being “group of communities”, “group of neighbourhoods” and “group of villages” or for each of those parishes which has an alternative style to cease to have such a style.

120. The power to make such provision is seen to be a natural extension to authorities existing powers to make provision in relation to parishes, e.g. provision for grouping parishes, for separating parishes in a group and for dissolving groups under sections 10 and 11 of the LGA 1972 and also provision for establishing parish councils in certain cases and providing for electoral arrangements for those councils under sections 16 and 17 of the LGRA 1997.

121. Under the Bill, authorities are given powers to implement by order recommendations following a community governance review (except for those recommendations which have been made by the Electoral Commission), such as recommendations for the constitution or abolition of a parish, for a new parish to have an alternative style, for the establishment of a parish council for a parish and the electoral arrangements for that council or for the dissolution of a parish council (see clause 88(2)).

122. It seems appropriate for an authority, rather than the Secretary of State, to have a power to provide for a group of parishes to have an alternative style as the decision to make such provision must be a local one and so is better taken at local level. The power for a parish which is not in a group to have the status of a town and associated styles is already taken at local level under section 245(6) of the LGA 1972 and decisions about whether existing individual parishes which are also not in a group should have alternative styles will similarly be taken locally (see clause 77(3) which inserts new section 12A into the LGA 1972) by either the parish council or, where a parish has no parish council, by a parish meeting of a parish.

123. Precedents for local authorities making orders in relation to parishes can be found in sections 10 and 11 of the LGA 1972 and sections 16 and 17 of the LGRA 1997. So we do not consider that this new power is likely to cause any problems.

124. Where a council make an order under clause 88, it must send two copies of the order to the Secretary of State and two copies to the Electoral Commission. In this way, the Secretary of State and the Electoral Commission will be alerted to changes which are made by such orders and can update their records accordingly and also monitor use of the new power.

125. Other than this, we have not prescribed any procedure for the authority to follow as we do not consider it necessary to do so. This follows the approach taken in respect of the precedents mentioned. The orders will not be subject to parliamentary scrutiny and we think that this is satisfactory because as mentioned, we consider the giving of alternative styles to groups to be a local matter and one with which parliament is unlikely to be particularly concerned.

Clause 78: Appointed councillors

126. Clause 78(4) inserts new section 16A into the LGA 1972. New section 16A(1) enables parish councils to appoint persons as parish councillors. Subsection (2) of that section enables the Secretary of State by regulations to make provision about the appointment of such persons and the holding of office after their appointment. The regulations can provide for the matters specified in subsection (3).
127. Provision to deal with the appointment of councillors and related matters is likely to be detailed. For this reason it is appropriate to provide for it to be made in secondary legislation rather than on the face of the Bill.

128. Any regulations made are to be subject to the negative resolution procedure. This is because they concern matters of detail which do not warrant a Parliamentary debate.

**Clause 79: Extension of power to certain parish councils**

129. Clause 79 amends section 1 of the LGA 2000 which lists those authorities which are able to exercise the power of well-being to include an “eligible parish council.” An “eligible parish council” is one which meets the conditions prescribed by the Secretary of State by regulations (section 1(2) of the LGA 2000).

130. The conditions are to be prescribed in secondary legislation to allow for flexibility as the conditions may need to change over time.

131. The negative resolution procedure is to apply to any regulations made as they are unlikely to require special parliamentary attention.

**Clause 88: Reorganisation of community governance**

132. As mentioned previously, authorities are given increased powers in relation to parishes under the Bill. Clause 88, in particular, empowers them to implement recommendations following a community governance review. The recommendations may be given effect by order under clause 88(2) (“a reorganisation order”). A reorganisation order may vary or revoke an order made under this section, Part 1 of the Bill, section 17 of the LGA 1992 or sections 16 or 17 of the LGRA 1997.

133. The Electoral Commission has power under the LGA 1992 to make provision for a change in the electoral arrangements of a specified area. “Electoral arrangements” is defined in section 14(4) of the LGA 1992 and includes in relation to a parish council the number of councillors that the council should have and whether the parish should be divided into wards for the purpose of the election of parish councillors. Implementation of recommendations of the Boundary Committee following an electoral review can be made by order by the Electoral Commission under section 17 of the LGA 1992. Where an electoral arrangements order has been made by the Commission under section 17, the authority will be able to vary or revoke that order by an order made under clause 88, so that it can put in place new electoral arrangements where this is recommended by a community governance review. This will be unless the electoral arrangements provided for in the order made by the Commission are “protected” within the meaning of clause 88(6) (i.e. where the order was made during the period of five years ending with the day on which the community governance review starts).

134. An authority is already empowered by section 17(5) of the LGRA 1997 to vary or revoke orders which they have made under sections 16 and 17 of that Act, which are concerned with the establishment of parish councils for existing parishes and the provision of electoral arrangements for a parish council. The power in clause 88(5), insofar as it relates to orders made under section 16 or 17 of the LGRA 1997, simply re-enacts section 17(5) of that Act. We think it appropriate for authorities to continue to have this power as they would otherwise be unable to put in place the necessary electoral arrangements for a parish council (except where the existing arrangements are protected).
135. Furthermore we also think it appropriate for the same reasons that they should be able to vary or revoke any order made under section 17 or 26 of the LGA 1992. This is because it seems preferable for authorities, rather than the Secretary of State or the Electoral Commission, to be responsible for changes which involve the creation or abolition of parishes and related institutions, and the arrangements for those institutions, in their area.

136. As mentioned previously, precedents for local authorities making orders in relation to parishes can also be found in sections 10 and 11 of the LGA 1972. Where a council make an order under clause 88, it must send two copies of the order to the Secretary of State and two copies to the Electoral Commission. Again, no procedure is prescribed for the making of orders under clause 88.

137. We think that some orders could be controversial, for instance, where there is an issue as to whether the recommendations implemented reflect the views of local people, which is not always an easy thing to judge. Even so, we still feel that such decisions need to be taken locally, in this case, by authorities, rather than centrally. As a safeguard, clause 95(1) imposes duties on authorities which they must comply with when undertaking a community governance review. This includes the duty to have regard to the need to secure that community governance within the area under review reflects the identities and interests of the community in that area and is effective and convenient (see clause 95(4)). There is also a duty to take into account any representations received in connection with the review.

138. In addition, the Secretary of State will be issuing guidance on carrying out such a review to which authorities must also have regard (see clause 102(4)). Authorities are already required to have regard to matters along the lines of those referred to in clause 95(4). To guidance when carrying out reviews under Part 2 of the LGRA 1997 the provisions of which Part 4 of the Bill builds upon with the aim of devolving more powers to authorities.

139. Further, the option of judicial review is open to those who are unhappy with the outcome of the review process.

140. We consider that the sheer volume of orders likely to be made under this clause would make it impractical for Parliament to scrutinise them effectively. Currently, a great number of orders relating to parishes are made each year by the Secretary of State and the Electoral Commission. None of these are subject to any parliamentary procedure and we are not aware of any problems having been caused by this approach. Further, we think it would be inappropriate to change this approach in relation to the devolution of the order-making powers concerned to local authorities.

Clause 94: County, district or London borough: consequential recommendations

141. Clause 94(3) gives the Electoral Commission a power to implement recommendations made by a community governance review as to consequential alterations to the electoral areas of any principal council whose area the review relates to.

142. The order will not be subject to any parliamentary procedure. A precedent for this can be found in the LGRA 1997 under which orders made by the Electoral Commission to implement consequential changes to electoral area boundaries are not subject to parliamentary scrutiny. This is by virtue of section 23 of that Act. We see no reason to depart from this approach given the local nature of any such changes.
Clause 99: Supplementary regulations

143. Clause 99 enables the Secretary of State to make any incidental, consequential, transitional or supplementary provision he thinks necessary or expedient for the purposes of, or in consequence of any reorganisation order made under clause 88.

144. The power is needed to enable provision to be made which gives full effect to such an order in secondary legislation rather than on the face of the Bill as it is likely to be very detailed.

145. The power is exercisable by regulations of general application which are to be subject to the negative resolution procedure.

Clause 100: - Orders and regulations under this Chapter

146. Provision in a reorganisation order may include such incidental, consequential, transitional or supplementary provision as may appear to the authority to be necessary or proper for the purposes of, or in consequence of, or for giving full effect to the order (clause 100(3)).

147. Any such order or regulations made by the Secretary of State under clause 99 can include provision about the transfer and management or custody of property and about the transfer of functions, property, rights and liabilities (clause 100(4)). They can also include provision for excluding or modifying the application of 16(3) or 90 of the LGA 1972 or rules under section 36 of the Representation of the People Act 1983, which are concerned with the elections of councillors and the filling of casual vacancies. (Supplementary regulations made under section 15(1) of the LGRA 1997, the Local Government (Parishes and Parish Councils) Regulations 1999 (S.I. 1999/545), make provision, for instance, in article 11(3) which requires a person who is a parish councillor of a parish abolished by order to retire immediately before the order date notwithstanding the provision made in section 16(3) of the Local Government Act 1972 which provides for a parish councillor to retire on the fourth day after ordinary elections are held for that council).

148. The regulations will be subject to the negative parliamentary procedure which follows the approach taken under the LGRA 1997- we do not consider that they are likely to make provision which is particularly controversial. Although regulations made by the Secretary of State will be subject to provision made in any reorganisation order, in our experience of making orders relating to parishes we have found that authorities do not tend to want to make provision which disapplies or modifies the supplementary regulations.

149. A reorganisation order is therefore likely not to include provision which is as detailed as, or deals with the same matters as, that included in any supplementary regulations.

Part 5 - Co-operation of English Authorities with Local Partners etc

150. This Part provides for a local area agreement (“LAA”), which will be an agreement between a local authority and certain partner authorities, approved by the Secretary of State. It will be prepared by the local authority which will consult partner authorities and others (including persons from the voluntary and community sector and local businesses). The local authority and partner authorities will co-operate with each other in determining local improvement targets for the area to be included in the LAA. It also amends section 4 of the LGA 2000 to provide that the local authorities which prepare LAAs must consult partner authorities when preparing their Community Strategy.
151. This Part also amends Section 21 of the LGA 2000 in respect of local authority overview and scrutiny committees. It seeks to strengthen the role of the overview and scrutiny committees to improve accountability. It enables committees to review specific actions of the public bodies specified in clause 106 operating in their area and to require them to provide information or appear before them. It also requires the local authority or the authority’s executive to respond to the committee’s reports or recommendations. It also makes provision for the establishment of joint overview and scrutiny committees to review matters relating to LAA targets.

Chapter 1: Local Area Agreements

Clause 106: Application of Chapter: partner authorities

152. Clause 80 enables the Secretary of State to add persons to, and remove persons from, the list of named partners set out in subsections (2) and (3), and to add functions to, and remove functions from, the list in subsection (3)(g). The Secretary of State also has power to make necessary or expedient consequential provision. Before using these powers the Secretary of State must consult with such representatives of local government and such other persons as he considers appropriate (clause 106(7)).

153. These powers will allow the list of named partners to be kept relevant by reflecting changes in the organisations who would be expected to work with the local authority.

154. The regulations will be subject to the negative resolution procedure. It is considered that any use of these powers will be uncontroversial and that there is insufficient justification for a Parliamentary debate. The powers are simply intended to keep the definitions in the clause up to date and to add in other bodies as named partners or to remove named partners. This will only be done following full consultation as the LAA clauses rely on co-operation between partners.

