These notes refer to the Constitutional Reform and Governance Bill as brought from the House of Commons on 3rd March 2010 [HL Bill 40]

CONSTITUTIONAL REFORM AND GOVERNANCE BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Constitutional Reform and Governance Bill as brought from the House of Commons on 3rd March 2010. They have been prepared by the Ministry of Justice, in conjunction with the Cabinet Office, the Foreign and Commonwealth Office, the Home Office and HM Treasury. These notes have been prepared in order to assist the reader of the Bill. 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.

3. The Constitutional Reform and Governance Bill was initially introduced in the House of Commons on 20th July 2009 and was carried over from the previous Parliamentary session under Standing Order No. 80A.

OVERVIEW OF THE BILL

4. The Constitutional Reform and Governance Bill has 13 Parts and 15 Schedules. The explanatory notes are divided into 13 Parts, reflecting the structure of the Bill. A summary of each Part and background in relation to the Bill as a whole and each Part separately is provided below. Commentary on each Part is then set out in number order, with the commentary on the various Schedules included in the section to which they relate.

SUMMARY

5. A summary of the Bill is set out below.

Part 1: The Civil Service etc

6. Part 1 of the Bill provides for:

- A power for the Minister for the Civil Service to manage the Civil Service, and a parallel power for the Secretary of State in relation to the Diplomatic Service;

- A requirement for a code of conduct for civil servants which specifically requires civil servants to carry out their duties in accordance with the core Civil Service values of integrity, honesty, objectivity and impartiality;
- The establishment of a Civil Service Commission with functions in relation to selections for appointments to the Civil Service and in relation to hearing complaints that the Civil Service and diplomatic service codes have been breached;
- A requirement for appointments to the Civil Service to be made on merit on the basis of fair and open competition;
- A requirement for a separate code of conduct for Special Advisers which provides that Special Advisers may not authorise the expenditure of public funds, exercise any power in relation to the management of any part of the civil service (except other Special Advisers) or otherwise exercise any statutory or prerogative power.

7. The new statutory Civil Service Commission will take on the functions of the existing Civil Service Commissioners. The Civil Service Commission will publish principles on the application of the fundamental requirement that selections for appointment be made on merit on the basis of fair and open competition, and will investigate complaints under the code of conduct for civil servants. The First Civil Service Commissioner and the other Civil Service Commissioners will be the members of the new Civil Service Commission. Transitional arrangements will enable those serving as Civil Service Commissioners automatically to move across to the new Commission when it becomes operational.

8. Whilst the Bill removes the prerogative powers for the management of the Civil Service, the prerogative will be retained in relation to security vetting and the management of the parts of the Civil Service of the State which will not be covered by the provisions in Part 1.

9. Chapter 4 of Part 1 removes existing nationality restrictions placed on employment or holding office in a civil capacity under the Crown. This will open up employment or holding office in a civil capacity under the Crown to applicants of any nationality, apart from in relation to those posts restricted under rules made by a Minister of the Crown.

10. It does not deal with immigration or work permits and does not affect the requirements for non-UK nationals to obtain leave to remain and work in the UK before they can take up employment.

Part 2: Ratification of Treaties

11. Part 2 of this Bill puts Parliamentary scrutiny of treaty ratification on a statutory footing and gives legal effect to a resolution of the House of Commons or Lords that a treaty should not be ratified. This means that should the House of Commons take the view that the Government should not proceed to ratify a treaty, it can resolve against ratification and thus make it unlawful for the Government to ratify the treaty. The House of Lords will not be able to prevent the Government from ratifying a treaty, but if they resolve against ratification the

Government will have to produce a further explanatory statement explaining its belief that the agreement should be ratified.

Part 3: Referendum on Voting Systems

12. Part 3 of the Bill provides for a referendum to be held, no later than 31st October 2011, on changing the voting system for Parliamentary elections. The Bill defines the choice to be offered in a referendum: retaining the existing 'first past the post' system or moving to an 'alternative-vote system'. The expression 'alternative-vote system' is defined in the legislation. A Command Paper will be laid before Parliament describing the exact alternative vote system that is proposed. The date and question for the referendum poll must be set by order made by statutory instrument, to be approved by affirmative resolution procedure.

Part 4: Parliamentary Standards etc

13. Part 4 of the Bill amends the Parliamentary Standards Act 2009 ("the 2009 Act") and makes provision for the Independent Parliamentary Standards Authority ("the IPSA") to make a scheme providing for the payment of resettlement grants for Members of the European Parliament who have opted-out of the common arrangements under the single Statute for MEPs which came into effect on 14th July 2009 ("opted-out MEPs"). It also makes provision for IPSA to make a MPs' pension scheme and to make a scheme dealing with the administration and management of the Parliamentary Contributory Pension Fund and also for the Minister for the Civil Service to make a pension scheme in relation to Ministers and certain other office holders.

14. The amendments to the 2009 Act provide for:

- the appointment by IPSA of a Compliance Officer for the Independent Parliamentary Standards Authority ("the Compliance Officer") to police the MPs' expenses regime;
- the abolition of the office of Commissioner for Parliamentary Investigations;
- a review by the Compliance Officer of a refusal by IPSA to pay the whole or part of an MP's expenses claim;
- the investigatory and enforcement powers of the Compliance Officer in relation to suspected and proven overpayments of MPs' expenses;
- MPs' rights of appeal to the First-tier Tribunal against the decisions of the Compliance Officer;
- the abolition of IPSA's functions in relation to MPs' financial interests;
- IPSA to be under certain duties to promote efficiency, cost-effectiveness and transparency in the way it discharges its functions;
- IPSA to determine MPs' pay;
- the duty on IPSA to pay MPs' salaries and allowances to be subject to the exercise of the disciplinary powers of the House of Commons in relation to an individual MP;
- the extension of the membership of the Speaker's Committee for the Independent Parliamentary Standards Authority to include three lay members; and

- the repeal of the sunset provisions in section 15 of the 2009 Act.

Part 5: The House of Lords

15. Part 5 of the Bill contains provisions to end the system of by-elections for making hereditary peers members of the House of Lords. It also contains provisions for the removal of members of the House of Lords in specified circumstances. The Bill provides that when a member of the House of Lords (a) is convicted of an offence and sentenced to a term of imprisonment exceeding one year or indefinitely, or (b) is made the subject of a bankruptcy restrictions order or undertaking (or equivalent in Scotland or Northern Ireland) or a debt relief restrictions order or undertaking, that person will cease to be a member of the House of Lords.

16. The Bill also provides a power for the House of Lords to discipline its members through either expulsion or suspension and to withhold a writ of summons from a member who has been expelled or suspended.

17. The Bill also provides for a peer, whether life or hereditary, to resign from the House. It also provides for peers who have resigned or been excluded from the House to disclaim the peerage.

Part 6: Tax status of MPs and members of the House of Lords

18. Part 6 of the Bill provides that Members of Parliament and the Lords Temporal are to be deemed to be resident, ordinarily resident and domiciled ("ROD") in the United Kingdom for the purposes of income tax, capital gains tax and inheritance tax. As a result, MPs and Lords will be liable to pay these UK taxes on their worldwide income, gains and assets regardless of their actual status in the UK, and will be unable to access the remittance basis of taxation.

19. The deemed status will start from the tax year 2010-2011, and will apply to individuals in whole tax years (including where an individual is a member only for part of a tax year). The deemed status will apply to MPs once they have taken the oath of allegiance, from the start of the new Parliament in 2010. It will apply to members of the House of Lords, with the exception of the Lords Spiritual and those temporarily disqualified from sitting in the House by virtue of being an MEP or a judge, following a three month transitional period. During the transitional period members of the House of Lords (except the Lords Spiritual) will be able to state that they do not wish to be subject to the deemed status and leave the House without the deemed status applying to them. Those who remain members at the end of the three month transitional period will automatically be deemed ROD.

Part 7: Public Order

20. *Clause 61* of the Bill provides for the repeal of sections 132 to 138 of the Serious Organised Crime and Police Act 2005, thereby removing the distinct legislative framework for the policing of demonstrations around Parliament. Repeal of these sections will remove the

requirement to give notice of demonstrations in the designated area around Parliament and the offence of holding such demonstrations without the authorisation of the Metropolitan Police Commissioner.

21. *Clause 61* also gives effect to *Schedule 9* which inserts new powers on maintaining access to Parliament into Part 2 of the Public Order Act 1986. Those provisions give the police discretionary powers to impose conditions on public processions or assemblies around Parliament in order to maintain access to and from the Palace of Westminster. Conditions may be imposed only where in the senior officer's reasonable opinion they are necessary for ensuring that specified requirements are met in relation to maintaining access to Parliament. The requirements which may be specified in a statutory instrument might include requirements specifying entrances at or by the Palace of Westminster or Portcullis House which must be kept open, and to and from which there must always be an access route for pedestrians and vehicles through the area around Parliament.

Part 8: Human Rights Claims against Devolved Administrations

22. Part 8 of the Bill inserts a time limit for actions against the Scottish Ministers under the Scotland Act 1998, the Northern Ireland Ministers or Departments under the Northern Ireland Act 1998 or the Welsh Ministers under the Government of Wales Act 2006 where it is claimed that they have acted incompatibly with Convention rights.

