These notes refer to the Local Democracy, Economic Development and Construction Bill [HL] as introduced in the House of Lords on 4th December 2008 [HL Bill 2]

LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Local Democracy, Economic Development and Construction Bill [HL] which was introduced in the House of Lords on 4th December 2008. They have been prepared by the Department for Communities and Local Government in order to assist the reader in understanding the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

STRUCTURE OF THE BILL

3. The Bill is set out as follows:

Part 1 – Democracy and Involvement

Chapter 1 – Duties Relating to Promotion of Democracy

Chapter 2 – Petitions to Local Authorities

Chapter 3 – Involvement in Functions of Public Authorities

Chapter 4 – Housing

Part 2 – Local Authorities: Governance and Audit

Chapter 1 – Governance

Chapter 2 – Audit of Entities connected with Local Authorities

Part 3 – Boundary Committee for England

Part 4 – Local Authority Economic Assessments

Part 5 – Regional Strategy

Part 6 – Economic Prosperity Boards

Part 7 – Multi-Area Agreements

Part 8 – Construction Contracts

Part 9 – Final Provisions

TERRITORIAL EXTENT

4. On the whole the Bill extends to England and Wales only. Part 8 (construction contracts) also extends to Scotland. Amendments and repeals made by Parts 1 to 7 have the same extent as the enactments amended or repealed.

TERRITORIAL APPLICATION: WALES

5. In Part 1, Chapters 1 and 2 apply to Wales as they apply to England and, where functions are conferred on the Secretary of State in relation to England, they are conferred on the Welsh Ministers in relation to Wales. Chapters 3 and 4 apply to England only.

6. In Part 2, clauses 27 and 28 apply to England and Wales equally. Section 29 applies only to Wales and confers measure-making powers on the National Assembly for Wales in relation to governance and overview and scrutiny arrangements of local authorities (see the commentary on that clause). Chapter 2 of Part 2 applies equally to England and Wales and confers functions on the Welsh Ministers in relation to Wales.

7. Part 3, which relates to local government boundary and electoral change, applies on the whole only to England, but there are some repeals to un-commenced provisions of the Political Parties, Elections and Referendums Act 2000 ("PPERA") which apply to Wales. See the commentary on that Part.

8. Parts 4, 5, 6 and 7 do not apply to Wales.

9. Part 8 (construction contracts) applies to Wales as it applies to England.

TERRITORIAL APPLICATION: SCOTLAND

10. Part 3 contains some amendments and repeals to PPERA which apply in relation to Scotland – see the commentary on that Part. Part 8 extends to Scotland and applies in Scotland as it applies in England and Wales.

11. At Introduction this Bill contains provisions that trigger the Sewel Convention. These provisions are the ones referred to in the preceding paragraph. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

TERRITORIAL APPLICATION: NORTHERN IRELAND

12. Part 3 of the Bill repeals un-commenced provisions in PPERA that apply in relation to Northern Ireland.

COMMENTARY

PART 1: DEMOCRACY AND INVOLVEMENT

Background

13. In December 2007, the report of the Councillors Commission *'Representing the future'* was published. The report was an independent review of the incentives and barriers to serving on councils. In July 2008, the Government provided a response to the report in *'The Government Response to the Councillors Commission'*. Some of the recommendations mentioned in the review were taken forward in the *'Communities in control: real people, real power'*.

14. In July 2008, the Government published the White Paper *'Communities in control: real people, real power'*. The paper set forward the Government's proposals for empowering local communities. The provisions relating to Chapters 1, 2 and 3 of Part 1 follow on from the White Paper.

15. The creation of a National Tenant Voice was one of Martin Cave's recommendations in his review of social housing regulation ("*Every Tenant Matters*" (June 2007)). Martin Cave recognised that whilst social landlords have well-established organisations in place to represent them at national level (not least in discussions with Government and the TSA), tenants lacked such representation.

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CHAPTER 1: GENERAL DUTY OF LOCAL AUTHORITIES

Summary

16. This Chapter imposes duties on local authorities to promote understanding of the opportunities that exist for members of the public to get involved in, and influence, the work of local authorities and other public authorities.

17. The duties apply to both England and Wales.

Commentary on Clauses

Clause 1 - Democratic arrangements of principal local authorities

18. *Subsection (1)* places a duty on principal local authorities to promote understanding of their functions and democratic arrangements. It also requires them to promote understanding of how to take part in those arrangements and what taking part is likely to involve.

19. *Subsection (2)* expands on *subsection (1)(c)* to require principal local authorities to promote information and understanding of the role of councillors, how to become one, and the support that is available to councillors to assist them in their role.

20. *Subsection (3)* defines the principal local authorities on whom the duty will be placed. This covers all county and district councils in England (including unitary authorities), London borough councils and the Common Council of the City of London, and county and county borough councils in Wales.

21. *Subsection (3)* also defines "democratic arrangements" to mean the arrangements for people to participate in or influence the making of decisions. This would include participation, either by becoming a council member or through other arrangements for members of the public to attend and influence full council and council executive meetings, and other committee meetings. It would also cover participation in processes for reviewing those decisions such as through the council's overview and scrutiny committees and any other more informal methods of involving the public which may exist. Overview and scrutiny committees were introduced by the Local Government Act 2000, alongside executive arrangements to provide important checks and balance to decisions taken by the executive, and to inform policy development.

Clause 2 - Democratic arrangements of connected authorities

22. *Subsection (1)* places a duty on a principal local authority to promote understanding among local people of public bodies (referred to as 'connected authorities') which relate to the authority's area. It requires principal local authorities to promote understanding of the functions and democratic arrangements of these connected authorities. It also requires them to promote understanding of how to take part in those arrangements and what taking part is likely to involve.

23. *Subsections (2)* and *(3)* specify what the connected authorities are in England. These are public bodies that provide, or directly influence, the services provided within the principal local authority's area and include:

- health bodies, police bodies, fire and rescue authorities, waste disposal bodies, schools and Further Education colleges, National Park and Broads authorities, transport authorities and probation services;
- parish councils;
- for a county council in a two-tier area, a district council;
- for a district council in a two-tier area, a county council;
- for London boroughs and the City, the Greater London Authority and Transport for London.

24. *Subsections (4)* and *(5)* refer to Wales. *Subsection (4)* largely replicates, in relation to Wales, the provisions of *subsection (2)*, save that the connected authorities do not include Further Education colleges nor those bodies which operate only in England but include equivalent Welsh bodies where appropriate.

25. *Subsection (6)* enables an appropriate national authority, by order to:

- add any person who has functions of a public nature to the list of connected authorities;
- remove a connected authority from the list;
- change the functions in respect of which any authority is connected with a principal local authority for those purposes.

26. *Subsection (7)* requires the appropriate national authority to consult with local government representatives and other persons as the authority thinks appropriate before making an order under *subsection (6*).

27. The "appropriate national authority", in relation to principal local authorities in England is the Secretary of State and in relation to principal local authorities in Wales, the Welsh Ministers.

Clause 3 - Monitoring boards, courts boards and youth offending teams

28. *Subsections (1)* and *(2)* place a duty on a principal local authority to promote understanding of courts boards, independent monitoring boards for prisons and immigration removal centres and Youth Offending Teams (YOTs).

- Courts boards make recommendations to improve the administrative services provided by courts. They scrutinise, review and make recommendations about the way in which the courts are being run in their area and consider business plans.

- Independent monitoring boards are appointed for every prison and immigration removal centre. They monitor day-to-day life in the local prison or removal centre and ensure that proper standards of care and decency are maintained.

- YOTs are established for every local authority in England and Wales and are responsible for co-ordinating the work of the youth justice services. YOTs identify the needs of each young offender and then identify suitable programmes to address those needs with the intention of preventing further offending.

29. Principal local authorities are to provide information about the functions of the bodies, how to take on one of the roles within these and what this is likely to involve.

Clause 4 - Lay justices

30. *Subsections (1)* and *(2)* place a duty on a principal local authority to promote understanding among people about lay justices. They are to provide information about the functions of a lay justice, how to become a lay justice and what the role involves.

Clause 5 - Provision of information

31. *Subsections (1)* and *(2)* provide that the duties in sections 1 to 4 do not apply to principal local authorities if information requested from connected authorities, monitoring boards, courts boards, youth offending teams and (in the case of lay justices) the Lord Chancellor has not been made available to them.

32. *Subsections (3)* and (*4)* provide the appropriate national authority with the power to make an order, requiring one or more connected authorities to provide information to one or more principal local authorities. It is intended that this power will only be used if the intention of the duty is significantly frustrated by the failure of one or more authorities to provide the necessary information to the principal local authorities. The appropriate national authority is the Secretary of State in relation to principal local authorities in England, and the Welsh Ministers in relation to principal local authorities in Wales.

33. However, by virtue of *subsection (5)* subsections (1) to (3) do not apply to a district council in a two-tier area. *Subsection (6)* establishes how the duties in sections 1 to 4 would operate such a case. In two-tier areas, county councils are responsible for disseminating information to the district councils within their area, as it relates to those districts, at least once a year. Where a county has been informed of material changes to information previously disseminated to its districts, they will be required to pass the revised information on accordingly. District councils in two-tier areas will not have failed to meet their duties under sections 2, 3 and 4 if the relevant information has not been passed to them by the county council.

Clause 6 – Guidance

34. This section provides that, following consultation with relevant principal local authorities, the appropriate national authority may produce statutory guidance to principal councils on how to fulfil their responsibilities under this duty. In relation to principal local authorities in England, the appropriate national authority is the Secretary of State, and in relation to principal local authorities in Wales, the Welsh Ministers. Principal local authorities must have regard to any statutory guidance which applies to them. This guidance may be tailored to the needs of different councils if appropriate and must be published.

Clause 7 - Isles of Scilly

35. This section provides the Secretary of State with the power to apply the duties in this Chapter, with or without modifications, to the Scilly Isles.

Clause 8 - Orders under this Chapter

36. This section specifies that orders made under this Chapter are to be made by statutory instrument. A statutory instrument made by the Secretary of State is to be subject to negative resolution procedure. An instrument made by Welsh Ministers is subject to the equivalent procedure in the National Assembly for Wales.

CHAPTER 2: PETITIONS TO LOCAL AUTHORITIES

Summary and Background

37. Clause 10 places duties on principal local authorities in England and Wales in relation to petitions signed by those who live, work or study in the local area. Clause 11 requires principal authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions. The intention of this Chapter is to make local decision-making in relation to petitions made to principal local authorities more transparent, by requiring them to respond to petitions which meet certain criteria, and making the response to petitions publicly available.

Clause 10 – Electronic petitions

38. Clause 10 requires principal local authorities to provide a facility for people to make petitions electronically. Principal local authorities are defined in *subsection (3).*

Clause 11 – Petition scheme

39. Clause 11 requires principal local authorities to make, publicise and comply with a scheme for handling both paper and electronic petitions. *Subsection (7)* makes it clear that existing powers and duties relating to petitions continue unaffected by the provisions in this Chapter.

Clause 12 – Valid petitions

40. Clause 12 makes provision as to what counts as a petition to a principal local authority which will trigger the requirements of this Chapter. Petitions schemes must specify the number of signatures of people who live work and study in a local authority's area which are required for a petition to be valid. Petitions made successfully under other statutory provisions – for example, a petition requiring a local authority to hold a referendum on executive arrangements, pursuant to regulations made under section 34 of the Local Government Act 2000 will not be considered a valid petition for the purposes of this chapter. However, petitions which do not meet the requirements for triggering a referendum on executive arrangements could be considered valid for the purposes of this chapter. *Subsection (1)(f)* provides that electronic petitions are not valid unless they are made using the principal local authority's e-petitions facility. What amounts to "signature" for the purposes of an e-petition is a matter to be specified by authorities in their schemes. It may be, for example, that an authority will specify that entering an email address will constitute "signature" for this purpose.

Clause 13 – Requirement to acknowledge valid petitions

41. Clause 13 requires principal local authorities' petition schemes to acknowledge valid paper petitions in writing within a time specified in the scheme and to say what the authority intends to do in response to the petition. Clause 14(9)(a) permits this acknowledgement also to be the notice of what the substantive response to a petition is. For example, if an authority proposes to do whatever it is called on to do by the petition, it may be that a single letter confirming this will be sufficient. *Subsection (3)* provides that e-petitions do not need to be acknowledged in this way. For electronic petitions an acknowledgement is unnecessary since the authority will either have hosted the petition or refused to do so giving reasons under clause 10(2).

Clause 14 – Requirement to take steps

42. Clause 14 requires principal local authorities to take one or more steps in response to valid petitions which meet the criteria set out in *subsections (1) and (2)*

and are therefore 'active' petitions. Authorities in England and Wales must take one or more substantive steps in response to a petition which relate to the authority's functions. In England, principal authorities other than non-unitary district councils must also take steps in response to petitions relating to an improvement in the local economic, social or environmental well-being to which any of the partner authorities could contribute.

43. There is no duty to take any substantive step in relation to petitions which are vexatious, abusive or otherwise inappropriate to be dealt with, or which duplicate petitions which have been dealt with in the previous six months. The appropriate national authority has power to make an order to provide that certain principal local authority functions are excluded, so that petitions on these subjects would not be considered 'active'. The Secretary of State has the power to determine that petitions about certain matters will not be considered active petitions.

44. *Subsection (6)* sets out some examples of what the substantive steps might be and requires principal authorities to ensure that their petitions schemes include as a minimum all the listed examples as possibilities. *Subsection (7)* ensures that the petition organiser is told what steps will be taken, and that this information must be publicly available online unless it is inappropriate because, for example, it would breach someone's right to privacy.

Clause 15 – Requirement to debate

45. Clause 15 requires principal local authorities to specify a threshold number of signatures which will give an automatic right for the matter raised in the petition to be debated by the full council. The appropriate national authority has the power to issue guidance as to the threshold figure which is appropriate, to specify by order a threshold figure applicable to all principal authorities, or to direct a principal authority to amend its petitions scheme, including the threshold specified in it. The exception to this requirement is active petitions requiring an officer to be held to account, defined in clause 16.

Clause 16 – Requirement to call officer to account

46. Clause 16 provides that certain senior officers of a principal local authority can be called to account at a public meeting. It is up to principal authorities to determine which of their officers are liable to be called to account, but their petition schemes must ensure that as a minimum the head of paid service, often known as the chief executive of the authority, and the most senior officers responsible for the delivery of services can be required to attend meetings of overview and scrutiny committees when requested to do so by a petition with a number of signatures above the threshold in the authority's scheme. The reasons for the request must relate to the officer's job functions.