Clause 108: Duty to prepare and submit draft of a local area agreement

155. Clause 82 enables the Secretary of State to direct local authorities to prepare a draft Local Area Agreement. This must set out local improvement targets, the persons to whom those targets relate (ie who shall be responsible for those targets) and the period for which the LAA will have effect. In making a direction in relation to an authority for the first time, the Secretary of State may provide that it does not matter when the draft of the LAA was prepared and that certain of the statutory duties in clause 108 do not apply (see clause 120). This is a transitional provision. It means that local authorities with a voluntary LAA in place before the Bill provisions come into force may, where the direction so provides, treat that voluntary LAA as though it was a statutory LAA.

156. The power of direction is necessary since different areas will be at different stages with their voluntary LAAs at the time that these clauses come into force. Further, in the future, some LAAs may last for longer than others. The power of direction gives the Secretary of State the flexibility to deal with these issues by allowing him to direct any particular area to prepare a draft LAA at any particular time. The clause includes a power for the Secretary of State to be able to vary or revoke such a direction.
**Clause 113: Designated Targets: revision proposals**

157. Clause 113 gives the Secretary of State the power to designate targets in a local area agreement. The power is exercisable by notice in writing and it enables the Secretary of State to specify which targets he considers to be priority targets.

158. Clause 113(1)(b) gives the Secretary of State the power by direction to require a local authority to prepare and submit a revision proposal to an existing local area agreement by a defined date. The Secretary of State may vary or revoke such a direction. This power of direction is necessary as the Secretary of State may wish to ensure that changes are made to designated targets by local authorities and their partners or that new targets are added to the LAA, for example to reflect new national priorities which may arise during the lifetime of a LAA.

159. As this is a direction-making power, it is not subject to any Parliamentary procedure.

**Clause 115: Duty to publish information about local area agreement**

160. Clause 115(2) provides that the Secretary of State may direct the form of the memorandum of the LAA, prepared by the local authority under that clause. Such a direction may be varied or revoked. This power of direction is necessary to ensure that there is some consistency between the form of the memoranda of different responsible authorities. The Secretary of State may give different directions to different responsible local authorities or different descriptions of responsible local authority, this will mean that for example the Secretary of State may direct a different form of memorandum for those authorities with an existing LAA which is treated as a statutory LAA under the transitional provisions. As this is a direction-making power, it is not subject to any Parliamentary procedure.

**Clause 118: Health and social care: joint strategic needs assessments**

161. Clause 118 makes provision to require upper tier local authorities and Primary Care Trusts to produce a “joint strategic needs assessment” of the health and social care needs of their local population.

162. Clause 118(2) makes provision for the Secretary of State to direct local authorities and PCTs to undertake a further “joint strategic needs assessment” where the Secretary of State considers that one is so required.

163. The power of direction is necessary because the processes and timescales for developing sustainable community strategies and local area agreements in some areas may not be synchronised, either now or in the future. Sustainable community strategies vary in their duration and some LAAs in the future may also last longer than others. The duration of the reliability of a “joint strategic needs assessment” may also vary from place to place. The power of direction gives the Secretary of State the flexibility to deal with this issue by allowing him to direct any particular area to undertake a further “joint strategic needs assessment” at any particular time.

164. A power to revoke such a direction is taken so as to enable the Secretary to revoke a direction where the bodies have good reason for not undertaking a “joint strategic needs assessment”.
Chapter 2: Overview and scrutiny committees

Clause 123: Powers to require information from partner authorities

165. Clause 123(1) inserts new section 22A into the LGA 2000. New section 22A(1) enables the Secretary of State by regulations to provide for information which partner authorities must provide to an overview and scrutiny committee of an upper tier or unitary authority in England, and information which they may not disclose to such a committee. For the purposes of clause 123(1), a partner authority is a person which a local authority is required to consult and cooperate with when preparing a local area agreement (but excluding a police authority or a chief officer of police).

166. New section 22A(4) will enable regulations to be made about the information which “associated authorities” may or may not provide to district councils in two-tier areas. An “associated authority” is either a partner authority or the county council in that two-tier area.

167. To avoid any overlap, the information about which the Secretary of State can make provision, under new section 22A(1), does not include information for which provision can be made under either section 20(5)(c) or (d) of the PJA 2006, ie on information which relates to crime and disorder matters. Section 244(2)(d) and (e) of the NHSA 2006 provide that provision may be made by regulation as to health related information that may be disclosed, or not to an overview and scrutiny committee. As section 244 of the NHSA 2006 does not apply to district authorities in two-tier areas, the Secretary of State will be able to make provision about health related information in the regulations that can be made under new section 22A(4), ie the regulations which apply to districts in two-tier areas. He will not be able to under the power in new section 22A(1), to avoid overlap.

168. Provision under new section 22A is likely to be detailed, and so it is not appropriate to include it on the face of the Bill. Further, some flexibility is also needed as the provision might need to change over time.

169. Any regulations made will be subject to the negative resolution procedure. This is appropriate in view of the nature of the power and is consistent with the approach taken in relation to regulations made under the similar provisions in the PJA 2006 and the NHSA 2006.

Clause 124: Overview and scrutiny committees: reports and recommendations

170. Clause 124 inserts new sections 21B to 21D which are concerned with the making, and copying, of reports or recommendations of overview and scrutiny committees in England, responses to any report or recommendations, and the publication of any document containing any of these.

171. New section 21D concerns the publication of reports or recommendations from an overview and scrutiny committee to an authority and the publication of responses by the authority. It is particularly concerned with the exclusion of information which is either confidential information or relevant exempt information where any report, recommendation or response is published. The definitions of “confidential information” and “relevant exempt information” are taken from Part 5A of the LGA 1972.

172. “Confidential information” is information given by a Government department on terms that it should not be disclosed or information which is prohibited from being
disclosed by virtue of any enactment or court order (section 100A(3) of the LGA 1972).

173. “Relevant exempt information” is exempt information which is specified in a resolution of an overview and scrutiny committee or an authority at any meeting at which a report, a recommendation or a response are considered.

174. Because section 21D does not apply to executives, clause 124(2) inserts a new subsection (12A) into section 22 of the LGA 2000. Section 22 enables the Secretary of State by regulations to make provision as to access to meetings and documents of an executive. For consistency subsection (12A) will allow her to make provision along the lines of that contained in section 21D in relation to an executive. The regulations will be subject to the negative resolution procedure which is the procedure that currently applies to regulations made under section 22.

175. Section 32(3) of the LGA 2000 is replaced by clause 128(2) which will enable regulations to be made which apply or reproduce the provisions of new sections 21B to 21D in relation to local authorities which are operating alternative arrangements. Any regulations made will be subject to the affirmative resolution procedure which is in keeping with the approach taken to regulations made under section 32.

Clause 125: Joint overview and scrutiny committees: local improvement targets

176. Clause 125 allows the Secretary of State to make regulations enabling county councils in two tier areas to establish a joint overview and scrutiny committee with one or more district councils in its area.

177. Regulations made under this power will allow such joint overview and scrutiny committees to make reports and recommendations on matters relating to the attainment of a local improvement target in the relevant local area agreement (ie in the LAA of the local authorities which established the joint committee.) However, crime and disorder matters on which a crime and disorder committee may make reports and recommendations by virtue of s.19 PJA 2006 are excluded.

178. These regulations may also make provision as to the relevant information which an “associated authority” may or may not disclose to a joint committee. An associated authority means the county council which is the responsible local authority in relation to the district council and partner authorities to the responsible authority, other than a police authority or chief of police. Relevant information means information which is (a) relevant to a local improvement target in the local area agreement and (b) which relates to the associated authority. However, regulations may not make provision in relation to crime and disorder related information as the joint overview and scrutiny committee may not report on crime and disorder matters.

179. Regulations may also make provision generally as to the discharge of functions, appointment of sub-committees, and co-opting of persons who are not members of the authority by applying the provisions of, or making corresponding provision to, section 21(4) and (6)-(12) LGA 2000. Regulations may also apply or make equivalent provision to new sections 21A-21D LGA 2000 as to the reference of matters to overview and scrutiny by councillors, the duty of an authority or executive to respond to an overview and scrutiny committee, the duties on associated authorities to have regard to reports and recommendations and as to confidential and exempt information in relation to the publication of reports. Provision equivalent to or applying section 246 of, and Schedule 17 to, the NHSA 2006 (exempt health related information) may also be made under this last head.
180. Sub-clause (9) requires joint overview and scrutiny committees to have regard to any guidance issued by the Secretary of State.

181. Any regulations made will be subject to the negative resolution procedure. This is appropriate in view of the nature of the power and is consistent with the approach taken in relation to regulations made under the similar provisions in the PJA 2006 and the NHSA 2006.

Clause 126: Overview and scrutiny committees of district councils: local improvement targets

182. Clause 126 inserts a new section 21E into the LGA 2000 which will allow the Secretary of State to make regulations enabling a district council in a two tier area to make reports and recommendations to its county council or to that county’s executive, on matters relating to a local improvement target in the area’s LAA, where that local improvement target relates to a partner authority. A partner authority for these purposes means the county council and any authority which is a partner authority of the county council other than a police authority or the chief of police. This provision was necessary as without it, an overview and scrutiny committee of a district in a two tier area would have no power to send a report to its county council or the to the executive of that county (see the existing provision in section 21(2) of the LGA 2000).

183. Regulations may also make provision as to the duty of an authority or executive to respond to an overview and scrutiny committee, the duties on associated authorities to have regard to reports and recommendations and confidential and exempt information around the publication of reports, ie the regulations may make provision applying the provisions of new sections 21B-21D LGA 2000.

184. Any regulations made will be subject to the negative resolution procedure which is the procedure applied in relation to other regulations on the provision of scrutiny powers for these district councils.

Clause 128: Overview and scrutiny committees: consequential amendments

185. Clause 128 replaces section 32(3) of the LGA 2000 with a new subsection (3) which amplifies the current provision under that section, so that the Secretary of State may make regulations for councils operating alternative arrangements, which may include similar provision to that provided for in this Bill for overview and scrutiny committees. It also splits the powers of the Secretary of State into powers which he may exercise and powers which the Welsh Ministers may exercise.

186. This clause also makes consequential amendments to section 245(3)(b) of the NHSA 2006 so that the Secretary of State may, by regulations, apply the revised overview and scrutiny provisions to joint health overview and scrutiny committees established under regulations in that section.

Part 6 - Byelaws

187. The clauses in Part 6 enable the Secretary of State to make regulations establishing a new procedure for local authorities to follow in making byelaws. The intention is that this power will be used so that once local authorities have consulted on, prepared and advertised draft byelaws locally, they can be enacted without reference to the Secretary of State. The Secretary of State’s power includes a power to make regulations dealing in particular with consultation on and the advertisement of byelaws locally. The clauses also give the Secretary of State the power to issue guidance in relation to the new procedures.
188. The clauses also provide for the enforcement of byelaws through fixed penalty notices, as an alternative to enforcement through Magistrates Courts. This will bring the enforcement of byelaws on to the same footing as the enforcement of other low-level nuisance activities, and will facilitate a more coordinated approach to the enforcement of such matters.

**Clause 130: Alternative procedure for certain byelaws**

189. Clause 130 inserts a new section 236A into the LGA 1972. This confers a power on the Secretary of State to make regulations prescribing classes of byelaws which are to be made and to come into force in accordance with a procedure described in the regulations rather than the procedure set out in section 236 of that Act. Such regulations may set out the detail of elements of these procedures, including local consultation and the advertisement of byelaws.

190. Initially it is intended that only byelaws currently confirmed by the Secretary of State for Communities and Local Government will be subject to the alternative procedures. The power to prescribe classes of byelaws by reference to different factors in new section 236A(2) (clause 130(3)) will allow for this. However, it will also give flexibility to extend the application of the alternative procedures in the future.