Part 9: Courts and Tribunals

23. Part 9 of the Bill provides for:

    a. a guarantee that the salaries of judicial office holders in certain tribunals may not be reduced;
    b. a correction of a cross-reference in the Courts Act 1971;
    c. the removal of the Prime Minister's role in the process for appointing Justices of the Supreme Court;
    d. a new method of obtaining medical assessments from candidates for judicial office;
    e. confidential information being disclosed to the police for specified purposes relating to the prevention or investigation of crime including for the purposes of criminal proceedings;
    f. the removal of magistrates from Schedule 14 to the Constitutional Reform Act 2005; and
    g. a guarantee that the salaries of certain judicial office holders in Northern Ireland may not be reduced.

Part 10: National Audit

24. This Part of the Bill modernises the governance arrangements for national audit. It continues the office of Comptroller and Auditor General ("C&AG") as an independent officer of the House of Commons but limits the term of appointment to that office to ten years. It provides

for the establishment of a new corporate body, the new National Audit Office ("NAO"), whose functions will include providing resources for the C&AG's functions, monitoring the carrying out of those functions and approving the provision of certain services. In common with most other corporate structures, the NAO will have a majority of non-executives and be led by a non-executive chair. The C&AG will be the NAO's chief executive but will not be an NAO employee. Within the new governance framework, the C&AG continues to have complete discretion in the carrying out of the C&AG's functions.

25. Part 10 will confer legislative competence on the National Assembly for Wales to pass legislation concerning the governance arrangements of the Wales Audit Office.

Part 11: Transparency of Government Financial Reporting to Parliament

26. Part 11 contains two clauses. *Clause 83* amends the Government Resources and Accounts Act 2000 ("the GRAA 2000") in order to allow the Treasury to issue directions about the way departments prepare Supply Estimates and to direct that such Estimates are to include information relating to "designated bodies". It also includes provision preventing the designation of a body if it is funded solely from the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund and makes consequential amendments to the GRAA 2000. *Clause 84* amends the Government of Wales Act 2006 to make corresponding provision in relation to Wales.

Part 12: Public Records and Freedom of Information

27. Part 12 of the Bill amends the Public Records Act 1958. The effect of the amendment is that any public record selected for permanent preservation and not required for an administrative purpose or other special reason must be transferred to the Public Record Office (now part of the National Archives) or other place of deposit within 20 years of its creation. The amendment reduces this time period from 30 years. This part also creates a power for the Lord Chancellor to make transitional arrangements by order relating to the reduction from 30 to 20 years. The 20 year limit will be subject to any such order for ten years from the time the amendment commences.

28. This part also amends the Freedom of Information Act 2000. The main effect of the amendment is to reduce the time during which some exemptions under that Act to the duties to confirm that information is held and to provide that information can apply.

29. The amendments also change the exemption in the Freedom of Information Act 2000 for information relating to communications with the Royal Family and Royal Household. The change increases the protection for such information by making the exemption an absolute exemption so far as it relates to communications with the Sovereign, the heir to the Throne and the second in line to the Throne or those acting on their behalf.

30. The amendments also change the length of the period during which this exemption can apply. For information relating to communications with the Sovereign, the heir to the Throne, the second in line to the Throne and other members of the Royal Family or those acting on their behalf this will be a period of 20 years from the creation of the record in which the information is contained or a period of 5 years from the date of the death of the relevant member of the Royal Family, whichever is longer. For information relating to communications with the Royal Household, when that information does not relate to communications on behalf of the Sovereign, the heir to the Throne, the second in line to the Throne or other members of the Royal Family, this will be for a period of 20 years from the creation of the record in which the information is contained or a period of 5 years from the date of the death of the Sovereign reigning when the record containing the information was created, whichever is longer.

31. The amendments to the Freedom of Information Act 2000 do not apply to Northern Ireland public authorities, the Northern Ireland Assembly or Northern Ireland departments and for these bodies the effect of the Freedom of Information Act 2000 prior to these amendments is preserved.

Part 13: Miscellaneous and Final Provisions

Clause 87: section 3 of the Act of Settlement

32. *Clause 87* of the Bill addresses an issue concerning section 3 of the Act of Settlement. This issue has arisen because of modifications in relation to that section made by the Electoral Administration Act 2006. It has been suggested that these modifications could be interpreted as having inadvertently cast doubt on whether Commonwealth and Republic of Ireland citizens are eligible for membership of the House of Lords and to hold certain offices under the Crown. Although the Government does not agree with this suggestion, *clause 87* is to remove any uncertainty about the interpretation of section 3.

Clauses 88 and 89: Referendums – regulation of permitted participants

33. *Clauses 88 and 89* make provision to improve the regulation of spending by individuals and organisations during a referendum campaign. *Clause 88* does so by ensuring that each permitted participant (i.e. individual or organisation that wishes to spend more than £10,000 on campaigning) must have as their person made statutorily responsible for reporting that participant's income and expenditure someone who is not already similarly responsible for another participant. *Clause 89* provides that where individuals and/or organisations act in concert to campaign together for a certain result in the referendum they each are treated as having incurred expenditure for that purpose, even where only one of them may in fact have done so.

Clause 90: Parliamentary elections: counting of votes

34. *Clause 90* places a duty on returning officers to take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within four hours of the close of poll (polling closes at 10pm). Where the counting of votes does not begin within this period returning officers are required to publish a statement within 30 days of the poll date and send it to the Electoral Commission within that period. The statement should explain why the counting of votes did not start within four hours, specify the time at which the counting of votes began, and set out the reasonable steps taken by the returning officer. The clause also obliges the Commission to list those constituencies that did not start the count within four hours of the close of poll in its statutory report on the conduct of the election under the Political Parties, Elections and Referendums Act 2000. The clause will come into force upon the Bill achieving Royal Assent.

Clause 91: Electoral Commission accounts in relation to specified matters

35. *Clause 91* amends Schedule 1 to the Political Parties, Elections and Referendums Act 2000 to provide that, in addition to preparing accounts for each financial year, the Electoral Commission must prepare accounts in relation to any matter specified in a direction given to it by the Treasury. This ensures that the Treasury can require the Electoral Commission to prepare separate accounts regarding its expenditure in connection with any particular matters such as a referendum. Any accounts prepared by the Commission in respect of a financial year or in relation to a matter specified by the Treasury must be prepared in accordance with any directions given for that purpose by the Treasury. In addition, the accounts will be subject to examination and certification by the Comptroller and Auditor General before being laid before Parliament.

BACKGROUND

36. The provisions contained within the Constitutional Reform and Governance Bill stem from *The Governance of Britain* Green Paper (Cm 7170) published on 3rd July 2007. This document can be found at:

http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf

37. This Green Paper set out the Government's proposals for constitutional renewal. It stated that those goals are:

- To invigorate our democracy;
- To clarify the role of Government, both central and local;
- To rebalance power between Parliament and the Government, and give Parliament more ability to hold the Government to account; and
- To work with the British people to achieve a stronger sense of what it means to be British.

38. As part of this wider agenda of work, the Green Paper set out the Government's intention to reform the complex and multifaceted role of the Attorney General, to alleviate conflicts or the appearance of them. The Government made a commitment to explore the future of its role in judicial appointments. The Government sought to improve the ways in which people can influence decisions and participate in the political process. One of the specific proposals here was to review restrictions on people's rights to protest in the area around Parliament.

39. The Green Paper proposed that the power to make key decisions that affect the whole country, such as whether to ratify treaties, should not stem solely from the Royal Prerogative, but rest on a more formal footing, with Parliament key in determining the exercise of the power. Similarly, the Government proposed that the governance of the Civil Service, also based on the Royal Prerogative, and the fundamental values of the Civil Service – impartiality, integrity, honesty and objectivity – should be set out in statute.

40. Following the publication of the Green Paper, the Government published a number of consultation documents on particular policies. These are referred to where relevant in the background to each separate Part of the Bill.

41. In March 2008, the Government published a draft Constitutional Renewal Bill. This can be found at:

http://www.official-documents.gov.uk/document/cm73/7342/7342_ii.pdf

42. It contained draft provision in relation to:
    - Demonstrations in the vicinity of Parliament;
    - The Attorney General and prosecutions;
    - Courts and tribunals;
    - Ratification of treaties; and
    - The Civil Service.

43. The draft Bill was subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament. The Joint Committee reported in July 2008 and its report (HL Paper 166 and HC Paper 551) can be found at:

http://www.publications.parliament.uk/pa/jt200708/jtselect/jtconren/166/166.pdf

44. In addition, the Justice Committee of the House of Commons held an enquiry into the provisions relating to the Attorney General. Its report (Fourth Report of the 2007-8 Session, HC 698) can be found at:

http://www.publications.parliament.uk/pa/cm200708/cmselect/cmjust/698/69802.htm

45. The Public Administration Committee of the House of Commons also held an enquiry which largely focused on the Civil Service provisions of the draft Bill, although it did also consider

the proposals on Treaties. Its report (Tenth Report of the 2007-8 Session, HC 499) can be found at:

http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/499/49902.htm

46. Since the draft Bill was published, the Government has added provisions to the Bill on:
    - A referendum on voting systems;
    - Parliamentary standards;
    - Resignation from the House of Lords;
    - Conduct and discipline in the House of Lords;
    - The tax status of MPs and members of the House of Lords;
    - Time limits for human rights cases brought against Ministers within the Devolved Administrations under the devolution Acts;
    - National audit;
    - Transparency of Government financial reporting to Parliament;
    - Public Records and Freedom of Information;
    - Section 3 of the Act of Settlement;
    - Counting of votes at parliamentary elections.