47. Authorities operating executive arrangements are required by section 21 of the Local Government Act 2000 to have overview and scrutiny committees (for

information about which, see the explanatory note to clause 27). The functions in this clause are performed by the overview and scrutiny committee in the case of such authorities. Authorities which do not operate executive arrangements are currently required by regulations made under section 32 of the Local Government Act 2000 to have committees which carry out essentially the same functions as overview and scrutiny committees – and this clause has the effect of conferring the public hearing function on such committees.

Clause 17 – Review of steps

48. Clause 17 gives the petition organiser (defined in clause insert clause number as the person with whom the authority may deal) the power to ask an overview and scrutiny committee (or its equivalent in authorities not operating executive arrangements) to review the principal local authority's response to their petition, if the organiser is not satisfied with the steps taken by the authority under clause 14. The overview and scrutiny committee may arrange for the full council to carry out this function – that is to say the response of the authority to the petition could be discussed at a meeting of the full council. The principal local authority must inform the petition organiser of the outcome of this review.

Clause 18 – Supplementary scheme provision

49. Clause 18 sets out other issues which principal local authorities' schemes may include.

Clause 19 – Powers of appropriate national authority

50. Clause 19 sets out the powers of the appropriate national authority to issue guidance in relation to the discharge of the petition function by principal authorities. This power includes a power to create a model petitions scheme which authorities will be able to adopt. The appropriate national authority has power to direct an individual principal authority to amend its petitions scheme, for example, if an authority set an inappropriately high threshold for the number of signatures which triggers the right to a debate of the full council, the appropriate national authority could require an authority to set a lower threshold. There is also a power to make orders applicable to all principal authorities to require them to make particular provision in their petition schemes.

Clause 20 – Handling of petitions by other bodies

51. Clause 20 enables the appropriate national authority to apply the petitions obligations of this chapter to different categories of local authority specified in clause 20(2). The power permits the petitions obligations to be applied with modifications to take account of differences in the way such local authorities operate.

Clause 22 – Interpretation

52. Clause 22 contains interpretation provisions. In relation to e-petitions it provides that such petitions are "made" to the authority – and thus potentially trigger the obligations specified in clauses 14, 15 and 16 – on a date specified by the e-petition organiser, rather than on the date the organiser asks the authority to host the e-petition, or the date when it is first opened for signature. If an e-petition organiser does not specify a date, it is for the principal local authority to specify in its petition scheme when the e-petition is deemed to be "made".

CHAPTER 3: DUTIES OF PUBLIC AUTHORITIES

Clause 23 - Duty of public authorities to secure involvement

53. *Subsection (1)* places a duty on those authorities listed in *subsection (2)* to involve representatives of interested persons in the exercise of their functions, where they consider that it is appropriate to do so. It sets out that those authorities will need to consider each of three ways of securing such involvement, namely informing the representatives, consulting them and involving them in other ways.

54. *Subsection (2)* lists the affected authorities and *subsection (3)* explains that with the exception of the Secretary of State, the relevant functions of the authorities listed are all functions they exercise in respect of or in relation to England. In respect of the Secretary of State, *subsection (3)(b)* provides that the relevant functions are limited to those specified (arrangements with respect to obtaining employment or employees and for the provision of probation services), in so far as they are exercisable in relation to England. *Subsection (8)* makes the Secretary of State's functions under *subsection (3)(b)(ii)* 'probation provision' for the purposes of Part 1 of the Offender Management Act 2007 (see in particular section 3 of that Act (power to make arrangements for the provision of probation services by another person as provider of probation services).

55. *Subsection (4)* provides that the duty to involve representatives of interested persons does not grant an authority any additional powers. Where there is a conflict between this duty and another duty, the latter takes precedence.

56. *Subsections (5) and (6)* enable the Secretary of State to provide exemptions from the duty by secondary legislation subject to the negative resolution procedure.

Clause 24 - Duty of public authorities to secure involvement: guidance

57. *Clause 24(1)* provides that the Secretary of State may issue guidance on the discharge of the duties under clause 23. *Subsection (2)* sets out that the guidance may

be general or for a particular authority, may be different for different authorities and must be published. *Subsection (3)* requires the Secretary of State to consult authorities to which the guidance relates before it is issued. *Subsection (4)* states that an authority must have regard to any such guidance that relates to it.

CHAPTER 4: HOUSING

Clause 25 - Establishment and assistance of bodies representing tenants etc

58. Clause 25 makes provision for the Secretary of State to establish and give financial or other support to a body that will represent the interests at national level of housing tenants in England.

59. *Subsection (1)* provides powers to the Secretary of State to create such a body, to provide funding to others to create such a body, or to fund an existing body (or a body newly created using other powers) capable of providing national representation of tenants.

60. *Subsections (2) to (4)* define the bodies in relation to which the Secretary of State may exercise powers in subsection (1). They outline the functions such a body must have: representing, or facilitating the representation of, the views and interests of tenants; conducting and commissioning research into issues affecting tenants, and promoting other bodies to represent tenants.

Clause 26 – Consultation of bodies representing tenants etc

61. Clause 26 amends the Housing and Regeneration Act 2008.

62. *Subsection (2)* inserts a new section 278A into the Act. The new section provides a power to the Secretary of State to nominate a body representing the interests of social housing tenants for the purposes of consultation in connection with certain functions carried out by the social housing regulator (established by Part 2 of the 2008 Act) and the Secretary of State and set out elsewhere in the Act (and which subsection (1) of the inserted section lists).

63. *Subsection (2)* of the inserted section requires the Secretary of State to notify the regulator of any such nomination and the withdrawal of any such nomination.

64. *Subsections (3) to (6)* amend those parts of the Act listed in subsection (1) of the inserted section by adding the nominated body to the list of those whom the regulator or Secretary of State must consult before exercising those functions. This means, specifically, the requirement on the regulator to consult on:

- the criteria for the registration of providers of social housing;
- the disposal of dwellings by registered providers of social housing;
- standards etc for registered providers of social housing;
- guidance to registered providers of social housing;

and the requirement on the Secretary of State to consult on directions to the regulator on the setting of standards for registered providers of social housing.

PART 2: LOCAL AUTHORITIES - GOVERNANCE AND AUDIT

CHAPTER 1: GOVERNANCE

Clause 27 - Scrutiny officers

65. Each local authority operating executive arrangements is required by section 21 of the Local Government Act 2000 to have at least one overview and scrutiny committee to review or scrutinise decisions made, and to make reports and recommendations about matters whether or not they are the responsibility of the Executive; and to make reports or recommendations on matters which affect the authority's area. Clause 27 inserts new a section into the Local Government Act 2000 requiring local authorities, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer to support the work of the authority's overview and scrutiny committee(s).

66. *Subsection (2)* sets out the functions that a scrutiny officer may undertake. Typically, a scrutiny officer will promote the scrutiny function generally within the authority and local government partners more widely, and provide advice and support to members of the authority's committee(s) in undertaking their work. This may include the provision, or management, of committee secretariat services, research, analysis of data and report preparation for example.

67. *Subsections (3)* to *(5)* specify the title of the role, those officers who may not be designated by the authority as the scrutiny officer, and the types of authority who are not required to designate an officer in this manner.

Clause 28 - Functions of joint overview & scrutiny committees

68. Section 123 of the Local Government and Public Involvement in Health Act 2007 enables a county council and one or more district councils within that county area to appoint a joint overview and scrutiny committee. The remit of joint overview

and scrutiny committees is limited to the scrutiny of matters relating to the attainment of a local improvement target in the relevant local area agreement.

69. A local area agreement ("LAA") is an agreement between a local authority and certain partner authorities approved by the Secretary of State. It is prepared by the local authority in consultation with partner authorities and others. 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. Partner authorities are those public bodies and persons listed under section 104 of the Local Government and Public Involvement in Health Act 2007.

70. Clause 28 amends section 123 of the Local Government and Public Involvement in Health Act 2007 so that the functions of a joint overview and scrutiny committee are no longer limited to matters which relate to the attainment of any local improvement target specified in the local area agreement.

Clause 29 - Powers of National Assembly for Wales

71. Clause 29 amends the Government of Wales Act 2006 ("the 2006 Act"). The clause extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as "Assembly Measures"). The legislative competence conferred by the clause is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

72. *Subsection (1)* provides for amendments to Schedule 5 to the 2006 Act that will introduce a number of matters into "*Field 12: local government*".

73. *Subsections (2)* and *(3)* insert matters 12.6 and 12.7 into *Field 12: local government"* in Part 1 of Schedule 5 to the 2006 Act.

74. Matter 12.6 is about decision-making structures of county and county borough councils, including executive arrangements. The matter does not include direct elections to executives of county or county borough councils or the creation of a form of executive requiring direct elections.

75. Matter 12.7 is about overview and scrutiny committees of county or county borough councils. Committees under section 19 of the Police and Justice Act 2006 (crime and disorder committees) are not included in this matter.

CHAPTER 2: AUDIT OF ENTITIES CONNECTED WITH LOCAL AUTHORITIES

Introduction

76. This Chapter provides for an audit authority to appoint an auditor to an entity connected to one or more local authorities in England and Wales and for the auditor to issue a public interest report where it is in the public interest to do so. For the purposes of this Chapter an "audit authority" is the Audit Commission in England ("the Commission") and the Auditor General for Wales in Wales ("AGW"). An entity which has an auditor appointed in this way can appoint the same auditor, at no additional cost, to carry out the statutory audit which it is required to have carried out. The entity remains free, however, to appoint a different auditor to carry out the statutory audit – in which case the audit authority-appointed auditor will carry out an audit which is identical to the statutory audit.

77. This takes forward recommendations from Lord Sharman's independent review into the audit and accountability of public money *Holding to Account: The Review of Audit and Accountability for Central Government (2001).* Lord Sharman recommended that, among other things, the Comptroller and Auditor General (and Auditors General for Wales and Scotland and the Comptroller and Auditor General for Northern Ireland) should be appointed as the auditors of Non-Departmental Public Bodies (NDPBs) which are companies, and be eligible for appointment as auditors of those companies where Departments or NDPBs have a substantial stake or influence. This endorses one of the key principles of the Public Audit Forum on the independence of public sector auditors from the organisations being audited.

78. The Government accepted the principles of this recommendation and Parliament gave it statutory backing in the *Companies Act 2006*. Lord Sharman also recommended that similar arrangements should apply to local government entities. This Chapter implements that recommendation in relation to companies, limited liability partnerships and industrial and provident societies that are connected with local authorities.

Clauses 30 - Overview; Clause 31 - Notification duties of local authorities; and Clause 47 - Regulations

79. Clause 30 provides that the relevant audit authority may appoint a person to carry out audit functions in relation to a local authority entity which meets certain qualifying criteria. An entity for the purposes of this Chapter is a company, a limited liability partnership ("LLP"), or an industrial and provident society ("I&PS"). The qualifying criteria are that the entity is connected with a local authority and that it meets other conditions specified in regulations made by the Secretary of State in England or by Welsh Ministers in Wales. A local authority is as defined in the Local Government Act 2003, and is required by accounting and auditing regulations to

prepare statements of accounts. Parish councils are excluded from the provisions for whilst they are covered by the 2003 Act definition, they are not required to prepare statements of accounts. The intention is for the qualifying criteria to refer to proper practices to define the relationship between the local authority and the entity according to the *Code of Practice on Local Authority Accounting in the United Kingdom - A Statement of Recommended Practice* ("SORP") as published by the Chartered Institute of Public Finance and Accounting ("CIPFA"). This will ensure consistency with Part 12 of the *Local Government and Public Involvement in Health Act 2007* (entities controlled by local authorities) which provides powers to place propriety controls on local authority entities. Clause 47 allows for this.

80. Clause 31 provides that a local authority in England or Wales must notify the entity and the relevant audit authority if an entity meets, or ceases to meet, the qualifying conditions or ceases to be connected with the authority. Notification must be made within 21 days of the matter coming to the attention of the local authority.

Clauses 32 - Power to appoint auditor; Clause 33 - Power to appoint replacement auditor; and Clause 34 - Exclusions;

81. Clause 32 provides that the audit authority may appoint a person to carry out an audit of a local authority entity where the entity appears to the audit authority to meet the qualifying criteria. The audit authority must consult the entity before making the appointment; and, after making the appointment, the audit authority must notify the relevant local authority. The appointment is made for a financial year of the entity and must be made before the start of that year. In the case of an appointment to a qualifying entity for its first financial year, an appointment may be made during the year.

82. Clause 33 provides that where an appointed auditor dies, is dismissed, or is unable or unwilling to act, the audit authority may appoint a replacement auditor for that financial year. The audit authority must consult the entity before making a replacement appointment and after making the replacement appointment must notify the relevant local authority.

83. Clause 34 provides that, unless the entity otherwise requests, the audit authority must not make an appointment if the entity appears to be exempt from statutory audit. A company, a LLP or an I&PS is to be exempt if it appears to the audit authority that the entity is, or will be, exempt from audit under Part 16 of the *Companies Act 2006* (including as applied to LLPs) or under the *Friendly and Industrial and Provident Societies Act 1968.*

Clauses 35 - Eligibility for appointment; and Clause 36 - Terms of appointment

84. Clause 35 specifies who is eligible for appointment as an auditor under this Chapter. The audit authority may appoint as an auditor under this Chapter: a member of the staff of the audit authority; an individual; or a firm. However, those individuals

or firms which are not eligible for appointment as a statutory auditor under the *Companies Act 2006* or who do not satisfy the test of independence in that legislation may not be appointed.

85. Clause 36 sets out the terms of appointment for an auditor appointed under this Chapter. An appointment made under this Chapter begins on the first day of the financial year or, in the case of a replacement auditor, on the date of the appointment. Unless terminated earlier, the appointment ends when the auditor has discharged their functions. An audit authority may terminate the appointment of an auditor if it appears that the entity has ceased to be a qualifying entity. However, the appointed person may not be dismissed for any divergence of opinion on accounting treatments or audit procedures.

Clause 37 - Right of entity to appoint auditor to conduct statutory audit; and Clause 38 - Functions of auditor not appointed to conduct statutory audit

86. Clause 37 provides that where an audit authority appoints an auditor to an entity, the entity may also appoint that same auditor as its statutory auditor under Part 16 of the *Companies Act 2006* (including that Part as applied to LLPs) or section 4 of the *Friendly and Industrial and Provident Societies Act 1968*. This appointment, if made, will be on the standard terms and conditions (including fees) as published by the audit authority. However, some entities may require certain modifications to be made to the standard terms and conditions and these modifications may be agreed between the entity and the auditor. The intention is that where the entity wishes to appoint the audit authority's appointed auditor as its statutory auditor, that it is able to but not obliged to do so. This may be done for no additional fee beyond that agreed for the audit under this Chapter unless agreed with the auditor as part of the modification of the terms and conditions on appointment.