191. New section 236A includes a power to include in regulations made under it such incidental, consequential, transitional or supplemental provision, including provision amending, repealing or revoking enactments, as the Secretary of State considers appropriate. The power to amend primary legislation is required so that if, in the future, the power to put in place alternative procedures is used in relation to byelaws which are not within the policy responsibility of the Secretary of State for Communities and Local Government, any necessary consequential amendments to the governing primary legislation can be made. Examples of such amendments can be found in clause 130(2) and (4), which adjusts sections 236 and 237 of the LGA 1972 to refer to the new power to make regulations specifying an alternative procedure for the making of byelaws by local authorities.

192. These regulations will be subject to the affirmative resolution procedure. This is appropriate since the regulations will be setting out a procedure for making byelaws which is alternative to that in the LGA 1972.

**Clause 131: Fixed penalties for breach of Byelaws**


194. New section 237A enables the Secretary of State to make regulations to prescribe classes of byelaws which may be subject to enforcement through fixed penalty notices. Where such regulations are in force, authorised officers will be able to issue a notice to a person for breach of a local authority byelaw, offering that person the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty. Regulations made under new section 237A may also include provision on the form of fixed penalty notices.

195. A power to make regulations has been taken to give flexibility over the classes of local authority byelaws which may be enforced through fixed penalty notices.

196. New section 237B enables the Secretary of State to make regulations in connection with the amount of a fixed penalty payable for breach of a local authority byelaw and, in particular, to specify a range within which the amount of fixed penalty must
fall and to limit the power of local authorities to impose fixed penalties of different amounts in relation to different byelaws.

197. This clause also confers a power on the Secretary of State to make an order changing the default amount of £75 for a fixed penalty, which will apply where the authority which made the byelaw has not specified another amount.

198. These powers have been taken to ensure that fixed penalties for breach of byelaws are set and maintained at an appropriate level.

199. As for regulations made under new section 236A of LGA 1972 (inserted by clause 130), it is intended that initially the powers in new section 237A and 237B will only be used in relation to local authority byelaws which are currently confirmed by the Secretary of State for Communities and Local Government, but they may be used in connection with a wider class of local authority byelaws in the future. To facilitate this, the powers to make regulations include a power to make necessary consequential amendments to the primary legislation governing such byelaws so that enforcement via a fixed penalty notice and the level of a fixed penalty notice can be referred to where appropriate.

200. Regulations made under new sections 237A or 237B of the LGA 1972 will be subject to the Parliamentary procedure imposed by new section 237F (inserted by clause 131(2)). This provides that such regulations or orders will be subject to the negative resolution procedure unless the power to amend primary legislation is being exercised, in which case they will be subject to the affirmative resolution procedure.

**Clause 135: Revocation of byelaws**

201. Clause 135 inserts new section 236B into the LGA 1972. Subsections (2) and (3) enable local authorities to make byelaws which revoke a previous byelaw they have made where there is no other power to do so. In most cases, local authorities can revoke byelaws they have previously made when making a new byelaw under the same power. However, in some cases this is not possible because the conditions for exercising that power can no longer be met. New section 236B will give local authorities a residual power in such cases.

202. Subsections (5) and (6) of new section 236B enable the Secretary of State (in England) and Welsh Ministers (in Wales) to make an order revoking any byelaw which appears to them to have become spent, obsolete or unnecessary.

203. This power has been taken so that the Secretary of State and Welsh Ministers can consider on a case-by-case basis any byelaws which are brought to their attention as likely to merit revocation.

204. This power includes at subsection (7) of new section 236B the power to make incidental, consequential, transitional or supplemental provision, including provision amending, repealing or revoking enactments. This is because in the vast majority of cases, local authorities have the power to revoke byelaws by making a new byelaw for this purpose under the same power that the original byelaw was made. In some cases, however, this is not possible. It is likely that it will be in these circumstances that the byelaw is brought to the attention of the Secretary of State or the Welsh Ministers for consideration of whether they should exercise the power conferred on them by new section 236B. Where this happens, the Secretary of State or Welsh Ministers may consider it expedient to amend the power under which the byelaw was made so that other local authorities do not face the same difficulties.
205. Orders made under new section 236B of the LGA 1972 will be subject to the negative resolution procedure unless the power to amend primary legislation is being exercised, in which case they will be subject to the affirmative resolution procedure (subsections (8)-(11)). Orders made by Welsh Ministers will be subject to the same procedures but before the National Assembly for Wales.

**Part 7 - Best Value**

206. Part 7 of the Bill amends the best value regime; that is, the regime under which best value authorities are required to make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness (see Part 1 of the LGA 1999). “Best value authorities” include most local authorities, police authorities and fire and rescue authorities.

207. Part 7 removes certain aspects of the best value regime, in particular the requirement on best value authorities to carry out best value reviews. It also places a new duty on English best value authorities (other than police authorities) to actively involve representatives of local people in the provision of local services.

**Clause 139: Involvement of Local Representatives**

208. Clause 139 inserts new section 3A into the LGA 1999. That new section requires a best value authority to involve local representatives in the exercise of its functions where the authority considers it appropriate. The duty does not apply to the authorities specified in new section 3A(3) and in addition the Secretary of State has power by order to specify other authorities and cases where the duty will not apply (new section 3A(3)(c) and (d) and (4)). This power has been included in the Bill because it will not be appropriate for the duty to apply in all circumstances.

209. The power has been left to secondary legislation because it is unclear at this stage exactly what exemptions will be necessary and also as it is likely that the exemptions will need to change, or be added to, over time. In addition the exemptions are also likely to be very specific and detailed, and as a result more appropriately contained within secondary legislation.

210. The negative resolution procedure reflects the fact that the contents of any order are not expected to be controversial.

**Clause 143: Power of Welsh Ministers to modify enactments obstructing best value etc**

211. Clause 143 inserts new sections 17A and 17B into the LGA 1999. New section 17A enables Welsh Ministers by order to modify or exclude the application of primary or secondary legislation if they consider that the relevant provisions prevent or obstruct compliance by Welsh best value authorities with the duties of best value set out in Part 1 of the LGA 1999. It also enables Welsh Ministers by order to confer on Welsh best value authorities such powers which Welsh Ministers consider necessary or expedient to permit or facilitate compliance with Part 1 of the LGA 1999.

212. This power has been left to secondary legislation as it is not creating a new power as such but rather essentially transferring the Secretary of State’s existing powers under section 16 of the LGA 1999 to the Welsh Ministers in relation to Wales. The Secretary of State’s powers under section 16 are, as a result, suitably amended to restrict her ability to make Orders under section 16 in relation to Wales.
213. The power is subject to a form of the affirmative resolution procedure before the National Assembly for Wales as set out in new sections 17A (7) and (8) and 17B of the LGA 1999 save for those orders the only purpose of which is to amend a previous order made under this clause. The requirements are very similar to those existing in relation to section 16 of the LGA 1999 (see section 17 of that Act). The provision in section 17B requires consultation with such best value authorities or such other persons as appear to them to be representative of interests affected by their proposals. Welsh Ministers must lay details of their proposals including a form of draft Order for a minimum of 60 days (excluding periods when the Assembly is dissolved or in recess for more than 4 days) before the draft can be formally laid before the Assembly.

214. The power under new section 17A of the LGA 1999 is subject to the same restrictions as the Assembly’s framework powers under the GOWA 2006 (see section 94 of that Act).

**Part 8 - Local Services Inspectorate and Audit**

215. Part 8 and Schedule 11 merge the inspection functions of the BFI (in relation to English local authorities) with the Audit Commission. The intention is that this will avoid duplication of effort and reduce inspection burdens on local authorities. The BFI is an agency of the Department of Work and Pensions.

216. Part 8 amends the Audit Commission’s powers to take account of the changes to its inspection role, and also amends the Commission’s power to produce and publish studies and reports. It seeks to update and amend several of the Commission’s powers relating to audit as well as relaxing the restrictions on disclosure of information obtained by the auditor or the Audit Commission. Schedule 12 makes provision for the working arrangements of the new inspectorate, including its interaction with other inspectorates.

**Clause 149: Benefits Fraud Inspectorate transfers to the Audit Commission**

217. Clause 149 provides for the merger of the BFI’s inspection functions in England with those of the Audit Commission. This will involve the transfer of property, rights and liabilities (including staff). The clause confers on the Secretary of State a power to make a scheme for transfers of property, rights and liabilities from the BFI to the Audit Commission. Persons can only be transferred if they are employed in the civil service (and more particularly in the BFI) immediately before the date on which the transfer takes effect and if they and the Audit Commission have consented. Before making the transfer scheme, the Secretary of State must consult the Audit Commission. Further provisions concerning the scheme are set out in Schedule 11.

218. The power has been left to delegated legislation as we do not yet know which staff are to transfer or the precise nature of the liabilities, rights or property to be transferred. These will be named in the scheme. The making of the scheme will not be subject to Parliamentary scrutiny. We intend not to require the scheme to be made by way of a statutory instrument, since the provisions relating to continuity of employment appear on the face of the Bill (see paragraph 2 of Schedule 11) and since it will not be possible to transfer an employee to work for the Audit Commission unless he or she agrees.
**Schedule 12: Schedule to be inserted in Audit Commission Act 1998**

219. Schedule 12 inserts a new Schedule 2A into the ACA 1998. This new Schedule concerns the interaction of the Audit Commission with other authorities.

*Paragraph 4: Inspection programmes and inspection frameworks*

220. Paragraph 4 requires the Audit Commission, from time to time, to consult on and then provide a document setting out details of the inspections it proposes to carry out and the manner in which it proposes to carry them out. It is required to consult with and then provide the document to the bodies listed in paragraph 4(2).

221. The paragraph gives the Secretary of State power by order to specify when the document must be produced, to specify the form of the document and to add to the list of bodies the Audit Commission must consult. What it is appropriate for the Audit Commission to do under paragraph 4 may change over time. These powers provide the Secretary of State with the flexibility necessary to address changing circumstances.

222. The powers are subject to the negative procedure. This is appropriate given their detailed and procedural nature.

*Paragraph 5: Inspections by other inspectors of organisations within the Commission’s remit*

223. This paragraph requires the Audit Commission to prevent inspections of certain organisations by other inspectorates where, in the Audit Commission’s opinion, the inspection or manner of it would impose an unreasonable burden on the organisation in question (paragraph 5(1)).

224. The Secretary of State is given power by order to specify both the organisations and any additional inspectors (additional to those in paragraph 5(2)) to whom the power will apply (paragraph 5(2)(c) and (3)). She may also by order specify circumstances in which the power will not apply (paragraph 5(6)).

225. These powers have been left to secondary legislation to allow for flexibility as to which bodies the powers apply to.

*Paragraph 6: Co-operation*

226. Paragraph 6 requires the Audit Commission to co-operate with certain named bodies where it is appropriate to do so for the efficient and effective discharge of any of the Commission’s functions.

227. Paragraph 6(c) enables the Secretary of State to specify by order additional public authorities (additional to those specified on the face of the Bill) with whom the Audit Commission would have a duty to co-operate. This power is intended to provide the Secretary of State with flexibility to address changing circumstances.

228. Any orders made are subject to the negative resolution procedure. This is appropriate given their detailed nature.

*Paragraph 8: Delegation of functions*

229. Paragraph 8 gives the Audit Commission a power to delegate certain functions to certain named bodies. Paragraph 8(1)(c) enables the Secretary of State to specify by order additional public authorities (additional to those specified on the face of the Bill) to whom functions can be delegated. Again this power is intended to provide the Secretary of State with flexibility to react to changing circumstances.
230. Any orders made are subject to the negative resolution procedure. This is appropriate given their detailed nature.