47. The following provides background on each Part of the Bill.

Part 1 Background - The Civil Service etc

48. The basis of the Civil Service as we know it today dates back to the Northcote-Trevelyan Report of 1854. The Report set out the enduring core values and key principles that underpin the role and governance of the Civil Service – integrity, honesty, impartiality and objectivity. The Report also recommended that these values and principles should be enshrined in legislation. However, no Government ever took forward this recommendation. Instead, over the last 150 years or so, Ministers have exercised powers in relation to the Civil Service under the Royal Prerogative.

49. In recent years, the merits of Civil Service legislation have been the subject of considerable debate, and there have been growing calls to implement the Northcote-Trevelyan recommendation and bring forward legislation for the Civil Service. In 2003, the House of Commons Public Administration Select Committee published a draft Civil Service Bill and, building on this, the Government launched a consultation *A draft Civil Service Bill – A Consultation Document* (Cm 6373, November 2004). This document can be found at:

    http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/consultation_bill_cm_6373.pdf

50. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3).

51. These consultation processes and other public debates have revealed a considerable body of opinion in favour of Civil Service legislation. Therefore, the Government announced in July 2007, in its Green Paper, *The Governance of Britain* (Cm 7170), that it intended to bring forward legislation which would "include measures which will enshrine the core principles and values of the Civil Service in law". The Joint Committee on the draft Constitutional Renewal Bill concluded that the Civil Service provisions received "overwhelming support".

52. Section 3 of the Act of Settlement makes provision about those who may enjoy any office or place of trust, either civil or military, under the Crown.

53. Section 6 of the Aliens Restriction (Amendment) Act 1919 provides that no alien shall be appointed to any office or place in the Civil Service of the State. An alien is defined in section 51(4) of the British Nationality Act 1981 as a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland.

54. Under the Aliens' Employment Act 1955 aliens can be employed if they are either (i) appointed in a country outside the UK, the Channel Islands and the Isle of Man in a capacity appearing to the Minister to be appropriate for aliens, or (ii) employed in accordance with a certificate issued by a Minister with the consent of the Minister for the Civil Service.

55. The European Communities (Employment in the Civil Service) Order 1991 (S.I. 1991/1221) amended the Aliens' Employment Act 1955 so as to allow nationals of member States of the European Communities (and their spouses and certain children) to take up civil employment under the Crown apart from "public service" posts within the meaning of what is now the Treaty on the Functioning of the European Union (see Article 45(4), which excludes from the freedom of movement of workers posts in the "public service").

56. The European Communities (Employment in the Civil Service) Order 2007 (S.I. 2007/617) amended the Aliens' Employment Act 1955 to broaden the category of person who could take up civil employment under the Crown to include "a relevant European" (EEA nationals, Swiss nationals and qualifying Turkish nationals and certain family members of EEA, Swiss and qualifying Turkish nationals).

57. The provisions in Chapter 4 were previously in the Crown Employment (Nationality) Bill, a Private Members' Bill, which has been brought forward on a number of occasions and received Government support.

Part 2 Background - Ratification of Treaties

58. The current procedure for the Parliamentary scrutiny of treaties is known as the Ponsonby Rule. It provides that treaties which do not come into force on signature, but which instead come into force later when governments express their consent to be bound through a formal act such as ratification, must be laid before both Houses of Parliament as a Command Paper for a minimum period of 21 sitting days. In 2000, the Government undertook that it would

normally provide the opportunity to debate any treaty involving major political, military or diplomatic issues, if the relevant select committee and the Liaison Committee so requested. Explanatory Memoranda are provided with each treaty laid before Parliament to keep it informed about the UK's treaty intentions. Parliamentary debates on treaties are rare. At present there is no legal effect to objections raised by Parliament, in a resolution of either House or by a Select Committee, to the ratification of an agreement.

59. *The Governance of Britain* Green Paper (Cm 7170, July 2007) set out the Government's belief that Parliament should have the right to scrutinise treaties prior to their ratification. In the Green Paper the Government went on to propose that the procedure for allowing Parliament to scrutinise treaties should be formalised and committed to consulting on an appropriate means for putting the Ponsonby Rule on a statutory footing.

60. A consultation document *The Governance of Britain – War powers and treaties: Limiting Executive powers* (Cm 7239) was published on 25th October 2007. The document can be found at:

http://www.justice.gov.uk/docs/cp2607a.pdf

61. The document invited comments on an appropriate means to put the Ponsonby Rule on a statutory footing. The consultation period ran until 17th January 2008. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3). The draft Bill provided for treaties to be laid before Parliament for 21 sitting days prior to ratification with provision for flexibility and exceptions based on established practice and for the effect of a negative vote in either House of Parliament.

Part 3 Background – Referendum on Voting Systems

62. Elections to the House of Commons are currently run under the 'first past the post' method of voting. Under this system, voters place a cross in the box next to the candidate they wish to vote for. The candidate with the greatest number of votes in the constituency wins and is elected as the MP.

63. The Government published a command paper, *Review of Voting Systems: the experience of new voting systems in the United Kingdom since 1997* on 24th January 2008. The document can be found at:

http://www.justice.gov.uk/publications/voting-systems-review.htm

64. The Prime Minister followed the review with a statement to the House of Commons on constitutional renewal on 10th June 2009 in which he said:

> "Last year, we published our review of the electoral system and there is a long-standing debate on this issue. I still believe that the link between the MP and constituency is

essential and that the constituency is best able to hold its MP to account. We should be prepared to propose change only if there is a broad consensus in the country that it would strengthen our democracy and our politics by improving the effectiveness and legitimacy of both Government and Parliament and by enhancing the level and quality of representation and public engagement. We will set out proposals for taking this debate forward."[1]

These proposals expand on this commitment. The alternative vote system retains the idea of the single member constituency within a majoritarian voting system, whilst seeking to improve the present arrangements. In 2005, because in order to win under the existing 'first past the post' system a candidate requires only a plurality of the votes (in other words, to achieve more votes than any of the other candidates) only 34% of members were elected with the support of more than half of the voters. Under the form of the alternative vote specified in the Bill, candidates must achieve 50% of the votes left in the count in order to be elected. The alternative vote also contrasts with the existing electoral system in that voters may express a preference for as many of the candidates on the ballot paper as they wish. However, a key similarity between the two systems is that under both, a single member is elected to represent a single geographic constituency.

Part 4 Background – Parliamentary Standards etc

65. The Government introduced the Parliamentary Standards Bill in June 2009 in response to public concerns over the issue of MPs' expenses. The Bill received Royal Assent on 21st July 2009. The Parliamentary Standards Act 2009 ("the 2009 Act");

- established the Independent Parliamentary Standards Authority ("IPSA") with responsibility for:
  - paying the salaries of MPs in accordance with the relevant resolutions of the House of Commons;
  - drawing up the MPs' allowances scheme and authorising and making payments to MPs under the scheme; and
  - preparing a code of conduct relating to MPs' financial interests.
- established a Commissioner for Parliamentary Investigations with powers to investigate any overpayments under the allowances scheme and failures to comply with the requirements in the code relating to the registration of financial interests; and
- created a Speaker's Committee for the Independent Parliamentary Standards Authority responsible for approving the selection of the members of IPSA and scrutinising IPSA's estimate of the use of resources.

66. The Committee on Standards in Public Life launched a review of MPs' expenses on 23rd April 2009. The Committee's report "MPs' expenses and allowances – supporting

[1] HC Deb 10th June 2009 c798

Parliament, safeguarding the taxpayer" (Cm 7724) was published on 4th November 2009. The report contained 60 recommendations the majority of which related to the details of the allowances scheme and, as such, fall to IPSA to implement as part of its responsibility for preparing an allowances scheme. However, a number of the recommendations relate to the role and functions of IPSA and, as such, require primary legislation to implement, including amendments to the 2009 Act. The Government announced in a Written Ministerial Statement of 10th December 2009 (Hansard, col. 33WS-38WS - http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091210/wmstext/91210m0002.htm#column_33WS) that it proposed to bring forward legislation to implement 10 of the 60 recommendations. The relevant recommendations dealt with the following matters:

- Ensuring that the House of Commons is empowered to remove an MP's right to receive a resettlement grant in cases of significant abuse (recommendation 33);
- IPSA to be under statutory duties as to efficiency, cost-effectiveness and transparency (recommendations 41, 49 and 60);
- Abolition of IPSA's functions in respect of the regulation of MPs' financial interests and the associated code of conduct (recommendation 42);
- Responsibility for determining MPs' pay and pensions to be transferred to IPSA (recommendation 43);
- Replacement of the Commissioner for Parliamentary Investigations with a Compliance Officer (recommendation 44);
- Enforcement powers of the Compliance Officer (recommendation 45);
- The appointment of lay members of the Speaker's Committee (recommendation 48); and
- Repeal of the sunset provisions in section 15 of the 2009 Act (recommendation 53).

Part 4 of the Bill gives effect to these recommendations.

Part 5 Background – The House of Lords

67. Under the House of Lords Act 1999, membership of the House of Lords by virtue of a hereditary peerage was brought to an end. A transitional arrangement was made to except 92 hereditary peers from the effect of the Act. Two hereditary office holders, the Earl Marshal and the Lord Great Chamberlain, continued to be members of the House. In addition, 75 hereditary peers were elected by the hereditary peers in the groups of Conservative, Labour, Liberal Democrat and crossbench peers, in proportion to their membership of those groups. A further 15 hereditary peers were elected by the whole House to be available to serve as Deputy Speakers or Chairmen of Committees. When excepted peers died, they were to be replaced. Until the end of the first session of the Parliament following that in which the Act was passed (which turned out to be November 2002), the replacement was the peer who had been next on the list in the relevant election. Since then, replacement has been by means of by-elections held in accordance with the Standing Orders of the House.