87. Before publishing any terms and conditions, the audit authority must consult the Secretary of State (in the case of the Commission) and Welsh Ministers (in case of the AGW) and such associations of local authorities and bodies of accountants as they consider appropriate. If the audit authority terminates the appointment of an auditor made under this Chapter, it does not terminate the appointment by the entity of their statutory auditor.

88. Clause 38 applies when the entity does not wish to exercise the power in clause 36(1) and instead chooses to appoint a different auditor as its statutory auditor, or where the entity exercises the power in clause 36(1) but then terminates the appointment. In such a circumstance, the audit authority's appointed auditor has the same powers as in the *Companies Act 2006* (including as applied to LLPs) or the *Friendly and Industrial and Provident Societies Act 1968* to enable the auditor to make a report to the company, partnership or society on the annual accounts. The auditor must also send a copy of the report to the local authority with which the entity is connected and the relevant appointing audit authority.

Clause 39 - Public interest reports; Clause 40 - Codes of practice; Clause 41 - Access to information; Clause 42 - Consideration of report by entity; Clause 43 - Consideration of report by local authority

89. Clauses 39 to 43 provide the powers for an auditor appointed under this Chapter to make a report in the public interest. This adopts, for this Part, one of the principles of public audit endorsed in Lord Sharman's report, namely that public auditors should be able to make the results of their audits available to the public and to democratically elected representatives.

90. By virtue of clause 39, an appointed auditor must make a report to the entity about any matter relating to the financial affairs or corporate governance of the entity which comes to their attention in discharging their functions under this Chapter and which they consider that it would be in the public interest to bring to the attention of the entity, the local authority with which it is connected, or the public. A copy of the report must be sent to the local authority with which the entity is connected and the relevant audit authority. The auditor may notify any person that a report has been made and supply a copy, or part of a copy to any person. Clause 40 provides that the Audit Commission must prescribe the way in which the auditor carries out their functions in a code of practice made under section 4 of the *Audit Commission Act 1998*, and the Auditor General for Wales must prescribe such conditions in a code of practice made under section 16 of the *Public Audit (Wales) Act 2004*. In carrying out their public interest reporting functions, an auditor is required to comply with the provisions in the relevant code of practice.

91. Clause 41 requires the entity to provide the auditor with every facility and all information which the auditor may reasonably require for the purpose of preparing a public interest report where the auditor intends to do so. Any person who without reasonable excuse obstructs the auditor, or fails to comply, is guilty of an offence. An appointed auditor has a right of access to documents of the entity for the purposes of making a public interest report.

92. Clauses 42 and 43 set out the process for the entity and the local authority to consider a public interest report. Clause 42 provides that where a public interest report is made, the report must be considered by the entity. In the case of a company this must be at a general meeting of the company, in the case of a LLP at a meeting of members of the partnership, and, in the case of an industrial and provident society in accordance with the rules of the society. The meeting must be held before the end of a period of one month, although the auditor may extend this period. At the meeting the entity must decide whether the report requires it to take any action and must notify the local authority of its decision. If the decision is to take no action then the reasons for this must be given in the notification. Clause 43 provides that where a public interest report is made, the local authority must consider the report and the entity's decisions in relation to the report and decide whether the authority needs to take any action. The notice given of the meeting must include a copy of the report and of the entity's notification setting out the decision it has taken in relation to the report. The

meeting must be held before the end of a period of one month although the auditor may extend this period. At the meeting the authority must decide whether the report requires it to take any action. Provision is made to cover admission to meetings, inspection and public access to agendas and reports.

Clauses 44 - Fees; Clause 45 - Power of audit authority to require information; and Clause 46 - Subsidiaries of Passenger Transport Executives

93. Clause 44 provides that a fee must be paid by the entity to the appointing audit authority when an auditor discharges any functions under clause 38 (Functions of auditor not appointed to conduct statutory audit) and clauses 38 to 43 (public interest reports). The audit authority must prescribe a scale of fees for the purposes of audits undertaken in clauses 38 to 43. This scale also determines the fees payable under the standard terms and conditions where the auditor is also appointed under Part 16 of the *Companies Act* (including that Part as applied to LLPs), or under the legislation applying to industrial and provident societies as provided for in clause 37. If the amount of work involved in a particular case differs substantially a different fee may be charged. Before prescribing a scale of fees, the audit authority must consult such associations of local authorities, or such bodies of accountants, as it considers appropriate. There is a reserve power for the Secretary of State or Welsh Ministers by regulations and following consultation to prescribe a scale of fees in place of any scale prescribed by the Commission or AGW respectively.

94. Clause 45 sets out the power of the audit authority to request information relating to the accounts audited by the auditor and any other document or information relating to the entity, which would have been available to the auditor under the powers that he had. This is to enable the audit authority to see what the auditors they have appointed have done, and allows them access to the information needed to maintain proper standards.

95. Clause 46 provides that a company which is a subsidiary of a Passenger Transport Executive is to be regarded as connected with the Integrated Transport Authority for the area for which the executive is established. This will allow for the relevant audit authority to appoint an auditor to a subsidiary of a Passenger Transport Executive and for that auditor to issue a public interest report where it is in the public interest to do so.

Clause 48 - Interpretation

96. This clause contains interpretation provisions relating to this Chapter. Clause 48(2)(b) provides that an entity "connected with" a local authority has the meaning provided in subsection 212(6) of the *Local Government and Public Involvement in Health Act 2007*, namely that an entity is connected with a local authority if financial information about the entity must be included in the local authority's statement of accounts. However, a local authority is not considered to be an entity itself in the 2007 Act.

PART 3: LOCAL GOVERNMENT ELECTORAL AND BOUNDARY CHANGE

Introduction

97. The Electoral Commission was established under the provisions of the Political Parties, Elections and Referendums Act 2000 (PPERA) to oversee the workings of political parties in the UK. Presently the Electoral Commission has functions including reporting on elections and referendums; reviewing electoral law; providing guidance in relation to party political broadcasts; and promoting understanding of electoral and political matters. It also has specific functions relating to the registration of political parties, the scrutiny of the income and expenditure of political parties and third parties; the administration of referendums and the review and upkeep of electoral arrangements in local authorities in England.

98. PPERA also includes provisions (sections 14-20) to establish Boundary Committees for each country in the UK within the Electoral Commission and to transfer to them the functions of the four Parliamentary Boundary Commissions for Scotland, England, Wales and Northern Ireland, together with those of the Local Government Commission for England and the Local Government Boundary Commissions for Scotland and Wales.

99. To date, only responsibility for local authority administrative and electoral boundaries in England has been transferred to the Electoral Commission. On 1st April 2002 the function of the Local Government Commission for England[1], an advisory Non Departmental Public Body (NDPB) of the then Department for Transport Local Government & the Regions were transferred to the Electoral Commission to be carried out thereafter largely by the Boundary Committee for England. The Local Government Commission for England was then wound up.

100. The Boundary Committee for England makes recommendations to the Electoral Commission for changes to the electoral arrangements of local authorities. It decides, with the agreement of the Electoral Commission, where and when it will carry out such reviews. The Electoral Commission is entirely responsible for the implementation of the recommendations through a Statutory Instrument (local order).

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1. [1] **The Local Government Commission was established as a NDPB (advisory) of the DETR by the Local Government Act 1992. Its function, in accordance with directions given by the Secretary of State, was to conduct reviews of local authority areas in England and to recommend such structural, boundary, or electoral changes as seem to it desirable. The Act also placed a duty to undertake periodic electoral reviews of each principal area in England on the LGC without direction from the Secretary of State. All change was implemented by the Secretary of State**

101. The Boundary Committee for England also, if the Secretary of State requests such advice, provides advice to the Secretary of State on changes to the structure of local government and makes recommendations for changes to administrative boundaries. For both structure and boundary changes, only the Secretary of State can implement change by an order which must be approved by resolution of both Houses of Parliament.

102. In February 2006 the Committee on Standards in Public Life (CSPL) decided to undertake a review of the Electoral Commission to ascertain whether its current mandate, governance arrangements and accountability framework remain appropriate. The purpose of the review was to provide an independent analysis of the role and responsibilities of the Electoral Commission and the Speaker's Committee and to make recommendations with a view to addressing some of the perceived difficulties in the Electoral Commission's role and the relevant legislation.

103. The CSPL Eleventh Report "*Review of the Electoral Commission*", published in January 2007, made 47 recommendations, two of which impact on the Boundary Committee and its work.

104. The CSPL made their detailed recommendations in the context of its key finding - that the Electoral Commission has not successfully performed its core duties as a regulator to ensure integrity and public confidence in the electoral process and in the framework that governs the political party funding and campaign expenditure.

105. The CSPL therefore recommended that the Electoral Commission should lose any other functions which may distract it from its core tasks. The two recommendations in relation to these provisions were:

> a) Recommendation 17 - The Electoral Commission should no longer have any involvement in electoral boundary matters and the provision in the Political Parties Elections and Referendums Act to allow the transfer of boundary setting functions in England, Scotland and Wales to the Commission should be repealed.
>
> b) Recommendation 18 - The Boundary Committee for England should become an independent body in line with local government boundary commissions in the rest of the United Kingdom.

106. The Government has accepted many of the recommendation of the CSPL Report including those in relation to electoral boundary matters. The Government response, presented to Parliament in November 2007, said "we will put matters in hand to make the necessary practical and legal arrangements to remove the English local government boundary review work from the Electoral Commission". This Bill seeks to put in place those legal arrangements.

107. These provisions largely re-enact the provisions in Part 2 of the Local Government Act 1992, which make provision for changes to local authority electoral arrangements in England. A number of modifications have been made to reflect the removal of the role of the Electoral Commission from this process. The new Boundary Committee for England will now be able to initiate reviews of its own accord and Orders made by the Committee will now be subject to a Parliamentary procedure providing a line of accountability to Parliament. These clauses also transfer other functions from the Electoral Commission and its Boundary Committee to the new Boundary Committee for England, subject to certain modifications.

108. The clauses that relate to the establishment of the Boundary Committee for England apply only to England. Clause 55 repeals provisions in the Political Parties, Elections and Referendums Act 2000 which would apply to the whole of the UK. The repealed provisions of PPERA related to the establishment as committees of the Electoral Commission of Boundary Committees for Wales, Scotland and Northern Ireland. As those Committees have never been established, the provisions are not required.

Clause 49 – Boundary Committee for England

109. Clause 49 establishes the Boundary Committee for England as a separate corporate body. Schedule 1 contains the detailed provisions for the constitution and administration of the new body.

Clause 50 – Review of electoral arrangements

110. *Subsection (1)* provides that the Boundary Committee for England must from time to time conduct a review of electoral arrangements of each principal council in England (the term "principal council" is defined in the clause). *Subsection (2)* provides that the Boundary Committee may at any time conduct a review of all or any part of the area of a principal council. Following a review under *subsection (1) or (2)*, the Committee may recommend whether a change should be made to electoral arrangements. The clause re-enacts with changes the provision previously made by sections 13(3), 13(4), 13(8) and 14(4) of the Local Government Act 1992.

Clause 51 – Requests for review of single-member electoral areas

111. This clause provides a power for the Boundary Committee for England to conduct a review of the area of a principal council (as defined by clause 49), at that council's request, with a view to making recommendations as to whether each electoral area in the area of the principal council should return only one member. It re-enacts with changes sections 14A and 14B of the Local Government Act 1992, which were inserted by the Local Government and Public Involvement in Health Act 2007.

The main difference from those provisions is that the role of the Electoral Commission has been removed.

Clause 52 – Review procedure

112. This clause sets out the procedure which the Boundary Committee for England must follow when conducting electoral reviews under clause 50. It provides in particular for a process of preparing and publishing draft recommendations, and for a period of time for interested persons to make representations about those draft recommendations (*subsection (2*)). At the end of its review, the Boundary Committee for England must publish a report stating its recommendations (*subsection 4(a)).* It re-enacts section 15 of the Local Government Act 1992 with some amendments to remove the role of the Electoral Commission.

Clause 53 – Implementation of review recommendations

113. This clause gives the Boundary Committee for England the power to make an order to give effect to all or any of the recommendations which it makes following a review of electoral arrangements for a local government area. It replaces section 17 of the Local Government Act 1992, removing the role of the Electoral Commission and making significant changes to the procedure for making an order to implement the Committee's recommendations.

114. *Subsection (2)* sets out the electoral changes that may be made by the Boundary Committee for England in an order. *Subsection (3)* provides that any electoral change may only be implemented at the next ordinary election for that council.

115. *Subsection (9)* provides that any order made by the Boundary Committee for England must be laid in draft before both Houses of Parliament before it can be made. Such an order will be subject to the draft negative resolution procedure in accordance with section 6(1) of the Statutory Instruments Act 1946. The Boundary Committee will not be able to make any order until a period of 40 days, beginning with the day on which a copy of the draft order is laid in Parliament, has passed. If during that 40 day period either House of Parliament resolves that the order be not made the Boundary Committee would not be able to make the Order. Under the Local Government Act 1992, recommendations from the Boundary Committee for England's electoral reviews were implemented by order by the Electoral Commission, and were not statutory instruments subject to Parliamentary procedure.

Clause 54 – Transfer of functions relating to local government boundaries

116. This clause transfers various functions from the Electoral Commission and its Boundary Committee for England to the new Boundary Committee for England. The existing Boundary Committee for England's functions in providing advice to the

Secretary of State on unitary local government (i.e. the replacement of a two tier system of county and district councils with a single tier of local government) and conducting boundary reviews under Part 1 of the Local Government and Public Involvement in Health Act 2007 are transferred to the new Boundary Committee for England. It also transfers the Electoral Commission's function of considering whether an electoral review is necessary following a structural or boundary change order being made. In addition the Electoral Commission's functions for the review of constituencies of the Greater London Assembly under the Greater London Authority Act 1999, and its functions in relation to changes to local authorities' electoral arrangements and parish reorganisation under Parts 2 and 4 of the 2007 Act are also transferred to the new Boundary Committee for England.

Clause 55 – Removal of Electoral Commission boundary functions

117. This clause abolishes the Electoral Commission's duty to establish a Boundary Committee for England and repeals section 14, so far as it relates to England, and section 15 of the Political Parties, Elections and Referendums Act 2000. Those provisions provide for the establishment of the existing Boundary Committee for England as a statutory committee of the Electoral Commission, and the appointment by the Electoral Commission of Deputy Commissioners to be members of the Boundary Committee. Recommendation 18 of the Committee on Standards in Public Life's 11th report stated that the Boundary Committee for England should become an independent body in line with local government boundary commissions in the rest of the United Kingdom. Subsection (1) terminates the duty in section 14 of the Political Parties, Elections and Referendums Act 2000.

118. Recommendation 17 of the Committee on Standards in Public Life's report also stated that the Electoral Commission should no longer have any involvement in electoral boundary matters, and that the provision in the Political Parties Elections and Referendums Act to allow the transfer of boundary functions in Northern Ireland, Scotland and Wales to the Commission should be repealed.