**Clause 158: Reports on English local authorities**

231. Clause 158 allows the Audit Commission to produce three types of comparative reports for English local authorities (the same bodies as those currently subject to Comprehensive Performance Assessment under section 99 of the LGA 2003). The clause includes a power for the reports to deal with individual authorities or groups of authorities. The intention is to enable the Audit Commission to consolidate reporting arrangements and provide flexibility of reporting to enable comparison between areas. This tool is intended to assist the Audit Commission in undertaking Comprehensive Area Assessments (CAA). The Local Government White Paper signalled the move away from Comprehensive Performance Assessment to a more risk based assessment (CAA), which is in line with Government policy to reduce the amount of inspection.

232. The CAA methodology is still being developed. It may prove necessary to ensure there is complete coverage of risks in an area for the proposed power to catch more bodies than are currently covered. As a result there needs to be some flexibility to add or remove bodies to which CAA will apply.

233. Clause 158(4) lists the bodies that fall under the definition of English local authorities. Clause 158(5) and (6) gives the Secretary of State the power to amend this list by order (by adding or removing certain best value authorities as defined at section 1 of the LGA 1999 (other than Welsh best value authorities and police authorities in Wales)).

234. Any Order under this power is subject to consultation by the Secretary of State with the body concerned or persons appearing to her to represent the body. Any orders made are subject to negative resolution procedure. This is appropriate given the need for flexibility and the nature of the power. In addition the ability to add or remove bodies is limited to a defined group of bodies namely best value authorities (other than Welsh best authorities and police authorities in Wales).

**Clause 159: Reports categorising English local authorities**

235. Clause 159 amends the requirement in section 99 of the LGA 2003 for the Audit Commission to produce, from time to time, reports on its findings on local authorities’ performance in exercising their functions. Reports under section 99 are required to categorise the authorities by performance. The amendments mean that the Audit Commission will only need to produce a report if directed by the Secretary of State.

236. The directions may specify who the report applies to, the periods of performance to be covered by the report, the form of the report (e.g. its physical form) and when the report is to be produced. This will allow the report produced to be more flexible than it is currently. Before making a direction the Secretary of State must consult with the Audit Commission.

237. As this is a direction-making power, it is not subject to any Parliamentary procedure.

**Part 10 - Ethical Standards**

238. Part 10 of the Bill gives effect to the Government’s proposals for the reform of the regime relating to standards of conduct for local government. The proposals are
aimed at devolving most decision-making on the conduct regime for local authority members to local authorities, with a revised, regulatory role provided for the Standards Board. The measures provide for standards committees to make initial assessments of misconduct allegations and for review arrangements for those assessments which lead to no action being taken. The provisions give the Standards Board powers to suspend a standards committee’s role in making initial assessments of allegations. They also make provision in respect of local authority posts subject to political restrictions and the maximum rate of pay for political assistants.

**Clause 184: Conduct that may be covered by code**

239. Clause 184 makes amendments to sections 49 to 52 of the LGA 2000. The amendments permit the general principles, and the provisions of each local authority’s code of conduct to include principles and provisions, which apply at all times, including conduct otherwise than in the member’s official capacity.

240. When relevant authorities first adopted their codes of conduct, section 52 of the LGA 2000 required that their members give an undertaking to observe that code. As the application of the code to conduct at all times, including conduct otherwise than in the member’s official capacity, is considered to be a significant amendment, we are providing that each member must give a new undertaking to observe the code of conduct which can mean either the code adopted by the authority or the mandatory provisions of the model code, depending on whether the authority has adopted a code or has had the provisions of the model code applied to it. Clause 184(6)(a) and (11) enable the Secretary of State to prescribe by order the period within which existing members must make this new undertaking.

**Clause 186: Assessment of allegations**

241. Clause 186 inserts new sections 57A to 57C and 58 into the LGA 2000. Under new section 57C the Standards Board will have the power by direction to suspend a standards committee’s function of undertaking initial assessments of allegations of breach of the code of conduct.

242. New section 57C(1) and (6) enables the Secretary of State to make regulations prescribing the circumstances in which the Board may exercise this power, the circumstances in which it may revoke a suspension, the provisions of Part 3 of the LGA 2000 which are to apply (with or without modification) where a suspension is in force and the procedures to be followed and the publicity to be given when a suspension direction is made or revoked. Regulations may also make provision, in circumstances where a direction is in force, modifying the provision enabling a Local Commissioner or the Public Service Ombudsman for Wales to consult with the standards committee, so as to enable him or her to consult with the body to which the cases of the standards committee, whose initial assessment powers have been suspended, have been referred under such a direction.

**Clause 190: Joint committees of relevant authorities in England**

243. Clause 190 inserts new section 56A into the LGA 2000. That new section enables the Secretary of State to make regulations setting out the arrangements under which two or more relevant authorities may establish a joint committee and arrange for functions of their standards committees to be undertaken by that joint committee. The regulations may specify the functions which may or may not be undertaken in this way and provide for the modification of Part 3 of the LGA 2000 (and any other enactment which provides for functions of standards committees) for the purpose of such joint committee.
Clause 192: Ethical standards officers: investigations and findings

Clause 192 amends sections 59, 62 and 63 of the LGA 2000. New subsection 63(1)(j) enables the Secretary of State to specify by order those persons to whom an ethical standards officer may disclose information and the purpose of the disclosure.

Clause 193: Ethical standards officers: reports etc

Clause 193 amends sections 64 and 65 of the LGA 2000. New sections 64(7) and 65(4A) enable the Secretary of State to make provision by regulations for the withdrawal of a reference (under section 64(3)(b) or section 65(4) respectively) to the Adjudication Panel for England. The references relate to a breach of an authority’s code of conduct following either an investigation or an interim report in respect of the allegation. It is proposed that the regulations will set out the circumstances in which such withdrawal can take place.

Clause 195: Matters referred to monitoring officers

Clause 195 extends section 66 of the 2000 Act so that regulations under that section may specify the circumstances in which a monitoring officer may refer matters to a standards committee.

Clause 196: References to Adjudication Panel for action in respect of misconduct

Clause 196 inserts section 66A into the LGA 2000. New section 66A enables regulations under section 66 to provide for the referral of cases to the Adjudication Panel for England for a decision on what action should be taken in circumstances where a standards committee considers that the penalty it can impose is insufficient.

Clause 199: Case tribunals: England

Clause 199 inserts sections 78A and 78B into the LGA 2000. These new sections make provision in relation to case tribunals (that is, bodies which consider any appeal against a decision made by the standards committee in relation to a particular allegation of breach of a code of conduct).

Clause 203: Politically restricted posts: grant and supervision of exemptions

Clause 203 amends the Local Government and Housing Act 1989 (LGHA 1989) and in particular inserts new sections 3A and 3B. The amendments make the granting and supervision of exemptions from the political restriction the
responsibility of the standards committee of each local authority in England, rather than that of an Independent Adjudicator.

252. For authorities which are not required to establish standards committees, new section 3A(8) enables the Secretary of State by regulations to require the establishment of a committee to exercise functions under section 3A. The regulations may apply (with or without modifications) certain provisions of the LGA 2000.

**Clause 205: Political assistants’ pay**

253. Clause 205 amends section 9 of the LGHA 1989. By reference to a point on a relevant scale, the Secretary of State may by order specify the maximum pay of local authority political assistants.

254. The orders and regulations under this Part will be subject to negative resolution procedure. This is considered to be appropriate because their contents are mainly procedural, ancillary, or incidental and as such their content is likely to be uncontroversial. In respect of local authorities in Wales this power will be exercisable by Welsh Ministers and subject to the negative resolution procedure of the National Assembly for Wales.

**Part 11 – Joint Waste Authorities**

255. Part 11 gives the Secretary of State the power to create joint waste authorities where two or more local authorities wish to discharge some, or all, of their waste functions through such an authority.

**Clause 206: Proposals for joint waste authorities**

256. If local authorities in England wish to form a joint waste authority they have to make a proposal to do so to the Secretary of State. Clause 206(5) provides a power for the Secretary of State to make regulations setting out the matters to be included in any proposals for joint waste authorities, and any information that must accompany such proposals. Clause 206(6) sets out the general scope of this power by outlining the types of issues the regulations will address, these include: the number of members of the proposed members; the number of members to be appointed by each local authority making the proposal; the procedure for appointing a chairman and vice-chairman; and proposals for the costs of the proposed authority and the basis on which the amount payable by each of the local authorities will be determined.

257. Under Clause 206(7) the Secretary of State also has the power to produce guidance on what proposals for joint waste authorities should seek to achieve and matters to be taken into account when formulating proposals. Regulations made under this power will be subject to the negative resolution procedure. This is considered appropriate as the Regulations will set out the required content of proposals, the key elements of which are set out in the face of the Bill.

**Clause 208: Implementation of proposals by order**

258. Clause 208(1) confers on the Secretary of State a power by order to implement proposals for joint waste authorities with or without modification. Clauses 208(3) to clause 208(10) sets out the scope of the Secretary of State’s power to implement proposals.
Clause 208(3) allows the SoS, by order, to require a joint waste authority to submit a scheme for the wind-up of that authority and for the transfer of its functions, property and staff, rights and liabilities, to appropriate local authorities. Clause 208(4) enables the Secretary of State to dissolve a joint waste authority, by order, and give effect to any scheme submitted under 208(3) with or without modification. Clause 208(5) limits this power such that the Secretary of State can only dissolve a joint waste authority where requested to do so by all the appropriate local authorities or where he considers it necessary to do so, e.g. where a joint waste authority is significantly failing.

In addition Clause 208(6) allows the Secretary of State to exclude functions, by Order, from joint waste authorities once they have been established. Again this may be necessary if a joint waste authority is failing on a particular function.

Clauses 208(7) to 208(9) allow orders to include incidental, consequential, transitional or supplementary provisions including the amendment or modification of other legislation to be included in any order. This provides for any consequential amendments that may be necessary.

Clause 208(10) limits the extent of the Secretary of State’s power to make an order with modifications such that a joint waste authority cannot be established for an area that is different from the area specified in the proposal or to discharge functions that are not specified in the proposal.

The orders will, with one exception, be subject to the negative resolution procedure. This is appropriate as the proposals to establish a joint waste authority must be agreed by all constituent authorities before submission to the Secretary of State. In addition clause 207(2) requires the relevant local authorities to take reasonable steps to consult relevant electors and any interested person in their areas before submission of a proposal to the Secretary of State. The Secretary of State’s powers to modify or dissolve established joint waste authorities are sufficiently outlined on the face of the Bill.

Where an order under clause 208(7) amends primary legislation or subordinate legislation, which is subject to the affirmative procedure, then the order under clause 208(7) would itself be subject to the affirmative procedure.

Clause 211: Joint Waste Authorities in Wales

Clause 211(1) enables Welsh Ministers to make orders in relation to Wales to apply the provisions of clause 206 to 209 with other modifications as they consider appropriate. Clause 211(2) provides Welsh Ministers with the power to make any necessary supplemental provisions in their orders including amendment or modification of legislation.

The orders will generally be subject to the negative resolution procedure. The establishment of specific joint waste authorities in Wales would not need scrutiny by Parliament.

Where an order under clause 168 amends an enactment the order may not be made unless a draft of the order has been laid before and approved by a resolution of the National Assembly of Wales.