68. The only restrictions which presently apply to membership of the House of Lords are on the grounds of nationality or age. Once someone is a member of the House, they cannot be removed from the House except by an Act of Parliament (whether generic, as in the House of Lords Act 1999, or personal, as in the Titles Deprivation Act 1917). Members may be temporarily disqualified for sitting or voting in the House if convicted of treason, on insolvency grounds and, on account of section 137 of the Constitutional Reform Act 2005, while holding judicial office. Life peers are similarly disqualified while members of the European Parliament.

69. The nomination of life peers to the House of Lords is overseen by the non-statutory House of Lords Appointments Commission. That commission makes nominations to the Prime Minister for peerages for those not recommended by a political party. It also vets for propriety the nominations made by a political party. Life peerages are conferred by the Queen on the advice of the Prime Minister.

70. The White Paper *An Elected Second Chamber: Further reform of the House of Lords* (Cm 7438, July 2008) can be found at:

http://www.official-documents.gov.uk/document/cm74/7438/7438.pdf

71. The paper proposed that there should be restrictions on the membership of the reformed second chamber on similar lines to those which applied to the House of Commons. That is, that members who had been convicted of an offence and sentenced to more than twelve months' imprisonment, those who were subject to a bankruptcy restrictions order and those who had been detained under mental health legislation should lose their seats. That White Paper also proposed that members of the reformed second chamber should be able to resign their seats.

72. On 25 January 2009, the Sunday Times newspaper published allegations that four peers had broken the House of Lords Code of Conduct on paid advocacy. The Leader of the House announced the setting up of two House of Lords inquiries, one by the Lords Sub-Committee on Lords' Interests and the other by the Committee for Privileges. The Lord Chancellor and Secretary of State for Justice also announced that he was working on a package of measures which would introduce legislation to remove from the House of Lords peers who were convicted of serious offences. He said he was also looking at whether provision should be made to permit the House of Lords to expel peers for grossly improper conduct that did not amount to a serious offence and at making provision for resignation.

73. On 14th May 2009, the House of Lords Committee for Privileges published its report into the allegations against the four peers. It also published a report into its investigation into the powers of the House. The report, *The Powers of the House of Lords in respect of its Members* (First Report 2009-10, HL 87) concluded that the House had the power to suspend a member for a defined period. This period however could not be longer than the remainder of the current Parliament because the House did not have the power to require that a writ of

summons be withheld from a member otherwise entitled to receive it. The Report can be found at:

http://www.publications.parliament.uk/pa/ld200809/ldselect/ldprivi/87/8702.htm

Part 6 Background – Tax status of MPs and members of the House of Lords

74. On 16th December 2009 the Leader of the House of Commons announced that the Government intended to bring forward legislation to provide that MPs and members of the House of Lords should pay UK tax in the same way as the vast majority of taxpayers in the UK.

Part 7 Background – Public Order

75. *The Governance of Britain* Green Paper committed the Government to consult widely on the provisions covering demonstrations in the vicinity of Parliament, with a view to ensuring that people's right to protest was not subject to unnecessary restrictions and with a presumption in favour of the freedom of expression.

76. The Government subsequently published the consultation paper *The Governance of Britain - Managing Protest around Parliament* (Cm 7235, 25th October 2007) which sought views on whether there remained a sufficiently strong case for a distinct legislative framework to apply to the policing of protests around Parliament. This document can be found at:

http://www.homeoffice.gov.uk/documents/cons-2007-managing-protest?version=1

77. The majority of responses called for the repeal of the current provisions in sections 132 to 138 of the Serious Organised Crime and Police Act 2005. A detailed analysis of the consultation responses can be found in *The Governance of Britain – Analysis of Consultations* (Cm 7342-3). Following this consultation the Government decided to seek to repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005.

78. The Government also invited Parliament to clarify whether additional provision was needed to keep access leading to the Palace of Westminster free and open. During pre-legislative scrutiny, the Joint Committee on the draft Constitutional Renewal Bill examined these proposals and made a number of recommendations.

79. On the issue of maintaining access to Parliament, the Committee said:

> "[T]here should be unrestricted access to the Houses of Parliament for Members, staff and the public, but there must also be a willingness to accept some disruption during large scale protests. As a minimum there should be one point of entry at each end of the Houses of Parliament open to both pedestrians and vehicles, particularly to enable disabled users to gain access. Our provisional view is that Black Rod's Garden

> entrance and the main entrance to Portcullis House are best suited to accommodate pedestrian access, while Carriage Gates and Peers Entrance are the most appropriate for vehicles. In light of the conflicting evidence we have received during our inquiry, we are concerned that the police may not have adequate powers upon the repeal of SOCPA to maintain the level of access that we call for above. We urge the Home Office to work with the police and other interested parties to resolve this issue." (paragraph 36)

80. The provisions in Schedule 9 which are given effect by *clause 61* give the police new discretionary powers to impose conditions on public processions and assemblies in the area around Parliament in order to maintain access to and from the Palace of Westminster.

Part 8 Background – Human Rights claims against Devolved Administrations

81. Under the Scotland Act 1998, Northern Ireland Act 1998 and Government of Wales Act 2006 ("the Devolution Acts"), the devolved administrations, Parliament and Assemblies have no power to act in breach of the rights set out in the European Convention on Human Rights which are incorporated into UK law by the Human Rights Act 1998, that is those rights and freedoms drawn from the European Convention on Human Rights set out in Schedule 1 to the Act ("the Convention rights"). An act, including a failure to act, which is incompatible with Convention rights is therefore *ultra vires*. A person who alleges that they are a victim of an act which is a breach of Convention rights can bring proceedings against the devolved body.

82. Under section 6(1) of the Human Rights Act 1998, it is also unlawful for a public authority to act in a way which is incompatible with a Convention right. If a person claims that a public authority has acted, or proposes to act, in a way which is made unlawful by section 6(1), they may bring proceedings against the public authority under the Human Rights Act in the appropriate court or tribunal. A person is permitted to do so only if they are, or would be, a victim of the unlawful act. A "public authority" includes the members of the Scottish Executive, Northern Ireland Executive and Welsh Assembly Government.

83. The Human Rights Act requires that proceedings must generally be brought within one year from the date of the alleged breach, unless a stricter time limit applies to the proceedings in question. A court or tribunal may permit proceedings beyond this time limit if it considers it equitable having regard to all the circumstances.

84. The Devolution Acts, however, make no such provision. As a result of the decision of the House of Lords in *Somerville v Scottish Ministers* [2007] UKHL 44, those bringing their claim under the Scotland Act are not subject to a specific time limit, notwithstanding that their claim may be identical in all other respects to proceedings under the Human Rights Act. Although the judgment did not deal with claims brought under the Northern Ireland Act 1998 and the Government of Wales Act 2006, those Acts are similarly silent as to the time in which proceedings may be brought.

85. These clauses therefore insert a one year time limit for bringing claims involving Convention rights against actions of the devolved administrations in Wales, Scotland and Northern Ireland**.**

86. *Clause 62* repeals the Convention Rights Proceedings (Amendment) (Scotland) Act 2009, an Act of the Scottish Parliament, whilst also re-enacting the amendments made by that Act to the Scotland Act 1998.

87. *Clause 62* also revokes the Scotland Act 1998 (Modification of Schedule 4) Order 2009, an Order made under section 30(2) of the Scotland Act, which enabled the Scottish Parliament to pass the Convention Rights Proceedings (Amendment) (Scotland) Act 2009.

Part 9 Background - Courts and Tribunals

88. Part 9 of the Bill provides for the protection of the salaries of various members of tribunals. The current position is that members of tribunals do not have salary protection but certain judicial office holders in the courts' system do have salary protection. Part 9 of the Bill also provides for the protection of the salaries of certain judicial office holders in Northern Ireland. Effect is also given to Schedule 10 to the Bill.

89. Schedule 10 makes adjustment to the existing functions of the executive and judiciary in relation to judicial appointments and other judiciary related matters in the context of the Government's wider programme, *The Governance of Britain*. The Government published *The Governance of Britain - Judicial Appointments* (Cm 7210) on 25th October 2007. This document can be found at:

http://www.justice.gov.uk/docs/cp2507.pdf.

90. A detailed analysis of the consultation responses can be found in *The Governance of Britain - Analysis of Consultations* (Cm 7342-3).

91. The proposals remaining in the Bill have been pared down from those outlined in the publications above but continue to address the functions of the executive and judiciary in relation to judicial appointments.

92. The provisions also remove the Prime Minister from the process of appointments of the President, Deputy President and Justices of the Supreme Court.

Part 10 Background – National Audit

93. The office of Comptroller and Auditor General ("C&AG") was created in 1866 when the role of the Comptroller of the Exchequer was combined with that of the Commissioners for Audit. The C&AG is still appointed under the Exchequer and Audit Departments Act 1866 ("the 1866 Act"). The National Audit Act 1983 ("the 1983 Act") built on that framework and

provided for the C&AG to be head of the National Audit Office ("NAO"), an office which consists of the C&AG and the staff appointed by the C&AG. The C&AG audits the accounts of government departments and a wide range of other public bodies under a number of statutory powers. Under the 1983 Act, the C&AG carries out "value for money" examinations of the way in which departments and other public bodies have used their resources. In addition, the C&AG audits certain public funds and has rights of inspection and examination over other bodies which receive public money.