119. Therefore, clause 55 also repeals section 14, so far as it relates to Northern Ireland, Scotland and Wales, sections 16, 17, 19 and 20 and the related provisions within the schedules to the Political Parties, Elections and Referendums Act 2000. Insofar as these sections relate to Northern Ireland, Scotland and Wales they have never been commenced. They are repealed to remove the Electoral Commission's duty to establish Boundary Committees for Northern Ireland, Scotland and Wales and the provisions for the transfer of the functions of the existing local government and parliamentary boundary commissions to these Boundary Committees.

Clause 56 – Transfer schemes

120. This clause places the Electoral Commission under a duty to produce one or more schemes for the transfer of property, rights and liabilities from the Electoral

Commission to the Boundary Committee for England. The Electoral Commission is required to consult with the Secretary of State on this scheme and seek the consent of the existing Boundary Committee for England before making the scheme. This clause requires the Electoral Commission to make such a scheme on or before 31 December 2009. If the Electoral Commission and existing Boundary Committee for England are unable to reach agreement on the provisions to be included in a scheme then the Secretary of State may by order specify such matters.

Clause 57 – Continuity of functions

121. This clause provides that anything done by the existing Boundary Committee for England (which is part of the Electoral Commission) or by the Electoral Commission, in relation to structural or boundary changes or electoral arrangements, may be treated as having been done by the new Boundary Committee for England.

Clause 58 – Interim provision

122. Schedule 3 makes modifications to the Local Government Act 1992 which will apply during an interim period starting on the day on which the Act is passed and ending on the establishment of the new Boundary Committee for England. *Subsection (2)* relates to recommendations made to the Electoral Commission by its Boundary Committee for England before this Bill is enacted. It places a duty on the Electoral Commission to exercise its powers under section 17 of the Local Government Act 1992 to decide whether or not to implement such recommendations on or before 31 March 2009, in order to ensure that recommendations made under the old system are dealt with swiftly.

Clause 59 – Electoral changes consequential on boundary change

123. This clause makes amendments to sections 8, 10, 11 and 12 of the Local Government and Public Involvement in Health Act 2007. At present, where an order is made effecting a boundary change under Part 1 of the 2007 Act, the Electoral Commission must consider whether a review of local government electoral arrangements is required. Therefore, at present the Electoral Commission's Boundary Committee for England may have to conduct two separate reviews (one boundary review and one electoral review) for the same area sequentially. This clause amends the process set out in sections 8 and 10 for the review by the Electoral Commission's Boundary Committee for England of the boundaries of local government areas, to enable the new Boundary Committee for England to consider whether consequential changes (including changes to constituencies of the Greater London Assembly) should be made to electoral arrangements as part of the same review. This enables, but does not require, both boundary and electoral matters to be considered in a single review rather than two separate reviews. A similar provision was made in section

47(1)(i) of the Local Government Act 1972, which was repealed by the 1992 Act. Clause 59 also makes consequential changes to the powers to implement boundary changes in sections 11 and 12 of the 2007 Act.

Clause 60 – Repeal of redundant provisions

124. This clause repeals provisions which relate to the now defunct Local Government Commission for England.

Clause 61 – Consequential and supplementary amendments

125. This clause gives effect to Schedule 4, which contains amendments consequential on provision made in Part 3 of the Bill. It also gives the Secretary of State a power by order to amend, repeal or revoke enactments for the purposes of making further consequential provisions in relation to any provisions within Part 3.

Schedule 1 – The Boundary Committee for England

126. This Schedule provides the detailed arrangements for the creation of a new Boundary Committee for England, separate from the Electoral Commission. The Schedule replicates many of the arrangements which apply to the Electoral Commission.

127. It provides for the number of Committee members, which must be at least five and no more than 12 and requires a Chair and Deputy Chair to be appointed. The Schedule provides for appointments to be made by Her Majesty following, in relation to the Chair, an address from the House of Commons, and for all other members, on the recommendation of the Secretary of State. The Schedule gives the Speaker's Committee the same role in the control and oversight of the funding of the Boundary Committee for England as it has for the Electoral Commission.

Schedule 2 – Boundary Committee for England: Electoral arrangements

128. This Schedule sets out the criteria that the Boundary Committee for England must have regard to when conducting electoral reviews under clause 50. It re-enacts and consolidates the existing statutory criteria previously made by Schedule 11 of the Local Government Act 1972 and sections 13(5), 13(5A) and 14(8) of the Local Government Act 1992. A number of drafting changes have been made to the existing legislation to reflect other changes made in legislation.

Schedule 3 – Interim modifications of the Local Government Act 1992

129. This Schedule makes modifications to the Local Government Act 1992 which will apply during the interim period starting on the day on which the Act is passed and

ending with the establishment of the new Boundary Committee for England. During that period, the procedure for implementing recommendations made by the existing Boundary Committee for England is modified so that it does not require the involvement of the Electoral Commission.

Schedule 4 – Boundary Committee for England: consequential and supplementary amendments

130. This Schedule makes amendments to the Local Government Act 1972, the Environment Act 1995, the Greater London Authority Act 1999 and the Local Government and Public Involvement in Health Act 2007 consequential upon Part 3 of the Bill. These changes reflect the establishment of the Boundary Committee for England as an independent body, the transfer of local government boundary and electoral functions from the Electoral Commission to the new Committee, and the new electoral review procedures set out in Part 3 of this Bill. In particular, paragraphs 19 to 21 makes substantial amendments to arrangements for the review of Greater London Assembly constituency boundaries under the Greater London Authority Act 1999. Under these provisions, where the Secretary of State makes a boundary change order under section 10 of the 2007 Act which affects a London borough, the new Boundary Committee for England must consider whether or not to conduct a review of the Greater London Assembly constituencies. An order made by the Boundary Committee for England to implement any recommendation for changes to Assembly constituencies will be subject to the draft negative resolution procedure (see notes on clause 53(9) above).

Background – Parts 4 to 7

131. In July 2007, the Government published the "*Review of Sub-National Economic Development and Regeneration"*. The review set out possible reforms that could be made which would affect regions and local authorities. In March 2008, the Government published the consultation document "*Prosperous Places: Taking forward the Review of Sub National Economic Development and Regeneration*". This consultation closed on the 20th June 2008. The provisions in Parts 4, 5, 6 and 7 follow from this consultation process.

PART 4: LOCAL AUTHORITY ECONOMIC ASSESSMENTS

Clause 63 - Duty of responsible local authorities to prepare economic assessment

132. This clause requires responsible authorities to prepare an assessment of the economic conditions of their area.

"Responsible authorities" are county councils, district councils other than a council for a district for which there is a county council (unitary authorities), the Council of the Isles of Scilly, London boroughs and the City of London Corporation.

A responsible authority may revise its assessment, or any part or aspect of it, at any time, and must do so if the Secretary of State directs it to. The Secretary of State may revoke a direction to a responsible authority to revise their economic assessment.

133. *Subsection (5)* places a duty on a responsible authority to consult its partner authorities and any other persons it considers appropriate in carrying out its economic assessment.

134. Where the responsible authority is a county council, *subsection (6)* requires it to consult and seek the participation of the district councils within its area in carrying out its assessment. The county council must also have regard to any material produced by district councils in the discharge of their responsibilities under *section 13* of the Planning and Compulsory Purchase Act 2004, which requires them to keep under review matters which may be expected to affect the development of their area or the planning of its development. The district councils are required to co-operate with the county council.

135. Responsible authorities are required to have regard to guidance issued by the Secretary of State setting out what an assessment should contain and how it should be prepared, when an assessment should be prepared and when it should be revised. The Secretary of State is required to consult representatives of local government and other such persons the Secretary of State considers appropriate before issuing guidance.

Clause 64 - Partner authorities

136. This clause lists the bodies which must be consulted under clause 63

137. *Subsection (3)(b)* refers to the "English Sports Council which is more often known as Sport England. *Subsection (3)(d*) refers to the Historic Buildings and Monuments Commission for England which is the formal name for English Heritage. The functions of the Secretary of State described in *subsection (3)(i)(i)* are a reference to Jobcentre Plus, and those in *(3)(i)(ii) and (iii)* the Highways Agency.

138. The Secretary of State may amend the lists, by order, by adding any person with functions of a public nature, deleting any person, or by deleting or adding references to the Secretary of States functions. Before making such an order the secretary of state must consult such representatives of local government and such other persons the Secretary of State considers appropriate.

PART 5: REGIONAL STRATEGY

Clause 65 - Regional Strategy

139. This clause provides for a regional strategy in each region other than London. A regional strategy must set out policies in relation to sustainable economic growth,

development and the use of land within the region and can include different policies for different areas within the region.

140. The regional strategy will replace the existing regional spatial strategy for the region, which sets out the Secretary of State's policies in relation to the development and use of land within the region, and the regional economic strategy for the region, which is the strategy produced by the regional development agency for the region relating to its purposes. These include the furtherance of economic development and regeneration of the region, the promotion of employment, business efficiency and investment, and contribution to sustainable development.

141. The regional strategy is to include policies to contribute to the mitigation of, and adaptation to, climate change.

142. On commencement of this clause, the existing regional spatial strategy and the existing regional economic strategy for an area will become the regional strategy, to the extent specified by the Secretary of State by direction.

143. "Region" is defined in clause 82.

Clause 66 - Leaders' Boards

144. This clause provides for participating authorities to set up "Leaders' Boards" for the purposes of this Part of the Bill. The Leaders' Board is a means to enable local authorities to act collectively and decisively at regional level. They will enable local government representation at regional level. District and county councils and (where relevant) National Park authorities and the Broads Authority must make and consult on a scheme for establishing and operating a Leaders' Board. The participating authorities must submit the scheme to the Secretary of State for approval before establishing the body in accordance with the approved scheme.

145. The clause gives the Secretary of State the power to fund the Leaders' Board or a participating authority in respect of that Board. It also gives the Secretary of State power to withdraw approval for the Leaders' Board where this is not operating effectively.

Clause 67 - Responsible regional authorities

146. This clause provides that the regional development agency (RDA) and local authorities' Leaders' Board for the region, are, jointly, the 'responsible regional authorities' referred to throughout the remainder of this part of the Bill. If there is no Leaders' Board, the RDA will act alone.

Clause 68 – Review and revision by responsible regional authorities

147. This clause gives the responsible regional authorities a duty to keep the regional strategy and relevant matters under review and explains when a draft revision is to be prepared either of part or the whole of the strategy.

Clause 69 - Community involvement

148. This clause requires the responsible regional authorities to prepare, publish and comply with a statement setting out their policies for involving interested persons when preparing a draft revision of a regional strategy.

Clause 70 - Examination in public

149. The clause provides for the responsible regional authorities to arrange for an examination in public into the draft revision to be held by a person appointed by the Secretary of State. If the responsible regional authorities decide not to arrange for such an examination, the Secretary of State has the power to do so and to appoint a person to hold it. There is no automatic right for a person to be heard at an examination in public. The person holding the examination in public must report to the responsible regional authorities and send a copy to the Secretary of State.

Clause 71 - Matters to be taken into account in revision

150. This clause sets out the matters the responsible regional authorities must take into account when preparing a revision. Along with the draft revision they must prepare, publish and submit a sustainability appraisal report of the draft revision.

Clause 72 - Approval of revision by Secretary of State

151. Once the responsible regional authorities have prepared and published a draft revision of the regional strategy and the sustainability appraisal report, this clause requires them to submit these to the Secretary of State. The Secretary of State can then choose, subject to consultation, either to approve the draft revision as it stands or to modify it before approving it and publishing it. In deciding whether or not to make modifications, the Secretary of State must have regard to any examination in public report and any representations made either to the responsible regional authorities or to the Secretary of State.

Clause 73 - Reserve powers of Secretary of State

152. This clause sets out the Secretary of State's reserve power to revise a regional strategy in whole or in part, where the responsible regional authorities fail to do so at the time specified in regulations or directions. It also sets out the Secretary of State's reserve power to revoke a regional strategy where the Secretary of State thinks it, necessary or, expedient to do so.

Clause 74 - Revision: supplementary

153. Clause 74 sets out the Secretary of State's power to make regulations for procedural matters in connection with revisions of regional strategies. It also makes a saving provision for any steps already carried out in relation to a revision of an existing regional spatial or economic strategy at the time that this Part of the Bill is commenced.

Clause 75 - Implementation

154. This clause imposes duties on the responsible regional authorities to implement and monitor the regional strategy. In particular, they must publish and keep up to date an implementation plan and must make an annual report.

Clause 76 - Regional strategy as part of the development plan

155. The regional strategy will be part of the statutory development plan for an area (and applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise - see section 38 of the Planning and Compulsory Purchase Act 2004).

156. Until the strategy is revised the statutory development plan for an area will only consist of the policies that were previously in the regional spatial strategy.

Clause 77 - Duties of regional development agencies

157. This clause requires regional development agencies to have regard to the regional strategy in exercising their functions.

Clause 78 - Sustainable development

This clause requires the bodies responsible for regional strategy to exercise their functions with the objective of contributing to the achievement of sustainable development and having regard to the desirability of achieving good design.

Clause 79 - Guidance and directions

158. This clause gives the Secretary of State power to give guidance and directions in relation to the exercise of functions under this Part of the Bill.

PART 6: ECONOMIC PROSPERITY BOARDS

Clause 83 –EPBs and their areas

159. *Subsection (1)* provides that the Secretary of State can make an order establishing an Economic Prosperity Board ("EPB") for an area. An EPB will have functions relating to the economic development and regeneration of its area.

160. *Subsections (2)* to *(6)* specify the conditions that need to be met for an area to be capable of designation as an EPB's area.

161. *Subsection (2)* specifies that the area must consist of the whole of two or more local government areas in England.

162. *Subsections (3) and (4)* stipulate that the area must be made up of local authority areas that have contiguous boundaries. It will not be possible to have an area of an EPB which completely surrounds an area which does not form part of it, nor for any area which does form part of it to have no common boundaries with any part of the rest of the area.

163. *Subsection (5)* stipulates that it is not possible for any local authority area to be part of more than one area of an EPB, or part of an EPB's area at the same time as being part of the area of a combined authority (see clause 98).

164. *Subsection (6)* requires each local government area that forms part of the area of an EPB to be included in the scheme prepared and published under clause 93.

165. *Subsection (7)* states that a local government area for this Part means the area of a county council or a district council. It does not therefore include Greater London or the Isle of Scilly.

166. *Subsection (8)* requires an order under this clause to specify the name that the EPB will be known as.

Clause 84 – Constitution

167. This clause allows the Secretary of State to make an order about the constitutional arrangements of an individual EPB.