Part 12 - Entities controlled by local authorities

Part 12 of the Bill provides a new regime for setting propriety controls in relation to companies and other entities connected to local authorities. This replaces the provisions at Part V of the LGHA 1989.
Clause 213: Entities controlled etc by local authorities

269. Clause 213 confers a power, by order, on the Secretary of State to set propriety controls on “entities” connected with an English local authority.

270. The clause provides the Secretary of State with a power, by order, to specify the entities that are “connected with” an English local authority as well as the propriety controls which will apply.

271. The purpose of these provisions is to replace Part V of the LGHA 1989 (“the 1989 Act”) (Companies in which Local Authorities have Interests).

272. Existing propriety controls set out in Part V of the 1989 Act and the Local Authorities (Companies) Order 1995 [SI 1995/849] (‘the Companies Order’) seek to ensure that companies through which local authorities may undertake their statutory functions and duties are required to act transparently and in accordance with the standards of the authorities themselves. There are a range of propriety controls currently which address the accountability, auditing and personnel requirements of a local authority company (e.g. the requirement to provide information to the authority’s auditor). The intention, subject to the outcome of consultation, is to replicate the existing propriety controls but to ensure that they catch a wider group of bodies connected to local authorities. We propose to consult on the proposed propriety controls and it may be as a result of the consultation that we slightly broaden or narrow the propriety controls.

273. The existing arrangements cover only companies. Local authorities are now able to operate through entities that are not covered by the ‘company’ definition. This clause brings the propriety controls into line with modern accounting definitions as incorporated into the rules on capital finance and local authorities under Part 1 of the LGA 2003. These rely upon definitions Code of Practice on Local Authority Accounting in the UK: A Statement of Recommended Practice (‘SORP’).

274. The power contains provision to allow expressions used in identifying a description of entity to have the meaning for the time being given by a document identified by order or any re-issue of such a document. The intention is to use the power to define entities on the same basis as provisions in the capital finance rules which currently rely on accounting definitions contained in the SORP.

275. An order under this clause may make provision in relation to every entity connected with a local authority or entities of a particular description. It also enables an order to require, prohibit or regulate the taking of certain actions by a local authority or certain members or officers of a local authority in relation to an entity connected with a local authority.

276. Local authority is defined as a body which is a local authority for the purposes of section 21 of the LGA 2003 and is required to prepare a statement of accounts by virtue of the ACA 1998 or the Public Audit (Wales) Act 2004.

277. The clause also provides Welsh Ministers with an equivalent power in relation to Welsh local authorities.

278. It is necessary to leave this to delegated legislation as the definitions used to define entities may be amended from time to time. It is important that there is sufficient flexibility to allow the propriety controls to be changed in line with changes in SORP or potentially changes to the capital finance rules. These Orders are subject to the negative resolution procedure. This seems appropriate given their detailed nature.
Clause 214: Trusts

279. Clause 214 provides that an order made under clause 213 may also cover the taking of specified actions by trustees of a trust, local authorities in relation to trustees or certain members/officers of local authorities as trustees.

280. This clause is necessary as the provisions in clause 213 concerning the requiring, prohibiting or regulating of taking specified actions by entities did not sit comfortably with the legal position in relation to trusts. Trusts are an equitable obligation and cannot, for example, themselves be required to carry out certain actions.

Clause 215: further provision about orders

281. Clause 215 enables an order under clause 213 to make provision requiring an entity, local authority or trustees to obtain the consent of the Audit Commission or the Auditor General for Wales as appropriate.

282. Subject to consultation we would look to require an entity connected with a local authority to obtain the consent of the Audit Commission (in England), or the Auditor General for Wales (in Wales), when the entity seeks to appoint an auditor. This ensures that the appointment of an auditor to an entity connected to a local authority is not solely in the hands of the controlling local authority and provides taxpayers with an appropriate level of scrutiny from an independent body. This proposed propriety control mirrors a control contained in the existing propriety controls.

283. This clause also enables an order made under clause 213 to include provision requiring, a local authority to make arrangements:

- enabling questions about an entity’s activities/in relation to a trust to be put to certain members or officers of the authority
- prohibiting a local authority from taking certain actions which would mean that certain people become a member or director of the entity or a trustee
- requiring a local authority to ensure, so far as it is able, that entities/trustees comply with the relevant propriety order

Clause 216: Exemptions from orders

284. Clause 216 permits the Secretary of State, by direction, to exempt a particular entity or description of entities from an order made under clause 213. A direction may be for a specified period or subject to special conditions.

285. This power is required as it may be necessary from time to time to exempt entities from the scope of regulation in relation to propriety controls if there is a case made for doing so. This replicates the provision in Part V of the LGHA 1989 (at sections 68(1) and 69(1)) which allows the Secretary of State to exempt companies from the propriety controls by direction (for instance where the propriety controls present practical difficulties for the entity). There would be a continued need to exempt such entities, or categories of entities, from the controls which can be provided under clause 213. This should be a direction making power due to the need to respond quickly and it does not seem appropriate or necessary to draw such a provision to Parliament’s attention.
Clause 217: Consequential amendments

286. Clause 217 repeals Part V of the LGHA 1989 and makes consequential amendments to other legislation, through Schedule 14. In addition it also provides that amendment of secondary legislation in consequence of the repeal of Part V of the LGHA 1989 can be ambulatory in the same way that orders under clause 213 are able to be.

Clause 218: Definition of certain terms for purposes of other enactments: England

287. The replacement of Part V of the LGHA 1989 has necessitated a number of amendments to other legislation. These amendments are set out in schedule 14. The amendments use certain terms to cover the category of bodies caught by the provision.

288. Clause 218 confers a power on the Secretary of State, by order, to define the terms included by amendment namely an “entity under the control of a local authority”, an “entity subject to the influence of a local authority”, an “entity jointly controlled by bodies that include a local authority” for the purposes of other enactments.

289. As noted in relation to clause 213, the definitions used for the purposes of defining entities may be amended from time to time (for example as the SORP is amended). Should the titles of definition (provided by the SORP) change then the legislation which uses these names will need amending to reflect the change may by the SORP. With the potential for this to occur annually it is appropriate to use secondary legislation.

290. In relation to Section 18(2)(b) of the LGA 2003 (Local authority companies etc) an order may, in addition, also define “a trust under the control of”, “a trust subject to the influence of” and “a trust jointly controlled by bodies that include”.

291. Orders made under this power are able to be ambulatory in the same way as orders under clause 213.

292. Orders made under this power are to be made by negative resolution. This is appropriate given their detailed nature and in view of the need for flexibility. In any event the extent to which the definition can change will in any event be limited in scope by the existing references to “entity under the control of a local authority” and other terms included in the legislation.

Clause 219: Definition of certain terms for purposes of other enactments: Wales

293. Clause 219 confers an equivalent power on Welsh Ministers in relation to Welsh legislation to that prescribed in clause 218 for the Secretary of State.

Part 13 - The Valuation Tribunal for England

294. Part 13 of this Bill makes provision to replace the 56 VTs in England with a single Valuation Tribunal for England (VTE). It creates the new positions of VTE President and Vice-Presidents, which may be remunerated, and provides that appointments to the VTE be made by the Lord Chancellor on the advice of the Judicial Appointments Commission.

Clause 220: Establishment of the Tribunal

295. Clause 220 abolishes the existing English tribunals and provides for the establishment of the VTE (by giving effect to Schedule 15). Schedule 15 amends
Schedule 11 to the LGFA 1988. In particular, it provides powers for the Secretary of State to make regulations relating to the VTE.

296. Paragraph A19 (which is to be inserted into Schedule 11 to the LGFA 1988) enables the Secretary of State by regulations to make provision in relation to procedure or any other matter relating to the VTE. Paragraph A19(2) and (3) specifies particular matters in respect of which provision may or may not be made.

297. Paragraph 8 of Schedule 11 to the LGFA 1988 (which is to be amended by paragraph 10 of Schedule 15) sets out further matters in respect of which provision may be made pursuant to the powers in paragraph A19.

298. The main aspects of the establishment of the VTE are set out on the face of the Bill. The power in paragraph A19 is a power to make provision about procedural or other matters relating to the VTE, which are matters of detail normally included in subordinate legislation. In addition, the approach which is taken under A19 in relation to the VTE is very similar to the approach which is currently taken under Schedule 11 to the LGFA 1988 in relation to valuation tribunals.

299. Regulations under paragraph A19 will be subject to a negative resolution procedure, which is appropriate given the subject matter of the power.

Clause 221: Consequential and transitional provision etc

300. Clause 221 makes consequential amendments relating to the creation of the VTE (by giving effect to Schedule 16). The clause also enables the Secretary of State by regulations to make consequential and supplementary provision (including transitory, transitional or saving provision). Clause 221(3) specifies particular issues in respect of which provision may be made pursuant to the powers in clause 221.

301. The power in clause 221 is a power that is commonly provided in relation to provisions such as those in Part 13. It simply ensures that full effect can be given to the VTE provisions in the Bill.

302. Regulations under clause 221 will generally be subject to a negative resolution procedure, which is appropriate given the subject matter of the power. There is power under clause 221(3)(f) to amend or repeal primary legislation. Where this power is exercised any regulations will follow the affirmative procedure route.

Part 14 - Patient and Public Involvement in Health and Social Care

303. Part 14 makes provision for the abolition of the Commission for Patient and Public Involvement in Health (CPPIH) and Patients' Forums. In their place, it imposes a duty on local authorities to make contractual arrangements for the involvement of people in the commissioning, provision and scrutiny of health services and social services.

304. Section 242 of the NHS Act 2006 provides for public involvement and consultation on the planning of the provision of health services, proposals for change in the way that those services are provided, and decisions to be made affecting the operation of those services. Part 14 of the Bill substitutes section 242(2) to strengthen and clarify those requirements.

305. Part 14 also imposes a new duty on each Primary Care Trust to report on consultation arrangements and the influence that the results of consultation have on commissioning decisions.
Clause 222: Health services and social services: local involvement networks

306. Clause 222 imposes a duty on local authorities to make contractual arrangements to ensure that there are means in place for enabling people to be involved in the commissioning, provision and scrutiny of local care services. Each local authority is required to ensure that there are means in place to facilitate the carrying out of the following specified activities, which are set out at subsection (2):

- promoting, and supporting, the involvement of people in the commissioning, provision and scrutiny of local care services,
- enabling people to monitor, and review, the commissioning and provision of local care services,
- obtaining the views of people about their needs for, and their experiences of, local care services, and
- making—
  - (i) known the views of people about their needs for, and their experiences of, local care services, and
  - (ii) reports and recommendations about how local care services might be improved,

  to persons responsible for commissioning, providing, managing or scrutinising local care services.

307. It is envisaged that there will be particular bodies created which will be given the task of being the means through which such activities are carried out and which is referred to as a local involvement network (a “LINk”).

308. LINks are intended to provide flexible ways for larger numbers of people to engage with their local health and social care organisations. Therefore, the provisions set out in legislation are deliberately flexible to enable LINks to develop to suit local needs and to attract a wider spectrum of people to become involved.

309. Clause 222(3) enables the Secretary of State, by regulations, to add to any of the activities in clause 222(2). Before making any such regulations, the Secretary of State must consult with such persons as she considers appropriate.

310. This power allows the Secretary of State to add to the functions of LINks in the light of operational experience and therefore provides for flexibility. This means that LINks will be able to react to changing circumstances in the health and social care system and add to their activities accordingly without the need for primary legislation. Without this power, additional functions, no matter how uncontroversial, could only be conferred by primary legislation, leading to delay and placing an unnecessary burden on Parliamentary time. Similar arrangements were made for adding to the functions of Patients’ Forums.