94. Under the 1983 Act, a committee of Members of Parliament, the Public Accounts Commission ("the Commission"), was set up to oversee the activities of the C&AG and the NAO. Its functions include agreeing the voted resources of the NAO. In July 2007, the Commission initiated a review of the corporate governance arrangements of the NAO to ensure that they conformed to best practice. The Commission's Report was published as HC 402 on 6th March 2008. That document is available here:

    http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpacomm/402/402.pdf

95. The Commission recommended that the NAO should remain the Government's auditor, independent of Government and answerable directly to Parliament through the Commission. Its audit reports, both financial and value for money, should continue to be laid in Parliament and the Committee of Public Accounts ("PAC") would continue to hold scrutiny hearings on some of them. As chief executive of the NAO, the C&AG should continue to lead its audit work and to make professional judgements on its audit reports.

96. However, the Commission said that the NAO should also have a board with a majority of non-executives, including a non-executive chair. The board would be charged with setting the strategic direction for the NAO and supporting the C&AG. The C&AG would have a fixed term of ten years instead of the current unlimited term. Former C&AGs would not be able to work for bodies that are subject to NAO's audit or inspection for two years after they leave office.

97. The Government accepted the Commission's recommendations and agreed to implement them through the Constitutional Reform and Governance Bill. When the Commission met on 16th December 2008, it published the Government's draft clauses and (subject to a recommendation that the C&AG's pay should be linked to that of the Lord Chief Justice and that the employment restrictions for former C&AGs should last for five years) said it was content with the draft clauses. Its recommendations are available here:

    http://www.parliament.uk/parliamentary_committees/public_accounts_commission/tpacfm161208.cfm

98. The Government of Wales Act 2006 provides that the National Assembly for Wales may pass legislation known as Assembly Measures, in relation to the "matters" specified in Part 1 of Schedule 5 to that Act. *Clause 82* will add a new matter which will enable the Assembly to

legislate to put in place new arrangements for the Auditor General for Wales and the Wales Audit Office. Those arrangements could be comparable to the ones set out in the rest of Part 10 of the Bill for the C&AG and the NAO. There is a distinct public audit structure for devolved bodies in Wales, and the Bill gives the National Assembly power to put in place different arrangements for the oversight, supervision and accountability of the Auditor General for Wales. At the same time, it ensures that the independence of the Auditor General's operational audit work is maintained.

Part 11 Background – Transparency of Government financial reporting to Parliament

99. There are a number of different systems for presenting Government expenditure. These include budgets, Supply Estimates presented to Parliament for approval and resource accounts prepared by departments at the end of each financial year.

100. These different systems mean that there is significant misalignment between the different bases on which financial information is presented to Parliament and the public. Government financial documents are published in different formats, and on a number of different occasions during the year. This makes it difficult to understand the links and inter-relationships between them.

101. The Government announced in *The Governance of Britain* Green Paper in July 2007 a "Clear Line of Sight" (Alignment) Project to simplify its financial reporting to Parliament by better aligning budgets, Estimates and resource accounts. The Treasury submitted detailed proposals for better alignment to Parliament in a Memorandum in March 2009 (Cm 7567). The Liaison Committee of the House of Commons responded to the Government's proposals in its report *Financial Scrutiny: Parliamentary Control over Government's Budgets (HC 804)*, published on 3rd July 2009. The report accepts, on behalf of the relevant House of Commons Select Committees, all of the Government's proposals for a better aligned public spending framework as set out in Cm 7567.

102. Part 11 deals with one aspect of the work of that Project. At present, the spending of Non-Departmental Public Bodies and other central government bodies falls within the budget of the parent department (the government department with policy responsibility for that activity) but falls outside the departmental boundary for Supply Estimates (departmental spending plans approved by Parliament) and resource accounts. *Clause 83* amends the Government Resources and Accounts Act 2000 in order to allow the Treasury to issue directions about the way departments prepare Supply Estimates and to direct that such Estimates are to include information relating to "designated bodies". It also includes provision preventing the designation of a body if it is funded solely from the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund and makes consequential amendments to the GRAA 2000.

103. *Clause 84* amends Part 5 of the Government of Wales Act 2006 ("GOWA 2006"). The changes are intended to simplify the arrangements for financial reporting and accountability

to the National Assembly for Wales (the "Assembly"). This will be achieved by better aligning the contents of the annual budget motion with the use of the resources set out in the resource accounts produced by Ministers and other persons to whom the Assembly votes resources.

104. There are a number of Assembly Government Sponsored Public Bodies ("AGSBs") and other organisations in Wales that are classified as central government bodies and are funded, wholly or to a significant degree, by Welsh Ministers. At present, the Assembly is not asked to authorise the use of resources by AGSBs and other central government bodies operating in Wales, and it is therefore more difficult for Ministers to align the resources included within the annual budget motion with those included in the Welsh Ministers' resource accounts.

105. As referred to above, the Assembly votes resources to some persons other than the Welsh Ministers. These persons are described as "relevant persons" in section 124(3) of the GOWA 2006. They are: the National Assembly for Wales Commission, the Auditor General for Wales and the Public Services Ombudsman for Wales. These other "relevant persons" could also fund bodies in Wales that would be classified as belonging to central government. Therefore, the changes to the GOWA 2006 made by *clause 84* apply to those "relevant persons", as well as to the Welsh Ministers.

106. *Clause 84* amends the GOWA 2006 in order to give Welsh Ministers the power to designate bodies for the purpose of enabling a budget motion to include information relating to the resources expected to be used by that body. It also includes provision that requires the Welsh Ministers to obtain the consent of the Treasury before designating any body that receives funding from the UK Consolidated Fund or a devolved Consolidated Fund other than the Welsh Consolidated Fund. This is intended to avoid duplicate or erroneous designations, and the accounting problems that would ensue.

Part 12 Background – Public Records and Freedom of Information

107. On 25th October 2007, the Prime Minister announced an independent review into the 30-Year Rule. The Review published its findings in January 2009. The Prime Minister announced the Government's intention to move to a 20-year rule, and to enhance the protection for certain categories of information, on 10th June 2009. The Government response to the 30-Year Rule Review report was published in the form of a Command Paper (Cm 7822) on 25th February 2010.

Part 13 Background - Miscellaneous and Final Provisions

Clause 87 – section 3 of the Act of Settlement

108. Section 18(7) of the Electoral Administration Act 2006 ("the 2006 Act") repealed the first entry in Schedule 7 to the British Nationality Act 1981. That entry had modified the application of section 3 of the Act of Settlement which concerns eligibility for membership of

both Houses of Parliament, the Privy Council and certain offices under the Crown by disapplying part of it in relation to Commonwealth and Republic of Ireland citizens, allowing such citizens to be Members of either House and to hold offices under the Crown.

109. This change was made in consequence of the provision at section 18(1) of the 2006 Act, which substituted a new modification of section 3 of the Act of Settlement that applies only for the purposes of membership of the House of Commons: under its terms, Commonwealth citizens who do not have indefinite leave to remain in the UK are prevented from being members of the House of Commons. However, since the drafting of the legislation did not contain provisions expressly saving the first entry in Schedule 7 to the British Nationality Act 1981 in relation to membership of the House of Lords and other offices under the Crown, a question has been raised about whether the eligibility of Commonwealth or Republic of Ireland citizens for membership of the House of Lords and other positions is affected.

110. The Government does not consider that the eligibility is affected. In particular, it clearly was not the intention of Parliament in passing the 2006 Act to change the entitlement of Commonwealth and Republic of Ireland citizens to sit in the House of Lords. The Government has nevertheless concluded that it is best to put the issue beyond doubt.

Clauses 88 and 89 – Referendums – regulation of permitted participants

111. The Political Parties, Elections and Referendums Act 2000 provides for controls on the spending and donations of individuals or groups who campaign in a referendum – known as 'permitted participants'. Following the 2004 North East referendum, the Electoral Commission raised a number of concerns about the effectiveness of the controls on the spending of such organisations. *Clauses 88* and *89* address these concerns by bringing the regulation of permitted participants more closely into line with the existing provisions regulating third parties.

Clause 90 – Parliamentary elections: counting of votes

112. Rule 44(1) of the Parliamentary election rules contained in Schedule 1 to the Representation of the People Act 1983 ("the Rules") provides that the returning officer shall make arrangements for counting the votes as soon as practicable after the close of the poll. This gives a discretion to returning officers about when exactly the count should begin and concerns have been expressed about the way in which this discretion has been exercised by returning officers when deciding whether it is practicable to count on the evening of polling day or on the day after polling day. In response, an amendment to the Bill was tabled by the Official Opposition and moved by the Justice Secretary requiring the counting of votes to begin within four hours of the close of the poll unless exceptional circumstances prevented it. *Clause 90* results from a Government amendment, produced in consultation with Opposition parties to replace the original amendment, which was considered to be unworkable. It amends the Rules to provide that a returning officer must take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within four hours of the close of poll. It

is intended to ensure that returning officers actively consider what action could reasonably be taken to achieve an 'overnight' count. The clause also provides for greater transparency so that when a count does not begin within four hours after the close of poll, a returning officer must publish a statement containing specified information, including the reasons for not starting the count within that time. Details of those constituencies that did not start the count within four hours of the close of the poll are to be contained in the Electoral Commission's statutory report on the relevant election. The clause will come into force upon the Bill achieving Royal Assent.