168. *Subsection (1)* sets out what those arrangements are. An order could cover the membership of an EPB, the voting powers of members of the EPB, and the executive arrangements of the EPB. (Executive arrangements are arrangements for an EPB to set up an executive to make specific decisions, especially the day to day decisions, on its behalf. An executive would be expected to be a smaller and more stream-lined

body than the EPB itself. Local authorities are required to operate executive arrangements).

169. *Subsection (2)* allows the order to make provision about the number of members of the EPB and how they are to be appointed. It also permits details of the remuneration of and pensions or allowances payable to members of the EPB to be included in such an order.

170. *Subsection (3)* states that the provision which may be made about the voting powers of each member includes provision about the different weight to be given to the vote of each member.

171. *Subsection (4)* explains what is meant by "executive arrangements" for the EPB, for instance the establishment of an executive and the arrangements by which that executive can exercise the powers of the EPB.

172. *Subsection (5)* provides that an order cannot provide that anyone other than the EPB has responsibility for agreeing its budget, so this function cannot be delegated to an executive of the EPB.

Clause 85 – Constitution: membership and voting

173. This clause sets out the provision which must be made for membership and voting arrangements of an individual EPB if an order is made under clause 84 in respect of its constitutional arrangements. It provides that where an order is made in relation to the constitution of an EPB, it must provide that a majority of the EPB's members must be elected members of the local authorities for the EPB's area.

174. *Subsection (5)* requires that the order must state that EPB members who are not elected members of its constituent councils will be non-voting members.

175. *Subsection (6)* allows for voting members of an EPB to resolve that provision in *subsection (5)* does not apply, so that the voting members can decide to allow the members who are not elected members of its constituent councils to vote.

Clause 86 – Exercise of local authority functions

176. *Subsection (1)* allows the Secretary of State to make an order to make functions of a county council or district council exercisable by the EPB. The functions must be exercisable by the council in relation to an area within the EPB's area.

177. This power applies only if the Secretary of State thinks it appropriate for the EPB to exercise the functions in question.

178. *Subsection (3)* provides that an order may specify for the function to be exercised generally, or subject to conditions or limitations.

179. *Subsection (4)* allows an order to make provision for functions to be exercisable by EPB instead of the local authority, or concurrently with the local authority.

184. *Subsection (5)* provides that an EPB must perform functions that are exercisable by the EPB with a view to promoting economic development and regeneration in its area.

Clause 87 – Funding

180. This clause allows the Secretary of State to make an order that sets out how the EPB will be funded.

181. *Subsection (1)* enables the order to make provision for the costs of an EPB to be met by its constituent councils and about the basis on which the amount payable by each constituent council is to be determined.

Clause 88 – Accounts

182. This clause requires that an EPB keeps a general fund whereby all receipts of the EPB shall be carried to that fund and all liabilities falling to be discharged by the EPB shall be discharged out of that fund. Accounts shall be kept of receipts carried to and payments made out of the general fund.

Clause 89 – Change of name

183. This clause provides that an existing EPB can pass a resolution to change its name. *Subsections (2) (3) and (4)* sets out conditions which must be followed in passing that resolution. The EPB must notify the Secretary of State that it has changed its name and must publish notice of the change. The Secretary of State can also direct the EPB as to the manner of publication.

Clause 90 – Changes to boundaries of an EPB's area

184. This clause allows the Secretary of State to make an order changing the boundary of an existing area of an EPB. Such an order could either add to or take away from an area the whole of the area administered by a county council or district council.

185. *Subsection (2),* reflects the conditions in *subsections (2), (3), (4) and (5)* in clause 83, so that the revised area would have to meet the same conditions as have to be met for the initial designation of an area of an EPB.

186. An order changing the boundary of an EPB's area cannot be made unless each of the councils in *subsection (3)* have agreed to the boundary change.

Clause 91 – Dissolution of an EPB's area

187. This clause allows the Secretary of State to make an order to dissolve an EPB's area and abolish the EPB.

188. An order dissolving an EPB cannot be made unless a majority of the councils whose territory is comprised in that EPB's area have agreed to the dissolution. This applies to county councils and unitary district councils, but not district councils in a county council area.

Clause 92 – Review by authorities: new EPB

189. *Subsection (1)* provides that any two or more authorities referred to in *subsection (2)* may review the effectiveness and efficiency of arrangements to promote economic development and regeneration within the geographical area covered by the review. Where a review is conducted by the county council, the review area must include the whole of any one or more of the districts within the county or if there are no such areas, the whole area of the county council. Where it is conducted by the council for a district, the review area must include that district.

190. *Subsection (5)* enables a review area to include counties or districts the councils for which are not conducting the review. There is no compulsion on the councils of those areas participating in the review under *subsection (5*) to be part of a clause 93 scheme, but if the conclusion of the review is to establish an EPB they can be included in the scheme if they agree to be included.

Clause 93 – Preparation and publication of scheme: new EPB

191. This clause stipulates that if two or more of the councils that have conducted a clause 92 review conclude that the establishment of an EPB for an area would be likely to improve the exercise of statutory functions relating to economic development and regeneration and economic conditions within the area, then they have the power to prepare and publish a scheme for the establishment of an EPB for the area.

192. *Subsection (3)* provides that the area of the proposed EPB must consist of all or part of the area covered by the review; may include one or more other local government areas; and must meet the conditions in *subsections (2), (3), and (4)* in clause 83.

193. *Subsection (4)* prevents a local government area from being included in a scheme unless each appropriate authority for that area (defined in *subsections (5) and (6)*) has either participated in the preparation of the scheme or consented to the inclusion of the local government area in the scheme.

Clause 94 – Requirements in connection with establishment of EPB

194. This clause specifies that the Secretary of State may make an order establishing an EPB for an area if having regard to the prepared and published scheme, the Secretary of State considers that the establishment of an EPB for an area is likely to improve both the exercise of statutory functions relating to economic development and regeneration in the area and the economic conditions in the area.

195. *Subsection (2)* requires the Secretary of State to consult each of the councils for the area which is proposed to be included in the EPB's area and any other persons she considers appropriate before making the order.

196. *Subsection (4)* requires the Secretary of State to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government in making the order.

Clause 95 – Review by authorities: existing arrangements

197. Clause 95 allows one or more of authorities under *subsection (2)* - an existing EPB, a county council whose area or part of whose area is within an existing or proposed area of an EPB, a district council whose area is within an existing or proposed area of an EPB - to review an "EPB" matter.

198. An EPB matter is, in relation to any existing or proposed EPB, any matter in respect of which the Secretary of State has power to make an order under clauses 84, 86, 87, 90 and 91 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the EPB) and also includes any matter concerning the EPB that the EPB itself can decide.

199. The review must relate to one or more existing areas or proposed areas of an EPB.

Clause 96 – Preparation and publication of scheme: existing EPB

200. If one or more of the authorities who have conducted a clause 95 review conclude that the exercise of economic development and regeneration functions, or economic conditions, in an existing or proposed area of an EPB would be likely to be improved by the making of an order under any one or more of clauses 84, 86, 87, 90 and 91 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the EPB), then those authorities have the power to prepare and publish a scheme proposing how this should be done.

Clause 97 – Requirements in connection with changes to existing EPB arrangements

201. This clause sets out the requirements applying to the Secretary of State's power to make orders under clauses 84, 86, 87, 90 and 91 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the EPB).

202. Specifically, an order can be made in relation to an area if the Secretary of State considers that it is likely to improve statutory functions relating to economic development and regeneration in the area; or the economic conditions in that area. Before making the order the Secretary of State must consult the bodies specified in clause 95(2) and such other persons as she considers appropriate. The Secretary of State must also have regard to the need to reflect the identities and interest of local communities and to secure effective and convenient local government.

Clause 98 – Combined authorities and their areas

203. This clause provides that the Secretary of State can make an order establishing a combined authority for an area which meets conditions specified in *subsections (2) to (6)*. A combined authority will have functions relating to economic development and regeneration and transport.

204. *Subsection (2)* specifies that a combined authority's area must consist of the whole of two or more local government areas in England.

205. *Subsections (3) and (4)* stipulate that a combined authority's area must be made up of local authority areas that have contiguous boundaries. It will not be possible to have a combined authority's area which completely surrounds an area which does not form part of it, nor for any area which does form part of it to have no common boundaries with any part of the rest of the area.

206. *Subsection (5)* stipulates that no part of the area may form part of an area of another combined authority's area, an area of an EPB or an integrated transport area.

207. *Subsection (6)* requires each local government area that forms part of the combined authority area must be included in the scheme prepared and published under clause 104.

208. *Subsection (7)* requires an order under this clause to specify the name that the combined authority will be known as.

Clause 99 - Constitution and functions: transport

209. The clause allows the Secretary of State to make an order about the constitutional arrangements and functions of an individual combined authority.

210. The clause enables the order to follow any of the specified provisions in the Local Transport Act 2008 that may be made for an Integrated Transport Authority (ITA) in relation to constitutional arrangements (including provision about membership), delegation of local authority and Secretary of State functions, and a conferral of a power to direct.

211. *Subsection (4)* provides that the provision relating to a change in name applies to a combined authority in the same way as it applies to an ITA.

212. *Subsections (5)* and *(6)* enable the Secretary of State by order to transfer functions of an ITA to a combined authority.

213. *Subsection (7).*enables the Secretary of State by order to provide for Public Transport Executive (PTE) functions to be exercisable by a combined authority or and the executive body of a combined authority.

214. *Subsection (8)* enables an order under *subsection (7)* to include any functions that have been conferred on an ITA by any enactment and relate to the functions of a PTE**.**

Clause 100 – Constitution and functions: economic development and regeneration

215. *Subsection (1)* enables an order to make in relation to a combined authority any provision that may be made in relation to an EPB under clause 86.

216. *Subsection (2)* provides that section 86(5) of this Act, the duty to perform functions with a view to promoting economic development and regeneration, applies to the exercise of functions by a combined authority.

217. *Subsections (3) and (4)* allow the Secretary of State by order to make in relation to a combined authority any provision that may be made in relation to an EPB with regards to funding. The order may only make provision in relation to the costs of a combined authority that are reasonably attributable to the exercise of its functions relating to economic development and regeneration.

Clause 101 – Changes to boundaries of a combined authority's area

218. This clause allows the Secretary of State to make an order changing the boundary of an existing area of a combined authority. Such an order could either add or take away from a combined authority's area the whole of the area administered by a county council or district council.

219. *Subsection (2),* provides that an order may be made if the new area meets the conditions in *subsections (2), (3), (4) and (5)* in clause 98 and if each council specified under *subsection* (3) consents to the making of the order.

220. *Subsections (4) to (7)* requires the order to designate one or more authorities as local transport authorities to take over the transport functions for areas removed from the combined authority's area. The requirement does not apply to those areas that become part of an integrated transport area of an Integrated Transport Authority.

Clause 102 – Dissolution of a combined authority's area

221. This clause allows the Secretary of State to make an order to dissolve a combined authority's area and abolish its combined authority.

222. An order dissolving a combined authority's area cannot be made unless a majority of the councils whose territory is partly or wholly within the combined authority's area have agreed to the dissolution. This applies to county councils and unitary district councils, but not district councils in a county council area.

223. *Subsections (4) to (7)* requires the order to designate one or more authorities as local transport authorities to take over the transport functions for the former area of the combined authority. The order does not apply to those areas that become part of an integrated transport area of an Integrated Transport Authority.

Clause 103 – Review by authorities: new combined authority

224. This clause provides that any two or more authorities of the types referred to in *subsection (2)* may review the effectiveness and efficiency of transport, and the arrangements to promote economic development and regeneration within the geographical area covered by the review. Where a review is conducted by the county council the review area must include the areas of one or more of the districts within the county or where the county is a unitary authority, the area of the county council. Where it is conducted by the district council the review area must cover the area of the district council. The review can also be undertaken by an EPB or an ITA but must include one or more local government areas within their existing area.

225. *Subsection (7)* enables a review area to include counties or districts the councils for which are not conducting the review. There is no compulsion on those participating in the review to be part of a clause 104 scheme, but if the conclusion of the review is to establish a combined authority and they agree to be included, they can be included in the scheme.

Clause 104 – Preparation and publication of scheme: new combined authority

226. If two or more of the authorities who have conducted a clause 103 review conclude that the establishment of a combined authority for an area would be likely to improve the exercise of functions relating to transport and economic development and regeneration, the effectiveness and efficiency of transport in the area, and the economic conditions in the area, the authorities may prepare and publish a scheme for the establishment of a combined authority for the scheme area.

227. *Subsection (3)* provides that the scheme area must consist of or include the whole or any part of the review area, may include one or more other local government areas and meet conditions set out in sections 98(2) to (4).

228. *Subsection (4)* ensures that the scheme area will only include the local government areas of authorities which participate in the preparation of the scheme or consents to their inclusion in the scheme area.

229. *Subsections (5)* and *(6)* identify the authorities who must participate in, or consent to the inclusion of their area in, the scheme.

Clause 105 – Requirements in connection with establishment of combined authority

230. This clause specifies that the Secretary of State may make an order establishing a combined authority for an area if, having regard to the prepared and published scheme, the Secretary of State considers that the establishment of a combined authority is likely to improve the exercise of statutory functions relating to transport and the effectiveness and efficiency of transport, in the area as well as the exercise of economic development and regeneration functions in the area and the economic conditions in the area.

231. *Subsections (2) and (3)* require the Secretary of State to consult each of the councils, any Integrated Transport Authority and any EPB for an area which or part of which is included within the area of the proposed combined authority, and any other persons she considers appropriate before making the order.

232. *Subsection (4)* requires the Secretary of State to have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government in making the order.

Clause 106 – Review by authorities: existing combined authority

233. Clause 106 allows one or more of authorities under *subsection (2)* - an existing combined authority, a county council whose area or part of whose area is within an existing or proposed area of a combined authority, a district council whose area is within an existing or proposed area of a combined authority - to review a "combined matter".

234. A combined matter is, in relation to any existing or proposed combined authority, any matter in respect of which the Secretary of State has power to make an order under clauses 99, 100, 101, and 102 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the combined authority) and also includes any matter concerning the combined authority that the combined authority itself can decide.

235. The review must relate to one or more existing areas or proposed areas of a combined authority.

Clause 107 – Preparation and publication of scheme: existing combined authority

236. Clause 107 enables authorities to prepare a scheme if one or more of the authorities who have conducted a clause 106 review conclude that the exercise of transport and economic development and regeneration functions, the effectiveness and efficiency of transport and the economic conditions in an existing or proposed area of a combined authority would be likely to be improved by the making of an order under any one or more of clauses 99, 100, 101, and 102 (relating to the constitutional arrangements, functions, funding, boundaries and dissolution of the combined authority).

Clause 108 – Requirements in connection with changes to existing combined arrangements

237. This clause sets out the requirements applying to the Secretary of State's power to make orders under clauses 99, 100, 101, and 102 (relating to the constitutional arrangements, functions, boundaries and dissolution of the combined authority).