311. Any regulations made will be subject to the affirmative resolution procedure, as it is appropriate that there should be parliamentary scrutiny of any additional functions given to LINks.

Clause 224: Duties of services-providers to respond to local involvement networks

312. Clause 224(1) allows the Secretary of State to make regulations which impose duties on services-providers to respond to requests for information from LINks and to deal with reports or recommendations made by a LINk or another services-provider.
313. Subsection (2) lists the services-providers, to which the regulations will apply, as follows:

   (a) an NHS trust;
   (b) an NHS foundation Trust;
   (c) a Primary Care Trust;
   (d) a local authority; or
   (e) a person prescribed by regulations made by the Secretary of State.

314. The duty for services-providers to respond to information will enable the LINk to carry out its functions by providing the means to effectively monitor and review the provision of services and to report on or make recommendations based on that information. This follows the approach taken in the regulations relating to Patients’ Forums. Recommendations and reports made by a LINk ensure that relevant matters may be brought to the attention of the services-providers. The duty on services-providers to respond ensures communication between the services-provider and the LINk and provides the means by which the LINk may influence the provision of health and social care services.

315. In the case of a LINk making a request for information, we intend that the regulations will state that this request can be made to any of the above named services-providers. We feel that this is appropriate, because LINks should be able to ask any services-provider directly for information.

316. In the case of reports and recommendations, we intend that the regulations will state that whilst a LINk may send its report or recommendation to any services-provider, it will only be those bodies that have ultimate responsibility for commissioning services (i.e. the local authority and Primary Care Trust) that will be under a duty to respond to the LINk. If action is to be taken as a result of the LINk’s recommendations it will be the commissioning body which will have to ensure that the appropriate action is taken – this is in line with the approach of the Department of Health to place more importance on the role of the commissioning body. We feel that this is appropriate, as it is ultimately the body responsible for commissioning which will have the power to respond to recommendations and, if appropriate, make the changes necessary to implement these.

317. We intend to make provision within the regulations to set a timescale within which the organisation will need to respond as well as providing exemptions around providing certain types of information, such as confidential patient information. We expect the timescale to be 20 working days as this is consistent with the timeframe to respond to Freedom of Information requests and is the current timescale for Patients’ Forums. We intend to consult on this when publishing draft regulations.

318. The regulations will enable the Secretary of State to vary provisions or to impose different conditions or limitations for different services-providers. The regulations will be subject to the negative resolution procedure except for subsection (2)(e). There is an obligation on the Secretary of State before making the regulations to consult such persons as she considers appropriate.

319. Subsection 2(c) creates a regulation-making power for the Secretary of State to prescribe what other persons should be considered as a ‘services-provider’ for the purposes of these duties. Currently, we do not intend to use this regulation-making power, however, it has been included to allow for this list to be added to if necessary in future without primary legislation. Regulations made under this subsection will
be subject to the affirmative resolution procedure since that power would be exercised to extend the meaning of services-provider.

320. The use of the regulations to impose duties on services-providers means that the detailed administrative arrangements in respect of these duties do not need to appear on the face of the Bill. By using regulations, the Secretary of State will be able to vary provisions or to impose different conditions or limitations for different services-providers. Furthermore, regulations can be more easily changed to reflect changes in the organisation of the NHS or other circumstances.

Clause 225: Duty of services-providers to allow entry by local involvement networks

321. Clause 225 places a duty on the Secretary of State to make regulations for the purpose of imposing a duty, on service-providers, to allow authorised representatives of LINks to enter and view, and observe activities on, specified health and social care premises.

322. The LINks’ right to enter will enable representatives of the LINk to speak to people about their needs and experiences of services whilst they are on premises and in receipt of those services, enabling them to have direct access to people’s views while they are experiencing services. This right to enter will also enable LINks to carry out their monitoring activity effectively.

323. The regulations will establish the circumstances in which, and by whom, the right may be exercised. As with Patients’ Forums’ rights to inspect premises, there will need to be limitations on LINks’ rights to enter and view, in order to protect patient safety and dignity and to safeguard the effective functioning of the services being provided. Subsections (2), (3) and (4) give examples of the provisions that may be made under these regulations to limit access to certain premises, for example:

- where LINks can enter and assess, and where they cannot (for example, we do not intend that they will have the power to enter people’s homes);
- exemptions to those places that LINks can enter, for example, when a procedure such as an operation or consultation is underway;
- who can enter, i.e. only those people authorised, with the correct skills and training and cleared by the Criminal Records Bureau etc.;
- that the activity of entering and assessing must be in accordance with a code of conduct (which might include behaviours and formalities such as notice of a visit etc).

324. It is appropriate that the administrative arrangements in respect of these duties are provided for by regulations and not on the face of the Bill. Regulations will allow for flexibility in varying provisions and imposing different conditions or limitations on services-providers. Further, any changes in the organisation of the NHS or any other change of circumstances which affect those duties could be more easily dealt with by amending regulations.

325. We intend to consult widely on draft regulations which detail LINks’ rights of entry before they are placed before parliament.

326. Since the power concerns entry of premises, which could potentially affect staff, patients and service users, the regulations will be subject to the affirmative resolution procedure.
Clause 226: Local involvement networks: referrals of social care matters

327. Clause 226 provides that where LINks refers a matter relating to social care services to an overview and scrutiny committee, that committee must acknowledge receipt of the referral and keep the referrer informed of the committee’s actions in relation to the matter.

328. Clause 226(6) enables the Secretary of State, by regulations, to provide for the time by which an overview and scrutiny committee must acknowledge receipt of a referral relating to social care services. The use of regulations provides for flexibility in deciding appropriate timescales.

329. It is intended that the overview and scrutiny committee’s duty to respond to a LINk will apply equally to health and social care matters. This clause only mentions social care referrals, because there is an existing regulation-making power to require committees to respond to health matters when they are referred. Therefore the purpose of this clause is to mirror that situation in social care.

330. The regulations will be subject to the negative resolution procedure. This is appropriate given the procedural nature of the power.

Clause 227: Local involvement networks: annual reports

331. This clause sets out the required provision about annual reports referred to in clause 223(6). The contractual arrangements made by the local authority, with the host organisation, as set out in clause 223, will require that an annual report must be prepared by the LINk on the activities of the LINk in each financial year.

332. Where a LINk does not produce an annual report for example in a year where LINks have not yet been established, the arrangements must provide for the host to produce it. The arrangements must also require that the report complies with certain requirements set out in subsection (3)(b), for example, the report gives details of the amount of money the host has spent on setting up the LINk.

333. Clause 227 subsection (2)(e)(i) enables the Secretary of State to issue guidance, and subsection (3)(a) enables the Secretary of State to give directions with regards to annual reports on the activities of the LINk in each financial year. The power to make directions and issue statutory guidance will allow the Secretary of State to control the detail of what is required in the report. The Secretary of State’s power to give directions and issue guidance must be exercised by a written instrument and includes the power to vary previous directions or guidance given. Directions or guidance must be published by the Secretary of State in a manner which she thinks is likely to bring it to the attention of those who it affects.

334. Directions are appropriate here to provide the Secretary of State with a degree of flexibility as to what should necessarily be included in a LINk’s annual report. As this is a direction-making power, it is not subject to any Parliamentary procedure.

Clause 228: Sections 172 to 177: interpretation and supplementary

335. This clause enables the Secretary of State to include incidental, supplementary, consequential, transitory, transitional and savings provision in any regulations made under clauses 172 to 177.

Clause 233: Primary Care Trusts: reports on consultation

336. Clause 233 inserts new section 24A into the NHSA 2006. Clause 233 provides that each Primary Care Trust must prepare a report at times set by the Secretary of
State, which details the consultation it has carried out, or intends to carry out, as well as the influence its consultations have had on the commissioning decisions it takes.

337. The report referred to relates, unless otherwise directed by the Secretary of State, to all the Primary Care Trust’s functions. The Secretary of State can give directions regarding the report on the following:
- the period covered
- the matters dealt with
- the form and content
- the method of publication
- which matters are considered to be “commissioning decisions” for the purposes of subsection (1).

Directions are considered suitable here to enable the Secretary of State to easily instruct Primary Care Trusts as to what is required in these reports. This is thought to be the appropriate procedure for instructing the NHS directly on matters of administrative detail.

**Part 15 - Powers of National Assembly for Wales**

338. The Local Government and Public Involvement in Health Bill presents an opportunity for the UK Government to deliver on a commitment to enhance the legislative competence of the National Assembly for Wales (the Assembly) in defined areas in which the Assembly already has executive functions (the White Paper “Better Governance for Wales” (CM6582) refers).

339. Part 15 amends Part 1 of Schedule 5 to the GOWA 2006 so as to confer enhanced legislative competence on the National Assembly for Wales (the Assembly) in the field of local government (clause 234).

340. The GOWA 2006 puts in place a structure that enables either Parliament, or Her Majesty by Order in Council, to confer continuing competence on the Assembly to legislate on specified matters. Since the Order in Council process requires observance of Affirmative Procedure, Parliament will continue to decide, on a case-by-case basis, whether to give the Assembly a power to legislate by Assembly Measure on particular matters, whether this be by Bill provision or by way of Order in Council.

341. When competence has been conferred on the Assembly the matters will be listed in Part 1 of Schedule 5 to the GOWA 2006. This will enable the Assembly, by virtue of section 93 of that Act, to make laws known as Assembly Measures. Section 94 of the GOWA 2006 provides that a provision of an Assembly Measure is within the Assembly’s competence if it relates to (or is incidental or consequential on provision that relates to) one or more of the matters specified in the fields listed in Part 1 of Schedule 5 to the GOWA 2006. Sections 93 and 94 of the 2006 Act are due to come into force immediately after the next ordinary election of the Assembly (due May 2007). Part 1 of Schedule 5 to the 2006 Act lists twenty fields in which the Assembly currently exercises functions and each field will be divided into matters. Field 12 provides for matters in the field of local government.

342. An Assembly Measure may include any provision that could be made by an Act of Parliament, subject to specific restrictions set out in Part 2 of Schedule 5 to the 2006 Act. An Assembly Measure will be scrutinised by the Assembly in accordance with sections 97 and 98 of the 2006 Act. In particular, the 2006 Act specifies that the Assembly’s Standing Orders must include provision for a debate and vote on the
general principles of a proposed Assembly Measure, on the details of the proposal and for there to be a final stage where the proposal can be passed or rejected. Should a question arise as to the validity of a proposed Assembly Measure, that it is not within the legislative competence of the Assembly, the Counsel General to the Assembly or the Attorney General can refer the question to the Supreme Court.

343. The Secretary of State for Wales has laid a memorandum before Parliament which provides further information about enhanced legislative competence for the Assembly and the specific powers being sought in the Local Government and Public Involvement in Health Bill. This memorandum is attached at Annex A.

**Part 16 - Miscellaneous**

**Clause 235: Exercise of functions by members of local authorities in England**

344. This clause provides that an authority may make arrangements for individual members to exercise functions of the authority in relation to the electoral division or ward for which the member is elected. The clause applies to principal authorities. The clause enables the Secretary of State by order to exclude any local authority function from such arrangements, or place conditions on how such a function is exercised. It is intended that functions relating to planning, licensing and the grant of other permits and licences will be excluded under this power.

345. This order is subject to the negative resolution procedure. This is considered to be appropriate as the equivalent power in relation to the functions not to be discharged by the executive (section 13 of the LGA 2000) is also subject to a negative resolution procedure.