Clause 91 – Electoral Commission accounts in relation to specified matters

113. Under paragraph 17 of Schedule 1 to the Political Parties, Elections and Referendums Act 2000, the Electoral Commission is required to prepare accounts for each financial year in accordance with any directions given to it by the Treasury. Paragraph 18 provides that those accounts are subject to examination and certification by the Comptroller and Auditor General before being laid before Parliament. *Clause 91* amends paragraph 17 of Schedule 1 to clarify that HM Treasury can also direct the Commission to prepare separate accounts in relation to any specified matter. This is intended to that ensure that there are appropriate accountability mechanisms in place for the Electoral Commission's expenditure in connection with the referendum to be held in accordance with the measures at Part 3 of the Bill – that is, payments in connection with counting officers' charges. However, the clause also enables HM Treasury to direct the Commission to prepare separate accounts in respect of any other specified matter. The clause is modelled on section 7 of the Government Resources and Accounts Act 2000, which similarly enables HM Treasury to direct a government department to prepare accounts in relation to any specified matter, such as the preparation by the Ministry of Justice of accounts relating to returning officers' expenses for conducting Parliamentary Elections. *Clause 91* also amends paragraph 18 of Schedule 1 so that any accounts prepared by the Commission in response to a direction from HM Treasury will be subject to examination and certification by the Comptroller and Auditor General in the same was as the Commission's annual accounts.

TERRITORIAL EXTENT

114. The provisions of the Bill extend to England and Wales while certain provisions also extend to Scotland and Northern Ireland. The Bill largely addresses reserved and excepted matters although there are some provisions that affect the executive functions of the Devolved Administrations.

115. At introduction this Bill contains provisions that trigger the Sewel Convention in relation to Scotland. The provisions relate to the Civil Service clauses and are outlined below:

- **Civil Service Codes** – *clause 5* requires the First Minister of Scotland to lay before the Scottish Parliament any separate Civil Service code that applies to civil servants serving the Scottish Executive.

- **Special Advisers Code** – *clause 8* requires the First Minister of Scotland to lay the special advisers code before the Scottish Parliament.
- **Special Advisers** – *clause 15* prescribes requirements that the First Minister for Scotland must apply when appointing Special Advisers to assist members of the Scottish Executive.
- **Special Advisers Report –** *clause 16* requires the First Minister of Scotland to prepare an annual report about special advisers appointed to assist members of the Scottish Executive and to lay this before the Scottish Parliament.
- **Civil Service Commission's Report** – Schedule 1, *paragraph 17(5)* requires the First Minister of Scotland to lay the Civil Service Commission's report before the Scottish Parliament.
- **Requirements to provide information** – *clauses 9(6), 13(4), 14(2) and 17(3)* impose requirements to provide information to the Civil Service Commission. Those requirements can apply to parts of the Scottish Administration.

116. The Sewel Convention provides that the UK Parliament will not normally legislate with regard to devolved matters in Scotland, or alter the executive competence of Scottish Ministers, without the consent of the Scottish Parliament. If there are any amendments to the Bill during its passage which trigger the Convention, the consent of the Scottish Parliament will also be sought for those amendments. *Clause 62*, which was added at Committee stage in the House of Commons in the previous Parliamentary session, required the consent of the Scottish Parliament in so far as it affects the legislative competence of the Scottish Parliament. The Scottish Parliament gave its consent by way of a Legislative Consent Motion on 28th January 2010 for the provisions in the Bill which trigger the Sewel Convention.

117. The Bill contains provisions which confer functions on Welsh Ministers and affect their responsibilities:

- These include provisions in Part 1 requiring that they are consulted about the Civil Service and special advisers code and requiring them to lay the codes and the Commission's reports before the Assembly.
- In Part 8 creating a time limit for human rights claims brought against them under the Government of Wales Act 2006.
- In Part 11 giving them the power to designate bodies that must be included in Assembly budget motions.

118. The Bill also contains other provisions that do not require a Legislative Consent Motion but which make incidental changes to Scots law and the law in Northern Ireland.

COMMENTARY ON CLAUSES

PART 1: THE CIVIL SERVICE ETC

CHAPTER 1

Clause 1: Application of Chapter

119. *Clause 1* applies Chapter 1 of Part 1 of the Bill to the Civil Service of the State, subject to the exclusions listed in *subsections (2) and (3).* The terms Civil Service and civil servant throughout this Chapter are therefore to be read as excluding those parts of the Civil Service listed in *subsections (2) and (3)* and the civil servants in those parts of the Civil Service.

Clause 2: Establishment of the Civil Service Commission

120. *Subsection (1)* establishes the Civil Service Commission as a body corporate with legal personality.

121. *Subsections (3) and (4)* set out the main function of the Commission. This concerns recruitment to the Civil Service, covered in *clauses 11 to 14*. Reference is also made to the Commission's other functions concerning complaints to the Commission under the Civil Service and Diplomatic Service codes of conduct *(clause 9)*.

Clause 3: Management of the Civil Service

122. *Clause 3* provides a power for the Minister for the Civil Service to manage the Civil Service and a parallel power for the Secretary of State in relation to the Diplomatic Service. The power to manage includes the power to appoint and dismiss. The general power to manage the Civil Service, including the power of appointment and dismissal, set out in the Bill must be read in conjunction with other clauses in the Bill, in particular provisions about the Civil Service Commission and requirements about fair and open competition. The power to appoint and dismiss individual civil servants will, as now, continue to be delegated to the Head of the Civil Service and the permanent Heads of Departments provided for under existing statutory powers in the Civil Service (Management Functions) Act 1992.

123. *Subsection (4)* expressly excludes national security vetting from the power to manage the Civil Service and the Diplomatic Service. This confirms that national security vetting will continue to be carried out under existing prerogative powers.

124. *Subsection (5)* requires the Secretary of State to seek the agreement of the Minister for the Civil Service in relation to remuneration and retirement conditions for civil servants in the diplomatic service.

Clause 4: Other statutory management powers

125. *Subsections (1), (2)* and *(3)* provide that statutory powers of management of the Civil Service (whether before or after the Act comes into force) are subject to the powers to manage the Civil Service in *clause 3.*

126. *Subsection (5)* expressly excludes the statutory management powers set out in the Superannuation Acts from the general power to manage by the Minister for the Civil Service provided in *clause 3*.

Clause 5: Civil service code

127. *Clause 5* makes provision for codes of conduct for the Civil Service (with the exception of the diplomatic service). *Clause 5* enables the Minister to publish separate codes of conduct for civil servants in the Scottish Executive or the Welsh Assembly Government after first consulting the First Ministers of Scotland and Wales on the content of the code relevant to their respective administrations. The codes published under this clause will be along the lines of the existing Civil Service codes, covering civil servants in the UK Departments in the Civil Service, the Scottish Executive and the Welsh Assembly Government respectively. Copies of the existing codes can be viewed at the following websites:

www.civilservice.gov.uk/about/work/codes/csmc/index.aspx;

http://www.scotland.gov.uk/Resource/Doc/923/0030759.doc;

http://new.wales.gov.uk/humanresources/publications/civilservicecode/codee.pdf?lang=en

128. There is no Parliamentary procedure attached to the obligation in *subsection (5)* for the Minister for the Civil Service to lay the Code before Parliament. The First Ministers of Scotland and Wales are also required to lay the code relevant to their administration before the Scottish Parliament and Welsh Assembly respectively. Under *subsection (8)* the applicable code or codes form part of a civil servant's terms and conditions.

Clause 6: Diplomatic service code

129. *Clause 6* makes provision for a code of conduct for the diplomatic service which will be along the lines of the existing code for the diplomatic service, the *Diplomatic Service Code of Ethics*. The code reflects the core principles of the Civil Service code of conduct. This code must be laid before Parliament, but there is no Parliamentary procedure. Under *subsection (4)* the code forms part of the terms and conditions for civil servants in the diplomatic service.

Clause 7: Minimum requirements for Civil Service and diplomatic service codes

130. *Clause 7* sets out the minimum requirements for the Civil Service and diplomatic service codes of conduct. *Subsections (2)* and *(3)* require civil servants in the UK, Scotland or Wales, to serve the administration of the day, whatever its political complexion. By *subsection (4)* the code must contain an obligation on civil servants to carry out their duties in accordance with the core Civil Service values of integrity, honesty, objectivity and impartiality. *Subsection (5)* concerns the provisions of the codes as they apply to special advisers. *Clause 8* makes separate provision for the special advisers code.

Clause 8: Special advisers code

131. *Clause 8* makes provision for a code of conduct for special advisers. The code published under this clause will be along the lines of the existing special advisers' code, which can be viewed at the following website:

www.cabinetoffice.gov.uk/propriety_and_ethics/special_advisers/code.aspx.

132. *Clause 8* specifies that the code of conduct for special advisers must provide that a special adviser may not authorise the expenditure of public funds, exercise any power in relation to the management of any part of the civil service (except in relation to another special adviser) or otherwise exercise any statutory or prerogative power. The code of conduct for special advisers will state that special advisers must not be responsible for the line management (including appraisal, reward, promotion or disciplining) of civil servants who are not special advisers.

133. *Clause 8* enables the Minister for the Civil Service to publish separate codes of conduct for special advisers who serve the Scottish Executive or the Welsh Assembly Government after first consulting the First Ministers of Scotland and Wales on the content of the code relevant to their respective administrations.

134. There is no Parliamentary procedure attached to the obligation in *subsection (5)* for the Minister for the Civil Service to lay the Code before Parliament. The First Ministers of Scotland and Wales are also required to lay the code relevant to their administration before the Scottish Parliament and Welsh Assembly respectively.