238. The Secretary of State may make an order she considers that the making of the order is likely to improve the exercise of statutory functions relating to transport or economic development and regeneration, the effectiveness and efficiency of transport and the economic conditions in the combined authority's area. Before making the order the Secretary of State must consult bodies specified in section 106(2) and any other persons she considers appropriate.

239. The Secretary of State must also have regard to the need to reflect the identities and interest of local communities and to secure effective and convenient local government.

Clause 109 – Incidental etc provision

240. This clause provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of an order made under this Part.

241. *Subsection (2*) allows the Secretary of State to make orders making amendments, repeals or revocations to, or applying or disapplying, primary and subordinate legislation in consequence of making an order, for instance to reflect the fact that a new EPB or combined authority has been established.

Clause 110 – Transfer of property, rights and liabilities

242. This clause specifies that the Secretary of State may make provision by order for the transfer of property, rights and liabilities for the purposes or consequence of an order under this Part. This includes the transfer of rights and liabilities under a contract of employment, to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Clause 111 – Consequential amendments

243. Clause 111 allows the Secretary of State, by order, to make provision in consequence of any provision made by this Part. This includes a power to amend, repeal or revoke provision contained in an enactment passed or made before the day on which the Act was passed.

Clause 112 – Orders

244. This clause sets out the procedure for making orders under the Part.

245. *Subsection (1)* requires an order under the Part to be made by statutory instrument.

246. *Subsections (2) and (3)* provide that an order under the Part is subject to the affirmative resolution procedure unless it is an order under clause 111 which only amends legislation subject to the negative resolution procedure.

247. *Subsection (4)* enables the draft of an order to proceed as if it was not a hybrid instrument. This avoids the need for special procedures which apply to instruments which have a differential effect on people or places to be applied to these orders.

Clause 113 – Guidance

248. *Subsection (1)* provides that the Secretary of State can issue guidance about anything which could be done under or by virtue of Part 6 by an authority referred to in *subsection (5).*

249. The authority must have regard to any guidance given in exercising any function conferred or imposed by virtue of this Part.

250. *Subsections (3)* and *(4)* specify that the guidance must be given in writing and may be varied or revoked by further guidance in writing and that the guidance may make different provision for different cases.

Clause 114 – Amendments relating to EPBs and combined authorities

251. This clause introduces Schedule 6 which makes a number of amendments to apply existing provisions of local government and transport law to EPBs and combined authorities.

Clause 115 – Interpretation

252. This clause provides definitions for Part 6.

PART 7: MULTI-AREA AGREEMENTS

Introduction

253. This Part makes certain arrangements for multi-area agreements ("MAAs") which are agreements between two or more local authorities and certain partner authorities, approved by the Secretary of State. It gives the Secretary of State the power to direct a nominated local authority (the 'responsible authority') to prepare an MAA in consultation with partner authorities and others specified in guidance (which might include persons from the voluntary and community sector and local businesses). The local authority and partner authorities are placed under a duty to co-operate with each other in determining local improvement targets for the area to be included in the MAA, and a duty to have regard to the targets.

Clause 116 - Multi-area agreements

254. This clause defines what a multi-area agreement is.

255. *Subsection (2)* explains that a multi-area agreement is a document specifying improvement targets for a geographic area for which there are two or more local authorities. *Subsection (3)* provides that this area can be non-contiguous so that it may, for example, cover the area of two local authorities which are separated by the area of a third local authority which is not to be part of the multi-area agreement.

256. *Subsection (4)* defines an improvement target as a target for improvement in the economic, social or environmental well-being of the area or part of the area covered by the multi-area agreement. For example, an improvement target might specify an improvement to be achieved in the whole of the area covered by the agreement, or it might apply only to specific ward(s) in the area. The target must also 'relate' to a local authority for the area, a partner authority, or another person acting, or having functions exercisable in the area.

257. *Subsection (5)* provides that for an improvement target to relate to an individual or body, that individual or body must be able to contribute to the target being achieved through its actions and they must have agreed that the target should

apply to them. Where an individual or body can have no impact on the achievement of a target through its actions and/or has not agreed to the target it will not relate to them and they will not be required to have regard to it.

258. *Subsection (6)* stipulates that an individual or body is taken to have consented to a target applying to it if it has agreed to the target (or any subsequent change to it) being specified in the multi-area agreement. The authority preparing the multi-area agreement ("the responsible authority") will therefore have consented to all targets as in drawing up the agreement it will have agreed to the inclusion of those targets.

Clause 117 - Local authorities

259. This clause defines the meaning of "local authority" for the purpose of this Part.

Clause 118 - Partner authorities

260. This clause sets out a list of public bodies and persons that will be "partner authorities" for the purpose of a multi-area agreement. This largely follows the list of bodies named for the purpose of agreeing a Local Area Agreement as set out in Section 104 of the Local Government and Public Involvement in Health Act 2007. The Government intends that the list of named partner authorities for the purposes of multi-area agreements and local area agreements should be consistent unless there is a good reason for there to be a difference.

261. In some cases the statutory reference does not make it immediately clear what the nature of the body or person is. *Subsection (4)(b)* refers to the English Sports Council which is known as Sports England. *Subsection (4)(e)* refers to the Historic Buildings and Monuments Commission which is known as English Heritage. *Subsection (5)(j)(i)* refers to the Secretary of State in relation to his functions under section 2 of the Employment and Training Act 1973. These functions are exercised by Jobcentre Plus. Similarly the functions described in *subsection (4)(j)(i) and (iii)* are exercised by the Highways Agency.

262. *Subsection (5)* allows the Secretary of State to amend the list of partner authorities, by order, by adding any person with functions of a public nature, deleting any person, or by adding or deleting references to the Secretary of State's functions. The Secretary of State can not exercise this power without first consulting appropriately *(subsection (6)).*

Clause 119 - Proposal for multi-area agreement

263. This clause provides that any group of two or more local authorities may approach the Secretary of State and request that the Secretary of State direct a multi-area agreement to be prepared for their area and submitted to the Secretary of State. It

is the Secretary of State's agreement to such a request (clause 120) that is the trigger for duties being applied to local and partner authorities, as set out in clause 121.

264. *Subsections (2) and (3)* stipulate that all local authorities covered by the area of the proposed multi-area agreement, other than district councils in a county council area, must be party to any request for the Secretary of State to make a direction, whilst also expressly allowing such district councils to be part of the request if they want to join it.

265. *Subsections (4) and (5)* specify that a request under this clause must be made in writing and set out the information the request must include together with the requirement that it should be prepared having regard to any guidance that the Secretary of State has issued. The request must name a local authority that will be responsible for preparing and submitting the draft multi-area agreement (the "responsible authority"). The area covered by the multi-area agreement does not have to include the whole area of a local authority that is party to the agreement – it may include part of a local authority area.

Clause 120 - Direction to prepare and submit draft multi-area agreement

266. This clause provides for the Secretary of State, in response to a request made under clause 119, to direct the responsible authority to prepare and submit a draft multi-area agreement. The Secretary of State may specify the period of time within which the draft multi-area agreement must be prepared. The Secretary of State can vary or revoke a direction *(subsection 4).*

267. *Subsections (2) and (3)* specify the information that the draft multi-area agreement must include: the period of time for which the agreement has effect and in respect of each improvement target, who it relates to (see clause 116(5)) and the geographic area covered by it if it does not apply to the whole area of the multi-area agreement.

Clause 121 - Preparation of draft multi-area agreement

268. This clause places duties on the responsible authority and other local and partner authorities where a direction has been issued under clause 121, following a request under clause 120. Local and partner authorities will not be subject to duties under this clause where they are developing a multi-area agreement without first obtaining a direction.

269. *Subsections (1) to (3*) place duties on the responsible authority to consult key stakeholders, to co-operate with local and partner authorities in determining the targets which are to relate to them and to have regard to guidance issued by the Secretary of State.

270. *Subsection (4)* places similar duties on local and partner authorities: a duty to co-operate with the responsible authority in determining the improvement targets that are to relate to them and a duty to have regard to guidance issued by the Secretary of State.

Clause 122 - Approval of draft multi-area agreement

271. This clause provides for the Secretary of State to approve, require modifications to or reject a draft multi-area agreement that is submitted in accordance with a direction issued under clause 120. The approval brings the multi-area agreement into effect for the period specified in the agreement.

272. *Subsection (3)* provides that where the Secretary of State requires modifications to a draft multi-area agreement, this acts as a new direction under clause 120 and therefore the duties on the responsible authority and local and partner authorities in connection with preparation of the agreement will continue to apply.

273. *Subsection (4)* stipulates that where the Secretary of State rejects a draft multi-area agreement then all directions and duties applicable to that agreement cease. If the local authorities concerned want to continue to pursue a multi-area agreement then they may do so without the benefit of a direction (and associated duties) or would need to submit a new request to the Secretary of State under clause 119.

Clause 123 - Submission of existing multi-area agreement

274. This clause provides for a multi-area agreement that is prepared through procedures other than following a direction from the Secretary of State under clause 120 to be submitted with a request that the Secretary of State approve it. This clause allows local authorities to submit a multi-area agreement agreed prior to clause 120 coming into force, or one that has been prepared without first seeking a direction.

275. *Subsection (3*) stipulates that all local authorities covered by the area of the multi-area agreement, other than district councils in a county council area, must be party to any request for the Secretary of State to approve the agreement whilst also expressly allowing district councils to be part of the request if they want to join it. This is consistent with who may request a direction to prepare and submit a multi-area agreement (see clause 119).

276. *Subsection (4)* requires local authorities making the request to consult any local or partner authority for the area covered by the multi-area agreement, prior to making the request. *Subsection (7)(d)* requires the local authorities making the request to report the outcome of their consultation under this subsection.

277. *Subsections (5) to (7)* stipulate the information that must accompany the request. These information requirements are consistent with the requirements for a

proposal for a direction under clause 120 together with the requirements for a draft multi-area agreement in clause 121.

Clause 124 - Approval of an existing multi-area agreement

278. This clause provides for the Secretary of State to approve a multi-area agreement submitted under clause 123. Once approved, the multi-area agreement takes effect in the same way as one prepared following a direction, and for the period specified in it.

Clause 125 - Duty to have regard to improvement targets

279. This clause places a duty on all local and partner authorities covered by the area of a multi-area agreement approved by the Secretary of State under clause 122 or 124 to have regard, when exercising their functions, to each improvement target in the agreement that relates to them. This duty does not apply where the agreement concerned has not been approved in accordance with clause 122 or 124. Signatories to a multi-area agreement agreed with Government prior to the commencement of these provisions will not, therefore, be subject to this duty unless that agreement has been subsequently approved by the Secretary of State under clause 124.

Clause 126 - Responsible authorities

280. This clause defines who the responsible authority is and provides for a mechanism for this to be changed by the local authorities to whom improvement targets in a multi-area agreement relate, with the agreement of the Secretary of State.

Clause 127 - Revision proposals

281. This clause provides a mechanism for a multi-area agreement that has been approved by the Secretary of State to be amended.

282. *Subsection (1)* provides that a proposal to modify an approved multi-area agreement can be prepared and submitted to the Secretary of State by the responsible authority at any time while the agreement is in force, but must be prepared and submitted if the Secretary of State directs to the authority to do so. A direction under this subsection may stipulate the time period for its completion and can be varied or revoked *(subsection (5)).*

283. *Subsection (2)* sets out the types of changes to an approved multi-area agreement that will require a revision proposal. Enlarging the area covered by the multi-area agreement may mean extending it to cover more of the area of a local authority that is already a signatory to the agreement, or, it may entail adding a local authority to the agreement whose area was previously outside the boundaries covered by the agreement. A revision proposal will not be required where a district council in an area where there is also a county council whose area was covered by the multi-area

agreement but did not originally agree to it, subsequently decides that it does want to be party to the agreement.

284. *Subsections (3)* and *(4)* stipulate that where changes to an improvement target or the addition of an improvement target is proposed, the revision proposal must specify who it relates to (see section 116(5)) and the geographic area covered by it if it does not apply to the whole area of the multi-area agreement. This is consistent with the information requirement for a draft multi-area agreement set out in clause 120.

Clause 128 - Preparation of revision proposal

285. This clause places equivalent duties on the responsible authority to consult and co-operate and have regard to guidance, and on other local and partner authorities to co-operate and have regard to guidance, when preparing a revision proposal as is placed on them when they are preparing a draft multi-area agreement by clause 121.

286. Where the proposal is to enlarge the area covered by the agreement, the definition of the "agreement area" in *subsection (1)(a)* and the reference to the agreement area in *subsections (2)(a)* and *(4)* make it clear that it is the all local authorities in the enlarged area that must be consulted and must co-operate .with the responsible authority.

Clause 129 - Approval of the revision proposal

287. *Subsection (1)* provides that the Secretary of State may approve or reject, in writing, a revision proposal that is submitted by the responsible authority. Where the revision proposal is submitted following a direction, the clause provides that the Secretary of State will also be able to request, in writing, that the proposal be modified.

288. *Subsection (2)* specifies that the changes will have effect in the multi-area agreement at the point the Secretary of State approves the revision proposal.

289. *Subsection (3)* provides that where the Secretary of State requires a modification to a revision proposal, this takes effect as a further direction to prepare a revision proposal, and so the duties on the responsible authority and local and partner authorities in relation to preparation of a revision proposal will still apply.

Clause 130 - Duty to publish information about multi-area agreements

290. This clause places a duty on the responsible authority to publish information about the multi-area agreement and any subsequent changes that are made to it through a revision proposal but leaves the decision as to what information is to be published and the manner of publication to the responsible authority.

Clause 131 - Consultation on guidance

291. This clause requires the Secretary of State to consult representatives of local government and, if appropriate, other people with an interest in multi-area agreements before issuing the guidance that responsible, local and partner authorities will have to have regard to in preparing agreements and revision proposals

PART 8: CONSTRUCTION CONTRACTS

Background

292. In March 2004, the Chancellor of the Exchequer announced a review of Part 2 (sections 104 to 117) of the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act") as regards England and Wales. This review was published in September 2004. As a consequence of its findings, the Secretary of State for Trade and Industry and the Welsh Assembly Government together consulted on broad proposals to amend Part 2 of the 1996 Act. This consultation took place between March and June 2005. This was followed by a second consultation in the summer of 2007 which set out detailed amendments to Part 2 of the 1996 Act.

293. Scottish Ministers undertook a consultation exercise in 2007 (similar to the consultation held that year in respect of England and Wales) and have continued to work with what is now the relevant Whitehall Department - the Department for Business, Enterprise and Regulatory Reform ("BERR") - and the Welsh Assembly Government to facilitate consistency as regards the content and timing of new legislation. In July 2008, BERR published the Draft Construction Contracts Bill, and a form of the draft clauses published is now being taken forward in the Bill.