**Clause 236: Exercise of functions under section 235: records**

346. This clause enables the Secretary of State to make regulations about the making of written records by an individual member in relation to any decisions or actions taken by him under the power in clause 235. The regulations will also provide for these records to be given to the authority so that they can be available for public inspection. It is intended that rules similar to those which apply to individual members of a local authority executive will be made under these regulations.

347. The regulations are subject to the negative resolution. This is appropriate as the equivalent power in relation to the written records of individual members of an executive (section 22 of the LGA 2000) is also subject to a negative resolution procedure.

**Clause 238: Contracting out**

348. Clause 237 amends sections 70 and 79 of the Deregulation and Contracting Out Act 1994. It also inserts new sections 79A to 79C into that Act. The effect is to update the list of bodies covered by the term “local authority” for the purposes of contracting-out orders made under the Act.

349. New section 79C enables the Secretary of State to make regulations bringing further bodies within that definition (for example, if changes in local government structures make this appropriate). Any regulations are subject to the negative resolution procedure. This is consistent with the approach under the analogous regulations made under section 23(2) of the LGA 2003 extending the definition of “local authority” for the purposes of Part 1 of that Act.
Part 17 - Final provisions

Clause 242: Power to make further amendments and repeals

350. Clause 242 enables the Secretary of State by order to amend or repeal primary or secondary legislation for consequential or supplementary purposes (clause 242(1) and (3)). The power in clause 242 is a power that is commonly provided in primary legislation of this type. It simply ensures that full effect can be given to the provisions in the Bill.

351. Any order which amends or repeals primary legislation, or secondary legislation which itself was subject to the affirmative procedure, will follow the affirmative procedure. Otherwise the negative procedure will apply.

Clause 244: Commencement

352. Clause 244 makes provision for the commencement of the provisions in the Bill, some of which come into force on such day as the Secretary of State may by order appoint (clause 244(4)). A limited number of provisions may be commenced in relation to Wales by Welsh Ministers (Clause 244 (3)). Clause 244(5)(b) enables the Secretary of State and Welsh Ministers to include transitional, saving or transitory provision in these orders. This is a power which is commonly provided in primary legislation of this type.

353. Since clause 244 concerns commencement orders, no Parliamentary procedure applies where the powers in clause 244(5(b)) are exercised.

May 2007

Department for Communities and Local Government

Annex A: memorandum on new powers for the National Assembly for Wales

Introduction

1. This memorandum sets out the background and context relevant to the provisions in Schedule 17 to the Local Government and Public Involvement in Health Bill, as Introduced into the House of Lords, that seek to confer new powers on the National Assembly for Wales (the Assembly).

2. In October 2006 the Secretary of State for Communities and Local Government published a White Paper, “Strong and Prosperous Communities”. The White Paper sets out the UK Government’s vision on the future form and function of Local Government in England. The White Paper also announced the UK Government’s intention to provide the Assembly with so-called framework powers that will enhance the legislative competence of the Assembly in the field of local government so that the Welsh Assembly Government (the Assembly Government) can propose Assembly Measures appropriate to Welsh circumstances.

The Proposals

3. Most existing legislation relating to local government is drafted to apply equally to England and Wales. In the Local Government and Public Involvement in Health
Bill, where the policies of the UK Government for local government in England and those of the Assembly Government for local government in Wales are similar, relevant provisions of the Bill will apply equally in England and Wales. In other cases, new provisions will apply only to England (and drafting amendments to existing legislation are proposed to allow it to continue to apply in Wales alone).

4. Where established or emerging policy in Wales is, or has the potential to be, different to that proposed for England, or the changes proposed for England are not considered appropriate to Wales, the UK Government considers it appropriate for the Assembly to be able to legislate in respect of those matters. Schedule 17 therefore inserts the following “matters” into Field 12 of Schedule 5 to the Government of Wales Act 2006 (the 2006 Act) to confer new powers on the Assembly. The matters are:

- Matter 12.1 - Structural and boundary change
- Matter 12.2 - Byelaws
- Matter 12.3 - Conduct of local government members and employees
- Matter 12.4 - Community planning and partner authorities
- Matter 12.5 - Best value

5. Conferring law-making powers on the Assembly by Parliamentary Bill follows the precedent set out in the Education and Inspections Act 2006 and the NHS Redress Act 2006, both of which provide the Assembly with “framework” legislative powers. However, the drafting of Schedule 17 in the Local Government and Public Involvement in Health Bill necessarily take a rather different form, reflecting the changed constitutional structure of the Assembly under the 2006 Act, even though the scope of the powers the UK Government is seeking to have conferred on the Assembly is similar. (The framework powers in the two 2006 Acts mentioned above will shortly be converted by Order into so-called measure-making powers thereby ensuring that legislation brought forward under those proposals will receive full and proper scrutiny by the Assembly. Once converted those powers will take the same drafting form as the insertions into Schedule 5 proposed by the Local Government and Public Involvement in Health Bill).

6. New powers in respect of these specified “matters” will enable the Assembly Government to bring forward coherent proposals for legislation which are based on Welsh priorities and timescales. Annex A provides further information about this. These proposals will be subject to thorough scrutiny and approval by the Assembly.

7. The constitutional context for these provisions is set out below.

**New Powers for Wales**

8. The White Paper “Better Governance for Wales” (CM6582), published in June 2005, set out proposals for delivering the UK Government’s manifesto commitment to enhance the legislative powers of the Assembly in defined areas in which the Assembly already has executive functions. The 2006 Act gives legal effect to those proposals.

**Assembly Measures**

9. The 2006 Act puts in place a structure that enables either Parliament, or Her Majesty by Order in Council, to confer continuing competence on the Assembly to legislate on specified matters. (Since the Order in Council process requires observance of Affirmative Procedure, Parliament will continue to decide, on a case-
by-case basis, whether to give the Assembly a power to legislate by Assembly Measure on particular matters, whether this be by Bill provision or by way of Order in Council). When competence has been conferred on the Assembly the matter/s will be listed in Part 1 of Schedule 5 to the 2006 Act. This will enable the Assembly to make an Assembly Measure that will be able to make any provision that could be made by an Act of Parliament, subject to the restrictions contained in the 2006 Act.

**Scrutiny of Assembly Measures**

10. The 2006 Act specifies that the Assembly’s Standing Orders must include provision for a debate and vote on the general principles of a proposed Assembly Measure, on the details of the proposal and for there to be a final stage where the proposal can be passed or rejected. Should a question arise as to the validity of a proposed Assembly Measure, that it is not within the legislative competence of the Assembly, the Counsel General to the Assembly or the Attorney General can refer the question to the Supreme Court.

**Local Government in Wales**

11. The Assembly established by the 2006 Act will only be able to acquire legislative competence on matters which relate to fields in which the Welsh Ministers, the First Minister or the Counsel General to the Assembly Government have functions. Local government is one of those fields. The Assembly Government is responsible for local government finance in Wales, and local government delivers a wide range of services (including Education, Social Services, Environmental Services, Transport, and Planning) for which Welsh Ministers have overall policy responsibility. The 2006 Act requires the Welsh Ministers to establish and maintain a Partnership Council with representatives of Welsh local government; it also requires them to make a scheme setting out how they propose, in exercising their functions, to sustain and promote local government in Wales.

12. The Assembly Government set out in “Making the Connections” a vision of a Welsh public service that shares common goals and works across functional and organisational boundaries. The task in hand is to reform public services in Wales to make them more citizen focused; responsive to the needs of communities; driven by a commitment to equality and social justice; and to deliver efficiency. This vision, together with a delivering the connections action plan, led to a review of local service delivery to advise on where the most significant opportunities for greater collaboration exist and how they can be taken forward. In September 2005 the Assembly Government asked Sir Jeremy Beecham to undertake such a review. In July 2006 Sir Jeremy reported his conclusions and recommendations to the Assembly Government in “Beyond Boundaries: Citizen-Centred Local Services for Wales” (the Beecham Review).

13. In November 2006 the Assembly Government set out its overall approach to the reform of public service delivery in Wales in, “Making the Connections – Delivering Beyond Boundaries: Transforming Public Services in Wales”. The Assembly Government will, in Spring 2007, be publishing a policy statement examining how Welsh local authorities can contribute to the general public service reform agenda in Wales. The policy statement will cover issues such as performance management and appraisal, maintenance of minimum standards, community leadership and the delivery of services across boundaries.

14. The powers the UK Government is seeking for the Assembly will enable the Assembly Government to bring forward proposals to address some of the delivery
issues in the Assembly Government’s Beecham-inspired public service reform agenda as it affects local government.

15. The Wales Office has placed copies of the Welsh publications referred to in this memorandum in the Libraries of both Houses of Parliament.

**Welsh policy context**

16. The Local Government and Public Involvement in Health Bill presents a further opportunity for the UK Government to deliver on the commitments given in the White Paper “Better Governance for Wales” to grant wider and more permissive powers to the National Assembly for Wales (the Assembly), and the Welsh Assembly Government (the Assembly Government) has asked that this be done.

17. The Assembly Government is seeking provision that confers legislative competence on the Assembly in respect of the following matters:

**Structure and boundaries**

18. Because of the significantly different organisation of local government in Wales, many of the proposals in the Bill (for example to deal with “two-tier” local government) are likely to be irrelevant to Wales. Legislative competence for the Assembly on this matter would however enable the Assembly Government to consider proposals for voluntary or directed mergers of local authorities, should the implementation of the Beecham Review in time lead to a view that some local structural changes would be advantageous.

**Bye-laws**

19. The UK Government and the Assembly Government are both committed to removing unnecessary bureaucratic burdens on local government, such as requirements for confirmation of decisions that are more appropriately taken at the local level. Legislative competence would enable the Assembly to simplify the procedures for making and confirming local authority bye-laws in Wales.

**Conduct of Members**

20. The conduct of local government members and employees in Wales, as in England, is regulated by the ethical framework for local government established by Part III of the Local Government Act 2000. There are, however, institutional differences (for example, there is no Standards Board for Wales and the Public Services Ombudsman for Wales has a key role in overseeing compliance with the framework). Legislative competence in respect of these provisions would enable the Assembly to make changes to the legislative framework reflecting distinctive Welsh circumstances. It would also enable the Assembly to legislate in respect of policy proposals similar in nature to, but not limited to, those proposed for England.

**Community planning and partner authorities**

21. The Assembly Government fully supports the general approach in the Bill to strengthening and formalising local partnership working and delivery of community strategy objectives. It wishes the Bill to make provision to allow broadly similar ends to be attained in Wales. However, the relevant functions in the Local Government Act 2000 are wholly devolved to Wales; they have been applied differently since coming into force there and reflect a divergent policy and institutional context. The number, size, structure and funding of local authorities in Wales differs fundamentally from the position in England, and partner organisations (e.g. NHS
bodies, fire authorities and economic development agencies) also differ radically in structure and are in many cases more coterminous with local authority boundaries than is the case in England. Despite the consensus as to basic principles, proposals in the Bill for England cannot therefore practically apply to Wales.

22. Legislative competence in respect of these matters would enable the Assembly to require local authorities to consult and seek the participation of named bodies (both public and private bodies) in the preparation or modification of community strategies; to require public bodies and local authorities to co-operate with each other in the preparation or modification of the community strategy; and, for such bodies to have regard to the community strategy for their area. It would also enable the Assembly to require local authorities and their partners to prepare, modify and deliver agreements which would be similar in purpose to local area agreements in England; and to allow the Assembly to confer powers on Welsh Ministers to issue directions and/or guidance as to the discharge of these duties.