135. Under *subsection (8)* the applicable code or codes form part of a special adviser's terms and conditions.

Clause 9: Conduct that conflicts with a code of conduct: complaints by civil servants

136. *Clause 9* makes provision for civil servants to complain to the Civil Service Commission about alleged breaches of the Civil Service and diplomatic codes.

137. *Subsection (4)* provides for the codes to include information on the steps a civil servant must take before making a complaint. It is expected that these will reflect the procedures already set out in the existing code.

138. *Subsection (5)* requires the Civil Service Commission to establish procedures for complaints under *subsection (2)*. It requires the Civil Service Commission to consider complaints in accordance with the procedures established by the Commission and allows for the Commission to make recommendations to resolve the complaint.

139. *Subsection (6)* provides that the Commission can require information from the Civil Service management authority, the civil servant who brought the complaint and any other civil servant whose conduct is involved in the complaint where that is reasonably required to enable the Commission to investigate the complaint.

Clause 10: Selections for appointments to the Civil Service

140. *Clause 10* requires that people can only be appointed into the Civil Service if they have been selected on merit on the basis of fair and open competition. The exceptions to this requirement are set out in *subsection (3)(a)* to *(c).*

141. Further provision on special adviser appointments and appointments excepted by the recruitment principles are set out in *clauses 15 and 12* respectively.

142. *Subsection (4)* provides that those appointed under *subsection (3)(a) to (c)* (Heads of Mission or Governors of overseas territories in the diplomatic service, special advisers and appointments excepted in the Commission's Recruitment Principles) are excepted from the requirement for selection on merit on the basis of fair and open competition only for the duration of that particular appointment. The persons holding such appointments would therefore be subject to the requirements of *clause 10* (in particular, the requirement of selection on merit on the basis of fair and open competition) in relation to any further appointments to the Civil Service unless specified to the contrary in the Commission's recruitment principles.

Clause 11: Recruitment principles

143. *Clause 11* requires the Commission to publish principles on the application of the requirement in *clause 10* of selection on merit on the basis of fair and open competition. These are referred to as "the recruitment principles". The Commission must consult the Minister for the Civil Service before publishing the recruitment principles.

144. *Subsection (4)* requires civil service management authorities to comply with the recruitment principles. Civil service management authorities are any body or person with the power to make appointments in the Civil Service.

Clause 12: Approvals for selections and exceptions

145. *Subsection (1)(a)* enables the recruitment principles to specify those appointments (which are subject to the requirement in *clause 10* of selection on merit on the basis of fair and open competition) that require the approval of the Commission before they can be made. *Subsections (2) and (3)* enable the Commission to participate in the selection process for any such appointments as they see fit.

146. *Subsection (1)(b) and subsection (4)* enable the recruitment principles to set out exceptions to the requirement of selection on merit on the basis of fair and open competition where justified by the needs of the Civil Service or in the interests of enabling the Civil Service to participate in Government employment initiatives, such as initiatives to relieve unemployment.

147. *Subsection (6)* make provision for the recruitment principles to specify the procedures and the terms and conditions for appointments made under the exceptions contained in the recruitment principles under *subsections (3)(c)* of *clause 10. Subsection (7)* allows the recruitment principles to give the Commission or civil service management authorities discretion in applying aspects of the recruitment principles.

Clause 13: Complaints about competitions

148. *Clause 13* allows people to complain to the Commission about selections to the Civil Service if that person has reason to believe the selection was made in breach of the requirement in *clause 10*.

149. *Subsection (3)* requires the Civil Service Commission to establish procedures for complaints under *subsection (1)*. It requires the Civil Service Commission to consider complaints in accordance with the procedures established by the Commission and allows for the Commission to make recommendations to resolve the complaint. The Commission can require information from Civil Service management authorities and the complainant where that information is reasonably required for the purpose of considering the complaint.

Clause 14: Monitoring by the Commission

150. *Clause 14* requires the Commission where it considers necessary, to review departments' recruitment policies and practices, to establish whether the requirement in *clause 10* and the recruitment principles are being complied with and are not being undermined. For these purposes the Commission may require a civil service management authority to provide it with information if the Commission reasonably requires that information.

Clause 15: Definition of "special adviser"

151. *Clause 15* makes provision about the appointment of special advisers and their terms and conditions of appointment. Special adviser appointments by a Minister of the Crown are

approved by the Prime Minister. Special advisers appointed to assist Scottish or Welsh Ministers must be selected for appointment by the First Minister for Scotland or Wales as appropriate.

152. The terms and conditions of all special advisers are approved by the Minister for the Civil Service. Appointments of special advisers are exempt from the requirement in *clause 10* of selection on merit on the basis of fair and open competition.

153. In each administration, a special adviser appointment ends when the appointing Minister's term of office ends. In the United Kingdom, this is the earlier of either the date on which the Minister ceases to hold office or the end of the day after the relevant election day. In Scotland and Wales, this is when the First Minister's term of office ends or, under *subsection (2)*, where the First Minister's functions are performed by a temporary First Minister under the terms of the Scotland Act 1998 or the Government of Wales Act 2006.

Clause 16: Annual reports about special advisers

154. *Clause 16* makes provision for annual reports about special advisers, and the laying of such reports before Parliament, the Scottish Parliament and the National Assembly for Wales. Similar reports are already published by the Minister for the Civil Service and the First Minister in Scotland and can be viewed at:

www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080722/wmstext/80722m0004.htm#08072253000033

www.scottish.parliament.uk/business/pqa/wa-08/wa0609.htm#43

Clause 17: Arrangements for Civil Service Commission to carry out additional functions

155. *Clause 17* enables the Minister for the Civil Service and the Commission to agree that the Commission carries out additional functions in relation to the Civil Service. The Commission must carry out those functions. The additional functions may be directly or indirectly related to their existing functions.

CHAPTER 2

156. *Clause 19* gives effect to Schedule 2.

CHAPTER 3

157. *Clause 20* amends the Northern Ireland Act 1998 to list the appointment of the Civil Service Commissioners for Northern Ireland as a reserved matter under the Act.

CHAPTER 4

Clause 21: removal of existing nationality requirements

158. *Clause 21* makes provision for the removal of nationality restrictions on employment or the holding of office in a civil capacity under the Crown.

159. *Subsection (1)* provides that the general prohibition in section 3 of the Act of Settlement on the employment of certain persons on nationality grounds does not apply to employment or the holding of office in a civil capacity under the Crown. *Subsection (2)* omits section 6 of the Aliens Restriction (Amendment) Act 1919 which, subject to exceptions, prevents the appointment of aliens to posts in the Civil Service.

Clause 22: power to impose new nationality requirements

160. *Subsection (1)* provides that rules can be made by a Minister of the Crown (see *subsection (9)*) to impose nationality requirements that must be satisfied by a person employed or holding office in a civil capacity under the Crown in a reserved post.

161. *Subsections (2) to (6)* reflect the criteria set out in section 1 of the Aliens' Employment Act 1955 as amended by the European Communities (Employment in the Civil Service) Order 2007 (which provides for the reserving of posts that would otherwise be open to "a relevant European") in terms of the kinds of post that can be reserved.

162. S*ubsection (7)* provides that the rules may also include nationality provisions in relation to persons "connected" with the person who is subject to the limits imposed by rules made under subsection (1). *Subsection (8)* sets out who is "connected" with a person for the purposes of the clause.

163. *Subsection (10)* allows the rules to exempt persons who were first employed or holding office before a specified date from the nationality requirements and allows the granting of exemptions to the rules by "the appropriate person". *Subsection (11)* provides a definition of "the appropriate person".

164. *Subsections (12) and (13)* refer to provisions in the Race Relations Act 1976 and the Race Relations (Northern Ireland) Order 1997 which permit the making and implementation of rules restricting employment in the service of the Crown to persons of, amongst other things, a particular nationality. These subsections provide that references in those provisions to the making and implementation of rules include provisions of the rules made under subsection (7) (to the extent they would otherwise not) and the grant of (or refusal to grant) exemptions under subsection (10)(b).

165. *Subsections (14)* and *(15)* provide that the rules must be made by statutory instrument subject to the negative resolution procedure.

166. *Subsection (16)* provides that *clause 22* does not affect powers to impose nationality requirements under the Police Reform Act 2002 and the Police (Northern Ireland) Act 2000. It also provides for the continuation of other powers to impose requirements which are not requirements as to nationality even if the ability of the person to satisfy the requirement may be affected by the nationality of the person or any other person.

Clause 23: repeals and revocations

167. *Clause 23* brings Schedule 3 (repeals and revocations relating to Chapter 4 of Part 1) into effect.

SCHEDULE 1 - CIVIL SERVICE COMMISSION

168. Schedule 1 makes provision for the Civil Service Commission. It contains provisions relating to: membership of the new Civil Service Commission; appointment of the First Civil Service Commissioner (who in practice will chair the Commission), and its other members the Commissioners, and their tenure of office; status and powers of the Commission; regulation of its proceedings; appointment of staff; arrangements for assistance, delegation and committees; financial provision and accounts; publication of its annual report; and transitional arrangements relating the old Civil Service Commission.

Part 1: The Commissioners

169. *Paragraph 1* provides for a minimum of seven members of the Civil Service Commission, one as the First Civil Service Commissioner ("the First Commissioner") and the others Civil Service Commissioners ("the Commissioners").

170. *Paragraphs 2 and 3* provide for the appointment of the First Commissioner and Commissioners, and the terms of appointment. Provision is also made for the appointment of ex-officio Commissioners. This might include for example, the appointment of the Public Appointments Commissioner as a Commissioner.