Introduction

294. Part 2 of the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act") concerns "construction contracts". Pursuant to section 104, these are agreements for the carrying out of "construction operations". Construction operations include the construction, alteration, repair, maintenance, extension, decoration and demolition of buildings; preparatory work such as site clearance, earth-moving and excavation; and the installation of fittings such as heating, lighting, drainage and sanitation systems (section 105). Contracts with householders are excluded, however. By virtue of section 107, Part 2 only applies to construction contracts which are "in writing".

295. Section 108(1) of the 1996 Act gives each party to a construction contract the right to refer a dispute to "adjudication" and, in this regard, section 108(2) to (4) requires the parties to include terms in their contract:

- enabling either party to give notice to the other at any time of the intention to refer a dispute to adjudication;

- requiring the adjudicator to reach a decision within a certain time period;

- allowing for the extension of such period;

- imposing a duty of impartiality upon the adjudicator;

- enabling the adjudicator to take the initiative as regards determining the facts and the law;

- providing (in the absence of contrary agreement) that an adjudicator's decision is binding in the interim; and

- relieving the adjudicator (and his employees and agents) of liability if acting in good faith.

296. Section 109 of the 1996 Act provides that contractors (those performing the work) are entitled to periodic payments (unless the work is or is estimated to take less than 45 days). Section 110(1) stipulates that construction contracts are to contain an "adequate mechanism" for determining what and when payments become due under the contract and are to provide, in respect of each such payment, a final date by which settlement must be made – the "final date for payment". Section 110(2) requires the payer to give the contractor/payee notice (in advance of each payment) of the sum which he proposes to pay.

297. If construction contracts do not contain provisions which are consistent with section 108(2) to (4) and section 110 (or, as regards section 109, the parties fail to agree upon the amounts or the frequency or circumstances of payments), the terms of the relevant Scheme for Construction Contracts apply – one Scheme in respect of contracts for construction operations carried out in England and Wales, and the other in respect of contracts for construction operations carried out in Scotland. Where either Scheme applies, such terms have effect as implied terms of the relevant contract – in effect supplying the missing contractual provision.

298. In addition, Part 2 of the 1996 Act:

- requires the giving of an appropriate notice by the payer where the payer proposes to withhold moneys (which notice may, if various conditions are met, be the same notice as that given by the payer of the sum which he proposes to pay) (section 111);

- allows a contractor to stop working where the payer owes the contractor money (section 112); and

- renders ineffective clauses in construction contracts which make payments conditional on the payer having been paid by a third party (section 113).

Summary

299. Part 8 of the Bill amends Part 2 of the 1996 Act. It is comprised of seven clauses, a brief description of which follows:

- Clause 133 removes the current limitation of Part 2 to contracts which are in writing;

- Clause 134 introduces a provision to facilitate the correction of clerical or typographical errors in a adjudicator's decision;

- Clause 135 makes agreements about the allocation of the costs of adjudication ineffective, unless such agreements are entered into after the appointment of the adjudicator;

- Clause 136 addresses the issue of making periodic payments under a construction contract conditional upon obligations under another contract, and the issue of making the date a payment becomes due dependent upon the giving of a notice by the payer of the sum the payer proposes to pay;

- Clause 137 amends the existing provisions relating to the notices which a payer gives of the sum which the payer proposes to pay and introduces provisions relating to the giving of notices by the payee;

- Clause 138 introduces (in most cases) a statutory requirement to pay sums specified in these notices;

- Clause 139 amends the existing provisions relating to a contractor's right to stop working when the contractor has not been paid.

Commentary on clauses

Clause 133 - Requirement for construction contracts to be in writing

300. Section 107 of the 1996 Act provides that Part 2 of the 1996 Act only applies to contracts which are "in writing". Section 107 has been interpreted restrictively by the courts such that all of the non-trivial terms of construction contracts must be "in writing" for Part 2 to apply. Clause 133 removes this general requirement, whilst prescribing that various matters must nonetheless be in writing.

301. *Subsection (1)* repeals section 107 in its entirety with the effect that Part 2 of the 1996 Act will apply to all construction contracts – those which are wholly in writing, partly in writing or wholly oral.

302. *Subsection (2)* provides that certain provisions of a construction contract, relating to adjudication, must be "in writing". These are the provisions necessary in order to comply with the requirements specified in section 108(2) to (4) – see paragraph 295 above.

Clause 134 - Adjudicator's power to make corrections

303. This clause inserts new subsection (3A) into section 108 of the 1996 Act. New subsection (3A) has the effect of requiring the parties to a construction contract to provide in their contract that the adjudicator has the power to correct a clerical or typographical error in his decision arising by accident or omission. The provision concerned must be in writing. Such a requirement of their contract is in addition to the requirements which already apply (see paragraph 295 above).

Clause 135 - Adjudication costs

304. Clause 135 inserts new section 108A into the 1996 Act. New section 108A provides that any agreement between the parties to a construction contract concerning the allocation between the parties of the costs relating to an adjudication is ineffective unless such agreement is made after the giving of notice by one party to the other of the former's intention to refer a dispute to adjudication and such an agreement is in writing. New section 108A catches both an agreement as regards the allocation of the parties' own costs, and an agreement as regards paying the fees and expenses of the adjudicator.

Clause 136 - Determination of payments due

305. Clause 136 inserts new subsections into section 110 of the 1996 Act. Subsection (1) of section 110 stipulates that every construction contract is to provide an "adequate mechanism" for determining what and when payments become due under the contract, and, in interpreting subsection (1), the courts have held that an "adequate mechanism" can include a certificate issued by a third party (e.g. an architect or quantity surveyor) under a superior contract. This has caused difficulties – a sub-contractor may not be aware that a certificate has been issued in a superior contract and, where such a certificate covers work undertaken by other sub-contractors, payment to the sub-contractor is often delayed until all of the other work has been completed.

306. New subsection (1A) secures that it is not an adequate mechanism for these purposes to make the determination of what payments are due, or when, dependent upon the performance of obligations in a different contract (e.g. in a superior contract) or upon someone's decision as to whether obligations have been performed in a different contract.

307. New subsection (1B) has the effect of excluding, from this general prohibition at new subsection (1A), obligations (in a different contract) to make payments: section 113 of the 1996 Act already secures that "pay when paid" clauses in a construction contract (clauses whereby one party is not to be paid unless the other party has been paid) are (for the most part) ineffective.

308. New subsection (1C) creates a material exception to the general prohibition at new subsection (1A) to ensure, for instance, that payments in a superior contract can of course continue to depend upon the work carried out in a sub-contract. Thus, where a construction contract is an agreement between two parties (A and B) to the effect that a third party (C) is to carry out construction operations (a contract of the type referred to at section 104(1)(b) of the 1996 Act), it will be permissible for A and B to provide in their contract that payments in that contract may be dependent upon C carrying out those obligations (i.e. in the contract which B has with C).

309. Section 110(2) of the 1996 Act currently provides that the parties to a construction contract must include terms in their contract to the effect that, in relation to each payment and at most five days after such payment becomes payable (or would have become payable), the payer is to give the contractor (i.e. the payee) a notice. The notice must specify the amount (if any) which the payer proposes to pay (or has by that time paid) and the basis on which that sum has been arrived at. New subsection (1D) provides that an "adequate mechanism" for determining *when* payments become due under the contract is not the giving of a "payment notice" to the contractor. New section (1D) therefore secures that a provision in the parties' contract whereby a payment will only fall due if a "payment notice" in respect of that payment is given to the contractor is ineffective.

Clause 137 - Notices relating to payment

310. Clause 137 amends the existing legislation relating to "payment notices" and, in doing so, provides for the giving of similar notices by the contractor (i.e. the payee). Clause 137 achieves this by repealing section 110(2) (*subsection (2)* of clause 137) and inserting new sections 110A and 110B into Part 2 of the 1996 Act (*subsection (3)* of clause 137).

311. New section 110A(1) provides that a construction contract is to contain either:

- a provision which, in relation to every payment, requires the payer (or a "specified person") to give the payee a "payment notice"; or

- a provision requiring the payee to give the payer (or a "specified person") a "payment notice";

and in either case, requires the notice is to be given at most five days after the payment in question becomes payable.

312. A "specified person" is defined at new section 110A(6) – such a person is one identified in the construction contract or one "determined in accordance with" terms in the contract (for instance, terms allowing the payer subsequently to notify the payee of the appointment and identity of such person). In practice, a "specified person" is generally an architect or engineer, i.e. someone qualified to value construction work.

313. New section 110A(2) prescribes the contents of a "payment notice" given by the payer (or a "specified person") to the payee. Such a notice is to identify the sum which the payer (or the "specified person") believes is payable (by the payer) on the date that the payment concerned becomes payable (or, where some or all of that amount has been paid before the notice is given, the sum that would have been payable on such date). Such a notice is also to explain how that sum has been arrived at - for instance, by identifying any relevant moneys paid before the payment concerned actually became payable, or by identifying any set-off or abatement applied by the payer.

314. New section 110A(3) prescribes the contents of a "payment notice" given by the payee to the payer (or to a "specified person"). Such a notice is to identify the sum which the payee believes is payable (to the payee) on the date that the payment concerned becomes payable (or, where some or all of that amount has been paid before the notice is given, the sum that would have been payable on such date). Such a notice is also to explain how that sum has been arrived at.

315. The effect of new section 110A(4) is to ensure that, even where, in relation to any payment, the payer or, as appropriate, the payee, considers that no sum is actually payable, a "payment notice" to that effect must still be given. Such a notice is also to explain (for instance, because of any set-off or abatement) why no sum is believed to be payable.

316. New section 110A(5) provides that where the parties to a construction contract fail to include terms in their contract for the giving of a "payment notice" pursuant to new section 110A(1), the appropriate provisions of the relevant Scheme for Construction Contracts will apply. (The consequence of this is that terms providing for the giving of a "payment notice" by the payer to the payee will take effect as implied terms of their contract.)

317. In addition to the definition of "specified person", new section 110A(6) defines what is meant by "payee", "payer" and "payment due date".

318. New section 110B applies in a case where the parties to a construction contract have said in their contract that the payer (or a "specified person") is to give the payee a "payment notice" (at most five days after payments become due) and, in relation to a particular payment, no notice is actually given (or, if given, is late). New section 110B also applies in a case where the parties have failed to make provision in their contract for the giving of "payment notices", (such that the relevant Scheme for Construction Contracts has implied a payer "payment notice" term into the contract), and, in relation to a particular payment, no notice is actually given (or, if given, is late). In other words, new section 110B addresses the situation of a payer failing to serve a payment notice as required either by an express or by an implied term of the contract.

319. The effect of subsection (2) of new section 110B is (generally speaking) to allow the payee to give the payer a "payment notice" instead (one which complies with the requirements (as to content) of a "payment notice" given by a payee in cases where parties to a construction contract have agreed in their contract that it is the payee who gives this notice). A notice like this given by a payee in default of a payer's (or "specified person's") "payment notice" may be given at any time after the date by which the payer (or "specified person") ought to have given the "payment notice".

320. New section 110B(3) is a provision to postpone the "final date for payment" of a relevant sum where, pursuant to new section 110B(2), the payee serves a notice in default of the payer (or "specified person") giving a "payment notice". The effect of this new provision is to postpone the final date for payment of the sum in question by the same number of days after the date by which the payer (or "specified person") ought to have given the "payment notice", as the number of days after that date that the default notice was given. If, for example, a sum becomes payable on the 2nd day of the month (such that the date by which the "payment notice" should have been given was the 7th day) and must be paid, at the latest, on the 17th day, the effect of a payee's notice in default served on the 14th day would be to postpone the date on which the relevant sum must finally be paid to the 24th day of the month (17 +7 = 24).

321. Subsection *(*4) of new section 110B provides that where the parties had agreed in their contract that the payee was to notify the payer (or a "specified person") of the sum that the payee believed was due in relation to a payment and of how that sum was arrived at (what in the construction sector is known as a payee's "application"), such a notification is deemed to be a notice given pursuant to new section 110B(2) and, indeed, the payee cannot give a notice pursuant to new section 110B(2) in such a case.

322. *Subsection (1)* of clause 137 makes a consequential amendment to bring the wording of section 109(4) into line with that used in new sections 110A and 110B.

Clause 138 - Requirement to pay notified sum

323. Section 111 of the 1996 Act currently provides that a party to a construction contract may not withhold payment after the "final date for payment" of a sum due under the contract unless that party has given a notice of the intention to do so. *Subsection (1)* of clause 138 substitutes a new section 111 and, in doing so, replaces this provision in respect of "withholding notices" with (generally speaking) a requirement on the part of the payer to pay the sum set out in such a notice. New section 111 also makes provision for the sum in such a notice to, in effect, be challenged or revised by the giving of a type of counter-notice.

324. Subsection (1) of new section 111 provides that the payer must pay the "notified sum" – i.e. the sum set out in such notice - on or before the final date for payment of such sum, (to the extent that it is unpaid). Subsection (2) has the effect of explaining what is meant by "the notified sum". In relation to a payment, it is (as appropriate):

- the sum set out in a "payment notice" given by a payer (whether such notice is given pursuant to an express term or one implied into the contract pursuant to the relevant Scheme for Construction Contracts) or by a "specified person" (subsection (2)(a)*);*
- the sum set out in a "payment notice" given by a payee (subsection (2)(b));
- the sum set out in a payee's "payment notice" in default of one given by the payer or "specified person" (see paragraph 319 above) (subsection (2)(c));or
- the sum set out in a payee's "application", where such notification is deemed to be a notice given in default of one given by the payer (see paragraph 321 above) (subsection (2)(c)).

325. This requirement to pay the "notified sum" is intended further to facilitate "cash flow" by determining what is provisionally payable. What is properly and ultimately payable as a matter of the parties' contract is unaffected (see the decision of the Court of Appeal in *Rupert Morgan Building Services (LLC) Limited v Jervis* [2003] EWCA Civ 1563).

326. Subsection (3) of new section 111 provides that a payer (or a "specified person") may, in relation to a payment, give a notice to the payee of the payer's intention to pay less than the notified sum. Subsection (3) permits both the giving of such a counter-notice where the notice containing the "notified sum" was given by the payee and, also, the giving of such a counter-notice where the notice containing the "notified sum" was given by the payer – a payer may wish to revise the amount he proposes to pay because, for instance, he subsequently discovers that the work in question was unsound.

327. Subsection (4) prescribes the content of such a counter-notice. It must identify the sum which the payer believes is payable on the date that such notice is given and is to explain how that sum has been arrived at (for instance, by identifying any moneys already paid by the date of the notice or by identifying any set-off or abatement applied by the payer). Subsection (4) makes it clear that such counter-notice may be for a nil payment (e.g. as a consequence of any such set-off or abatement).