Best value

23. The Bill proposes a major overhaul of many of the provisions of Part 1 of the Local Government Act 1999 dealing with best value. The powers therein are - with the exception of those in ss16-18 and those relating to Welsh police authorities - wholly devolved to Wales, and since 1999 there has been a very considerable divergence in their application. In England, the focus has been on rigour and formality in planning and reporting improvement, via the Comprehensive Performance Assessment (CPA); in Wales, a collaborative and flexible approach known as the Wales Programme for Improvement (WPI) has been developed. This divergence reflects the radical differences in the number, size, structure and funding of local authorities between the two countries, as well as a certain difference in policy emphasis.

24. The Assembly Government strongly agrees with the principles behind many of the proposed reforms. However, as with community planning, the divergence in the application of the current legislation prevents those reforms from being applied in Wales. For instance, proposals for England on performance measurement and reporting cannot apply to Wales as there is no parallel system of English local area agreements on which to base them. Further, while the Assembly Government broadly supports the proposed changes to the best value duty in England it has identified a pressing need fundamentally to re-examine that duty and its effectiveness in driving local improvement in Wales, in the context of the recommendations made on local service delivery in the Beecham Review.

25. Legislative competence for the Assembly in respect of the subject-matter of Part 1 of the 1999 Act would enable the Assembly Government to propose legislative action to encourage, support or direct the performance of Welsh best value authorities’ functions or delivery of those authorities’ services; and the means by which such performance and delivery is measured, communicated and subjected to audit, regulation and inspection.

Wales Office
May 2007
APPENDIX 3: GREATER LONDON AUTHORITY BILL – GOVERNMENT AMENDMENTS

Supplementary memorandum by the Department for Communities and Local Government

Introduction

1. This supplementary memorandum to the Greater London Authority Bill Delegated Powers Memorandum explains the provisions for delegated powers included in Government amendments to the Bill being moved on Report. Report stage is provisionally scheduled for 19 and 26 June 2007.

2. The Greater London Authority Bill (the “Bill”) was introduced into the House of Lords on 28 February 2007. A memorandum was submitted to the Delegated Powers and Regulatory Reform Committee that day. A copy is attached here for ease of reference (Annex C [not printed]). The Lords Bill Minister, Baroness Andrews, responded to the Committee’s 7th Report of Session 2006/07 on 2 May 2007. I attach a copy of her letter at annex D [not printed].

Delegated Powers

3. The Government has tabled 28 amendments at Report stage. Two of these contain a Secretary of State order making power. The first is included in an amendment inserting a new clause after Clause 31 in Part 7 of the Bill (Planning) ensuring the Mayor’s exercises his planning powers in an open and transparent way. The second is included in a new clause to Part 8 of the Bill (Environmental Functions). The clause establishes a London Waste and Recycling Board; the order making power provides for its constitutional and other arrangements. This clause also includes provision enabling the Secretary of State, in paying grant to the Board, to determine the amount of grant; the manner of its payment; and any conditions of payment. These amendments were tabled on Tuesday 12 June 2007.

Part 7: Planning

4. The Government is committed to ensuring that the Mayor exercises his new power to determine planning applications of strategic importance in an open and transparent way. Responding to debate in the House, Ministers are tabling an amendment inserting a new section (2E) into the Town and Country Planning Act 1990 requiring the Mayor to give the applicant and relevant local planning authority (London borough) the opportunity to make oral representations to him about applications he takes on. The hearing at which these representations take place is termed a “representation hearing”.

5. The new section also requires the Mayor to publish a document setting out other persons who may make oral representations; the procedures to be followed at a hearing; and arrangements for identifying the information that is agreed by the parties. These provisions were previously set out in the draft Mayor of London Order, published by the Government in January 2007 to inform Parliament’s consideration of the Bill.

6. Subsection (5) requires the Secretary of State to make provision, by order, for Part 5A of the Local Government Act 1972 to apply to a representation hearing and to the Mayor in the conduct of such a hearing. Part 5A covers access to, and conduct of, public meetings of principal councils. We have chosen to apply the provisions
through the Mayor of London Order because of the need to make detailed modifications to ensure the provisions sensibly apply to the specific circumstances of the Mayor as an individual decision maker.

7. In applying Part 5A by an order the Secretary of State may make any modifications which she considers necessary or expedient. In particular, we intend to disapply sections 100E, 100F, 100G(1) and (2) and 100J because they are specifically related to the structure and constitution of principal councils and are not applicable to the Mayoral model. However, the effect of this order making provision is to achieve the same degree of openness and transparency in Mayoral decision making as in other local planning authorities when determining planning applications.

8. We consider the negative resolution procedure is appropriate for this order-making power, in line with most other order-making provisions in Part 7 of the Bill, and this is provided for by the amendments now tabled.

**Part 8: Environmental Functions**

9. The Government has also tabled an amendment to Part 8 of the Bill to establish a London Waste and Recycling Board. The objectives of the Board are: to promote and encourage the production of less waste in London; an increase in the proportion of waste that is re-used and recycled; and the use of methods of collection, treatment and disposal of waste which are more beneficial to the environment. To achieve these objectives, the Board may provide financial support for the provision of facilities for or in connection with the collection, treatment and disposal of waste produced in Greater London; conduct regarding the introduction of new technologies and techniques; and securing the performance of any waste function of a London borough. The Board will not be a waste collection or disposal authority and will not provide any waste collection or disposal services. It is envisaged that the Board will comprise members nominated by the Mayor and the London boroughs, including members representing business and other sectors nominated jointly by the Mayor and the boroughs.

10. New section 356B(1) enables the Secretary of State by order to make provision on matters connected with the establishment and administration arrangements of the Board. Specifically, the Secretary of State may provide for the constitution of the Board, the appointment of its members and the payment of allowances and expenses to those members. The order is subject to the affirmative resolution procedure, by virtue of section 420(3) of the Greater London Authority Act 1999 as amended by subsection (2)(b) of the new clause. We consider this is appropriate for this order making power given the potential significance of the new Board to waste management in London.

11. Section 356B(3) gives the Secretary of State power to make payment by way of grant to the Board towards expenditure incurred or to be incurred by it. Subsection (4) enables the Secretary of State to determine the amount grant and the manner of its payment. Subsection (5) allows the Secretary of State to attach such conditions to the payment of grant as he may determine and subsection (6) sets out conditions that the Secretary of State may, in particular, determine. We consider it appropriate that the Secretary of State is able to exercise this degree of discretion when paying grant to the Board.
12. The Delegated Powers Memorandum submitted on 28 February included summaries (at annexes A and B [not printed]) of the Secretary of State’s delegated powers and powers of directions in the Bill. An amendment to annex A is included with this supplementary memorandum to reflect the additional delegated powers.

June 2007
Letter to the Chairman from Lord McKenzie of Luton, Parliamentary Under Secretary of State at the Department for Work and Pensions

1. I am grateful for the detailed consideration you and the Committee have given to the Pensions Bill in your Ninth Report and am pleased that, overall, you are content with the approach we have taken in the Bill.

2. I note that the Committee has made three recommendations, and I am pleased to inform you that we have accepted them all.

3. I intend to lay amendments today and tomorrow to give effect to these recommendations, in time for consideration at Committee Stage of the Pensions Bill, which starts on 4 June.

4. Because of forthcoming Recess (which immediately precedes Committee Stage), and my wish to respond to the DPRRC’s recommendations before the House rises, I regret I am unable to attach the amendments here. I will, of course, ensure they are made available to the Committee as soon as possible but I hope that the following provides sufficient explanation of the approach we have taken.

5. The Committee made recommendations for changes from negative to affirmative procedure in two areas where the Bill delegates power. The amendments I intend to table give effect to these recommendations:
   - Ensuring that powers provided to Her Majesty’s Treasury to set the Lower Earnings Limit are subject to affirmative, rather than negative, procedure;
   - Ensuring that powers relating to the conversion of guaranteed minimum pensions are subject to affirmative, rather than negative, procedure.

6. The Committee also expressed concerns about the approach the Bill took to the removal of past protected rights. The Bill currently provides for delegated powers to enable the removal of contracted out (or past protected) rights in relation to the abolition of contracting out of the State Second Pension on a defined contribution basis. Our policy intention has been to simplify the protected rights rules wherever possible.

7. Survivor benefits are the main issue arising from the removal of protected rights rules. Our intention was to await the outcome of the joint DWP/HM Treasury review of the working of the Open Market Option for annuities, which is looking at the protected rights rule on survivor benefits (amongst other things). The Review is due to report at the end of the year. The provision for delegated powers in this Bill appeared a sensible way of enabling us to take account of the Review’s findings.

8. The Committee considered the removal of the protected rights rules too significant for a regulation making power, and recommended that provisions to give effect to our policy be placed on the face of some future Bill, once the policy intention was decided.

9. I accept the Committee’s recommendations and intend to table a set of amendments to Clause 15 and Schedule 4 to remove the delegated power and place,

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3 The remaining past protected rights rules relate to the investment and transfer of protected rights, and the purchase of a unisex annuity; these do not give rise to the same concerns and it has been our intention to remove these rules in any case.
on the face of the Bill, provisions to abolish the remaining rules with the exception of those applying to survivor benefits. We intend to deal with survivor benefits issues in a future Bill and once the Review has reported.

10. I trust this approach to your recommendation meets both the spirit and the substance of the Committee’s concern.

11. It may interest the Committee to know that we intend to table a number of other Government amendments at Committee Stage, and a brief summary of these is attached. I would, of course, be happy to discuss them with the Committee, if it would be helpful.

12. I have provided copies of this letter to the LP Secretariat and the Lords Whips Office.

May 2007

Annex A

13. For the most part, the Government amendments are of a minor and technical nature:

- The amendment to Schedule 1 takes account of the 2007 Uprating Order, and of the fact that there will be further uprating orders before the amendments made by paragraph 18 of Schedule 1 have effect;
- Further amendments, to Schedule 1, Schedule 4 and Schedule 7 deal with missed consequentials and secondary repeals;
- The amendment to Clause 16 puts our policy intention beyond doubt by ensuring that internal dispute resolution arrangements include a reasonable time limit on applications from a person whose interest in the scheme has ceased, and also from persons whose claimed interest has ceased. As drafted, Clause 16 requires a time limit for all applications from a person claiming an interest in the scheme, not just those where the claimed interest has ceased.

14. The amendments to clause 23 are intended to align the occupational pensions powers in this Bill with the existing requirement (found in occupational pensions legislation) to consult interested organisations before making regulations.

15. There are a number of more substantive amendments and I thought it would be helpful to outline these below.

Clause 14: PUCODIs

16. At present, where a member of a contracted-out defined benefit occupational pension scheme defers taking his or her Guaranteed Minimum Pension beyond its payable age (which is 60 years for a woman and 65 years for a man), existing legislation requires that the amount of GMP be increased to compensate for its late payment.

17. Because the relevant scheme is not required to award full indexation on the GMP increment, uprating of this element of the pension is achieved through extra indexation payments paid as part of the state pension. These indexation payments are made under s150-151 of the Social Security Administration Act 1992 and are known as Payable uprating contracted out deduction increases (PUCODIs).
18. The Government amendment makes clear our policy intention to protect members who are in receipt of a GMP increment on the day that his or her GMP is converted, by ensuring that indexation payments can continue to be paid with the state pension (as if GMP conversion has not taken place).

Clause 27 and 28: Restoration of the Northern Ireland Assembly

19. Clause 27 prescribes the Parliamentary procedure by which an Order in Council would replicate the provisions of the Pensions Bill in Northern Ireland. Following the restoration of the Northern Ireland Assembly however, this clause is no longer necessary and I intend to oppose that that clause stands part of the Bill. The amendments to clause 28 (extent) remove references within it to clause 27.