328. Subsection (5), read in conjunction with subsection (7), prescribes the timing of such a counter-notice. It must be given no later than such number of days as the parties have agreed in their contract before the final date for payment or, where there is no contractual provision, such number of days before the final date for payment as the relevant Scheme for Construction Contracts provides. Subsection (5)(b) has the effect of prohibiting the giving of such a counter-notice before the payee has actually given his "payment notice" (whether in a case where the parties had agreed in their contract that "payment notices" were to be given by the payee, or the payee is giving (or is deemed to have given) his "payment notice" in a default of the payer giving a "payment notice").

329. Subsection (6) has the effect that the amount set out in a counter-notice given under subsection (3) of new section 111 becomes the "notified sum" which the payer must pay pursuant to *subsection (1).*

330. Subsection (7) defines the "prescribed period". It is the period that has been agreed by the parties to the construction contract. Where there is no such agreement, the provisions of the relevant Scheme for Construction Contract will apply. The Schemes currently make this seven days before payment is finally due.

331. Subsection (8) states that subsection (9) applies where the payment notice provisions have been complied with but there is a dispute about the amount owing and the adjudicator decides that more money is owed than that set out in the relevant notice.

332. In such a case, subsection (9) provides that any such additional amount must be paid by the date which is the later of seven days from the date of the adjudicator's decision or the date which, but for the notice, would have been the final date for payment.

333. Subsection (10) has reference to the decision of the House of Lords in *Melville Dundas Limited (in receivership) and others v George Wimpey UK Limited and others* [2007] UKHL 18 (a transcript of which judgment can be found at **http://www.bailii.org/uk/cases/UKHL/2007/18.html/**). In that case, the House of Lords decided that the payer could legitimately withhold moneys, notwithstanding that no "withholding notice" under current section 111 of the 1996 Act had been given, in a case where the parties' contract had provided that moneys need not be paid in the event of the payee's insolvency. The key to that decision was the fact that the

insolvency occurred *after* the period for giving a "withholding notice" had expired i.e. it was not in the nature of things possible for the payer to have given such a notice beforehand.

334. Subsection (10) is intended to ensure that the *Melville Dundas* decision remains confined to insolvency situations alone (and is not interpreted to include other events which the parties may have specified in their contract). In the context of new section 111, it provides that the *subsection (1)* requirement to pay the "notified sum" does not apply where the contract allows the payer to withhold moneys upon the payee's insolvency and the payee becomes insolvent after the expiry of the period for giving a notice of intention to pay less than this sum (pursuant to *subsection (3)).*

335. Subsection (11) applies the existing definitions of "insolvent" in the 1996 Act (section 113) to *subsection (10).*

336. *Subsection (2)* of clause 138 makes consequential amendments to section 112 of the 1996 Act such that, in effect, relevant references in that section are to the new subsection (1*)* requirement i.e. the requirement to pay the "notified sum".

Clause 139 - Suspension of performance for non-payment

337. Section 112 of the 1996 Act permits a contractor to stop carrying out work under the contract in the event of non-payment by the other party.

338. *Subsection (2)* of clause 139 amends subsection (1) of section 112 to put it beyond doubt that a contractor may stop carrying out some, and not simply all, of the work in such a case.

339. Subsection (3) of clause 139 inserts a new subsection (3A) into section 112. The effect of this is to make the "party in default" (i.e. the party who has not paid) liable to pay to the contractor stopping work pursuant to section 112 a reasonable amount by way of the costs and expenses he incurs by stopping work (for instance, the payee's reasonable costs in redeploying staff or removing plant and equipment).

340. *Subsection (4)* of clause 139 amends subsection (4) of section 112. Section 112(4) provides that any period during which the contractor stops work in pursuance of this right to do so in a non-payment situation is to be disregarded in calculating any time period prescribed in the contract. The amendment extends this to any period in which the contractor stops work "in consequence of the exercise of" this right; with the effect that extra time is allowable – for instance, the time which the payee requires to remobilise staff or return plant and equipment to the relevant site.

FINANCIAL EFFECTS

341. Implementation of the measures in the Bill will mean some costs for the public sector. The net cost will be approximately £35 million in 2010/11 and the same per year, subject to inflation, thereafter.

342. Duties relating to promotion of democracy (Part 1, Chapter 1), will have net cost of £22.3 million per annum, falling on local authorities, which will be funded via the new burdens principle. This is based on the assumption that the duties will require two employees working in this area and a publicity budget for each county and unitary authority. Each district authority will require 0.5 employees and a publicity budget.

343. Petitions to local authorities (Part 1, Chapter 2), will have a net cost of just over £3 million, falling on local authorities.

344. At this stage, Housing (Part 1, Chapter 4) will involve only minimal costs. Clause 25 simply bestows a power to fund on the Secretary of State - it does not confirm or provide those funds. We have made provision in the current spending review period of £1.5million each year to support setting it up and its on-going work. Clause 26 is a power for the Secretary of State to nominate a body fulfilling certain criteria and for the new social housing regulator to consult that body. This will involve a minor administrative cost to the regulator.

345. Governance (Part 2, Chapter 1), will incur a cost of £1.2 million on local authorities per annum This cost is based on the assumption of one designated full time overview and scrutiny officer in each top-tier local authority.

346. Local government boundary and electoral change (Part 3). Based on the monies allocated to the electoral boundary function in the Electoral Commission's previous budgets we would estimate that the new Boundary Committee will cost approximately £3 million to £4 million a year. However, monies provided to the new Boundary Committee will ultimately be a matter for Parliament and will vary year on year dependent on workloads.

347. The local authority assessment duty (Part 4), will incur a cost of £7.6 million per annum on local authorities. This cost will be funded by central government under the new burdens principle. This cost is based on case studies of good practice and on the costs for the Joint Strategic Needs Assessment. It assumes that a significant number of local authorities will undertake joint assessments and that local authorities that already undertake assessments will face less costs than those authorities who do not already undertake these assessments. See also paragraph 358 below.

348. The regional strategy (Part 5) will incur no new costs.

349. The Government will not fund the costs associated by setting up or running an EPB as we expect EPBs to be cost-neutral, or to provide savings for the local authorities involved, through delivering efficiencies.

PUBLIC SECTOR MANPOWER IMPLICATIONS

350. Implementation of the measures in the Bill will mean a slight increase in public sector manpower for local authorities.

351. The duties in Chapter 1 of Part 1 will require an additional two employees for each top-tier local authority and 0.5 employee for lower-tier authorities.

352. On Part 1, Chapter 2, petitions to local authorities, we expect to have some additional public service manpower implications however we expect these to vary in each local authority according to population size.

353. Governance (Part 2, Chapter 1), will result in an additional one designated full time Overview and Scrutiny officer in each top-tier local authority.

354. Local government boundary and electoral change (Part 3) will have no public service manpower implications. Boundary functions are already undertaken through the Electoral Commission. This bill will remove the boundary functions from the Electoral Commission and set up a new independent Boundary Committee. We expect the Electoral Commission to agree a transfer scheme (under clause 56) with the new Boundary Committee, which will determine how many staff will be transferred from the Electoral Commission to the Boundary Committee.

355. Local authority assessment duty (Part 4), is likely to have public service manpower implications, but this will vary amongst local authorities depending on their existing capacity.

IMPACT ASSESSMENT

356. There are three parts of the Bill where an impact assessment has been completed. They are Part 1 Chapter 1: the duties relating to promotion of democracy, Part 4: the duty on local authorities to undertake an economic assessment of their area and Part 8: the construction contracts provisions. All other areas of the bill have not completed an impact assessment as they do not incur a cost to the public sector of over £5 million and have no impact on business or the third sector.

357. Part 1, Chapter 1: duties in relation to the promotion of democracy will have an annual net cost of £22.3 million. This is based on the assumption that the duties will require two employees working in this area and a publicity budget for each county and unitary authority. Each district authority will require 0.5 employees and a

publicity budget. There are a number of non-monetised benefits including more effective local co-ordination and promotion of democratic and civic roles.

358. Part 4: Local authority economic assessment duty, will have an estimated cost of £7.6 million per annum to local authorities which will be funded by central government. However, the legislation is expected to produce a net benefit of £22.8 million over the course of 9 years. We expect that the evidence that will be provided to local authorities through the implementation of the duty will enable them to more effectively deliver services in relation to economic development leading to estimated efficiency savings of 1% of investment in economic development.

359. Part 8: Construction contracts, there will be no adverse effect on business as a result of the amendments. On the contrary, the Government believes that there will be significant savings and benefits as follows:

- Improvements to the adjudication framework should save the construction industry an estimated £1 million per annum in aggregate or £600 on average per adjudication (3% of the total cost of the adjudication);

- the deregulatory amendments to the "payment notice" requirements in the legislation should save the construction industry approximately £5.8 million in administration costs per annum, for example by removing the requirement that payment notices should be served where the contract already provides for notices from third parties i.e. payment certificates (see the references to "a specified person" at new sections 110A and 110B inserted into the Housing Grants, Construction and Regeneration Act 1996 by clause 137); and

- improvements to the payment framework to ensure contracts create clear and timely entitlements to interim payment should save an estimated 1% – 1.5% on the average project – reflected across the construction sector in England and Wales, this represents £1 billion - 1.5 billion.

This impact assessment can be accessed on the website of the Department for Business, Enterprise and Regulatory Reform:

http://www.berr.gov.uk/sectors/construction/constructionact/page13956.html

360. All of the above impact assessments are available online at www.communities.gov.uk and hard copies are also available in the vote office.

EUROPEAN CONVENTION ON HUMAN RIGHTS

361. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

Baroness Andrews, Parliamentary Under-Secretary at the Department for Communities and Local Government has made the following statement:

"In my view the provisions of the Local Democracy, Economic Development and Construction Bill [HL] are compatible with the Convention rights".

362. The Local Democracy, Economic Development and Construction Bill engages Article 1 of the First Protocol ("A1P1") of the European Convention of Human Rights and Article 8 ECHR but does not breach them.

Audit of entities connected with local authorities

363. Two provisions in Chapter 2 of Part 2 of the Bill confer powers for auditors of local authority entities to require the production of documents. Clause 37 applies statutory provisions from the Companies Act 2006 and the Friendly and Industrial and Provident Societies Act 1968 which enable auditors to require the production of documents necessary for the carrying out of the statutory audit of the entity's accounts. Clause 40(1) confers a right of access to documents necessary for the purpose of the exercise of the function of making a report in the public interest. Clause 44 then enables the audit authority also to require the entity to produce to it any document which the auditor was able to access.

364. Article 8 ECHR confers a right to respect for family life, the home and correspondence. Article 8(2) provides that there shall be no interference by a public authority with the exercise of that right except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

365. It might be said that the exercise of an auditor's right to require information and explanation could infringe this right – for example as regards the right to respect for the privacy of correspondence. It is considered that the extent to which there is any such infringement is justifiable under Article 8(2) as being in accordance with the law, in pursuit of one of the legitimate aims specified in the Article – namely the economic well-being of the country – by ensuring that accounts are effectively audited. The provision is necessary in a democratic society to ensure the accuracy of company accounts and to protect shareholders who rely on the accuracy of auditors' reports.

366. Insofar as there is an enhanced right to obtain information from entities connected with local authorities or from individuals, in connection with the production of a report in the public interest, it is considered that any interference remains proportionate. The aim of the proposals is to apply a level of audit in cases where public money is being administered to some degree by private entities, which is similar to that which applies to local authorities. It is a legitimate aim within the ambit

of Article 8(2) to protect the economic well-being of the country, and this is advanced if there is greater certainty that public money is properly and lawfully expended. The enhanced power to obtain information contained in clause 40 applies only in cases where there is a need for that information for the purposes of investigating and reporting on a matter which is in the public interest to be brought to the attention of the public.

367. The Audit Commission and Attorney General for Wales have the role of ensuring that persons appointed under these provisions maintain proper standards. Those bodies are permitted to access information from entities which have been audited. It would be unlawful for either of the public bodies to make use of any information obtained from any person for any purpose other than to secure the maintenance of proper standards by persons appointed as auditors.

Construction Contracts

368. Various clauses in Part 8 of the Bill interfere with what the parties may have provided in their contracts regarding payments. For instance, *subsection (2)* of clause 136 renders ineffective terms in such contracts which make payments to a contractor dependent upon the payer having received a certificate (e.g. from an architect) in a superior contract and clause 138 principally provides that the payer is required to pay the amount specified in a "payment notice" (notwithstanding that such amount might not otherwise be the amount that is payable).

369. In a broad sense, such clauses could be said to engage A1P1 (the right to the peaceful enjoyment of one's possessions). Any such interference is, in a sense, "neutral", however - to the extent that one party to the contract is disadvantaged by paying more or receiving less money, the other benefits by receiving or withholding more. To the extent that A1P1 is engaged, it is considered that such interference has a legitimate aim - securing and facilitating "cash flow" in order to mitigate the very real financial hardship suffered by many, particularly smaller, sub-contractors. It is considered that such interference is also proportionate to that aim. For example, a "payment notice" can be met with a counter-notice and the sums in such notices are *provisionally* payable only - they do not affect what is properly and fundamentally payable as a matter of contract law pursuant to the parties' contract.

COMMENCEMENT DATES

370. Part 1, Chapters 1 and 2 will come into force in relation to England, on a day appointed by the Secretary of State, or in relation to Wales, on a day appointed by the Welsh Ministers.

371. Part 1, Chapter 3 will come into force on a day appointed by the Secretary of State.

372. Part 1, Chapter 4, relating to the establishment, assistance and consultation of bodies representing tenants will come into force on the day the Act is passed.

373. In Part 2, section 27 will come into force on a day appointed by the Secretary of State. Sections 28 and 29 come into force two months after the Act is passed. Chapter 2 will come into force on a day appointed by the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales.

374. In Part 3, clauses 56, 58, 62 and Schedule 3, which make transitional provisions about the establishment of an independent Boundary Committee under Part 3, will come into force the day the Act is passed. All other provisions in Part 3 will come into force on such day as appointed by the Secretary of State by order.

375. Parts 4 and 7 come into force two months after the Act is passed.

376. Parts 5 and 6 come into force on a day appointed by the Secretary of State.

377. Part 8 comes into force on a day appointed by the Welsh Minister, in relation to construction contracts which relate to the carrying out of construction operations in Wales and on a day appointed by the Secretary of State for other construction contracts. So far as Part 8 extends to Scotland, the Scottish Ministers will appoint the day of commencement for Part 8.

LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION BILL [HL]

EXPLANATORY NOTES

These notes refer to the Local Democracy, Economic Development and Construction Bill [HL] as introduced in the House of Lords on 4th December 2008 [HL Bill 2]

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