171. *Paragraph 4* makes provision for the terms of appointment of a Commissioner to include provision for remuneration, allowances and pensions.

172. *Paragraph 5* sets out the circumstances in which the First Commissioner or Commissioner may resign or be removed from office by Her Majesty on the recommendation of the Minister for the Civil Service.

173. *Paragraph 6* makes provision for compensation for the loss of the office of First Commissioner or Commissioner.

Part 2: The Commission

174. *Paragraph 7* establishes the status of the Civil Service Commission as a non Crown body. It provides that the Commission is not to be regarded as a servant or agent of the Crown and is not to enjoy any status, immunity or privilege of the Crown. It provides that any property held by the Commission is not held on behalf of the Crown.

175. *Paragraph 8* sets out the powers of the Commission and enables it to take any action that facilitates or is incidental to its functions. Borrowing by the Commission is subject to the agreement of the Minister for the Civil Service.

176. *Paragraph 9* makes provision for committees and sub-committees to assist the Commission in carrying out its functions, and *paragraph 10* the procedure of the Commission and its committees and sub-committees.

177. *Paragraph 11* enables the Civil Service Commission to employ staff.

178. *Paragraph 12* enables pension provision to be made for the staff of the Commission and the First Commissioner. It provides for such persons to be eligible for membership of a pension scheme under section 1 of the Superannuation Act 1972. It places an obligation on the Civil Service Commission to cover the costs involved in membership of the pension scheme, and to pay the sums involved to the Minister for the Civil Service.

179. *Paragraph 13* enables the Civil Service Commission to enter into arrangements with other parties for the provision of assistance to the Commission. In particular, it enables the Commission to make arrangements with the Minister for the Civil Service for serving civil servants to provide assistance to the Commission.

180. *Paragraph 14* makes provision for the delegation of the Commission's functions.

181. *Paragraph 15* requires the Minister for the Civil Service to pay a grant or grant-in-aid to the Civil Service Commission to enable it to carry out its functions. Conditions may be attached to the payment of the grant or grant-in-aid. This is in line with the requirements and procedures set down in *Managing Public Money*. The Minister must consult with the Commission before setting the level of grant or grant-in-aid, or attaching any conditions to its payment.

182. *Paragraph 16* makes provision for the accounts and records of the Civil Service Commission. The preparation and content of the annual statement of accounts must comply with HM Treasury requirements, and provide a fair and true view of the Commission's income and expenditure and cash flows over the financial year and the state of its affairs at the end of the financial year. The Commission must send the annual statement of accounts to the Minister for the Civil Service by the date specified by the Minister. The Minister then sends the statement to the Comptroller and Auditor General who is required to examine, certify and

report on it, and to lay copies of the statement and report before Parliament, unless the Minister for the Civil Service arranges to do so himself.

183. *Paragraph 17* makes provision for the preparation and laying of the Commission's annual report. The Report is laid before the Parliament by the Minister for the Civil Service (unless it has been arranged for the Comptroller and Auditor General to do so where the annual report has been combined with the annual statement of accounts in a joint document). Copies of the report are also laid before the Scottish Parliament and National Assembly for Wales by the First Minister for Scotland and Wales respectively.

184. *Paragraph 18* provides a definition of the financial year for the purposes of *paragraphs 16 and 17*. The period begins when *clause 2* comes into force (that is, when the Commission is established), and ends with the following 31st March. Thereafter it runs in successive 12 month periods.

185. *Paragraph 19* makes provision for the authentication of the Commission's seal and the execution of documents by the Commission.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION RELATING TO PART 1

Part 1: Consequential Amendments

186. *Paragraphs 1* to *18* make amendments to various Acts to change references to the "Home Civil Service" and the "Civil Service Commissioners" to reflect the new terminology as set out in the Constitutional Reform and Governance Bill. The Bill preserves the Minister for the Civil Service's overarching power to manage, and appoint to, the Civil Service. *Paragraphs 9* and *15* make clear that Scottish and Welsh Ministers' existing powers to manage and appoint to the Civil Service will be exercisable under the Bill but those management powers will continue to be delegable to Scottish and Welsh Ministers under the Civil Service (Management Functions) Act 1992.

Part 2: Consequential Amendments to other Legislation

187. *Paragraphs 19* and *20* revoke the Civil Service Order in Council 1995, the Diplomatic Service Order in Council 1991 and all amending Orders in Council.

188. *Paragraphs 21* to *24* amend subordinate legislation to change references to the "Home Civil Service" or the "Civil Service Commissioners" to changes in terminology.

Part 3: Transitional Provision Relating to the old Commission

189. *Paragraphs 25 to 37* make transitional provision relating to the Civil Service Commissioners who operated under the prerogative (the "old Commission").

190. *Paragraph 26* provides for the First Civil Service Commissioner in the old Commission, to become the First Civil Service Commissioner in the Civil Service Commission when it becomes operational. The First Civil Service Commissioner who moves to the new Commission on this basis will be entitled to hold office for the remaining period of their original appointment. For example, where the serving First Civil Service Commissioner has been appointed for a five year term, and has served two years at the time the new Civil Service Commission becomes operational, he or she will be entitled to remain in office for a further three years, making a total period of appointment of five years. The other terms of the original appointment will continue to apply, unless the individual concerned agrees different terms.

191. *Paragraph 27* makes provision to restrict the period of office of the First Commissioner where that person was previously head of the old Commission. The aggregate of time the individual concerned served as First Civil Service Commissioner in the old Commission, and as First Commissioner in the new Commission, must not exceed a total of five years.

192. *Paragraph 28* provides for Commissioners who hold office in the old Commission immediately prior to the establishment of the Commission to become Commissioners in the new Commission when it becomes operational. A Civil Service Commissioner who moves to the new Commission on this basis will be entitled to hold office for the remaining period of their original appointment. For example, where the serving Civil Service Commissioner has been appointed for a three year term, and has served two years at the time the new Civil Service Commission becomes operational, he or she will be entitled to continue to serve as a Commissioner for a further year, making a total period of appointment of three years. Under these transitional arrangements, the other terms of the original appointment will continue to apply, unless the individual concerned agrees to different terms.

193. *Paragraph 29* makes provision to restrict the period of office of a Commissioner where that person was previously a Commissioner in the old Commission. The aggregate of time the individual concerned served as a Civil Service Commissioner under the old arrangements, and as a Civil Service Commissioner in the new Commission, must not exceed a total of five years. *Paragraph 29(4)* contains an exception from that in respect of the Commissioner for Public Appointments who currently holds office as a Civil Service Commissioner on an *ex officio* basis.

194. *Paragraphs 31 to 36* provide that certain functions that the old Commission are performing when the provisions are commenced can be continued by the Civil Service Commission and for property, rights and liabilities to transfer as appropriate to the new Commission.

195. *Paragraph 37* establishes that in the period between the passing of the Act and the new Civil Service Commission becoming operational, the serving First Civil Service Commissioner and the other serving Civil Service Commissioners in the old Commission may undertake

functions conferred on the new Civil Service Commission by the Act, on behalf of the new Commission.

Part 4: Transitional Provision Relating to the Management of the Civil Service

196. *Paragraphs 38 and 39* preserve actions done under existing prerogative powers including decisions to appoint civil servants who, *paragraph 39(4)* makes clear, will continue to hold their positions under the new power contained in *clause 17*.

197. *Paragraph 40* provides for the parts of the Civil Service of the State expressly excluded from the provisions in Chapter 1 of Part 1 to be managed under existing prerogative powers and preserves the position of civil servants who were managed under the revoked Orders in Council.

198. *Paragraphs 41 and 42* specify that any appointments to the Civil Service made under an exception permitted by the old Commission cannot be considered to have entered the Civil Service on merit following fair and open competition unless the Commission has specified that is permissible in the Recruitment Principles.

199. *Paragraph 43* provides for terms and conditions of special adviser appointments agreed before the enactment of the Constitutional Reform and Governance Act to continue as agreed between the passing of the Act and the commencement of the provisions.

SCHEDULE 3 - CROWN EMPLOYMENT: REPEALS AND REVOCATIONS

200. Schedule 3 repeals the Aliens' Employment Act 1955 and section 6 of the Aliens Restriction (Amendment) Act 1919 and the European Communities (Employment in the Civil Service) Orders 1991 and 2007 are revoked.

PART 2: RATIFICATION OF TREATIES

Clause 24 – Treaties to be laid before Parliament before ratification

201. This clause sets out the main procedure to be adopted in relation to treaties before they are ratified on behalf of the United Kingdom. The procedure described is based upon the convention known as the Ponsonby Rule, which has been applied to the ratification of treaties since 1924 (see *Erskine May*, 23rd edition, page 264). *Clause 24* provides that a treaty is to be laid before Parliament for a period of 21 sitting days, during which time both Houses have the opportunity to resolve that a treaty should not be ratified. If the 21 sitting days expire with no such resolution being passed by either House, the Government can proceed to ratify the treaty.

202. If the House of Commons resolves that a treaty should not be ratified, the Government cannot at that stage proceed to ratify the treaty. If it wishes to do so it must instead lay a statement explaining why it believes the treaty should be ratified, and then wait a further 21 sitting days,

before it can again proceed to ratify the treaty. Should the House of Commons resolve against the ratification of the treaty during this second 21 sitting day period, the Government remains blocked from ratifying the treaty; if it still wishes to do so it must re-lay its statement and start the 21 sitting day period again.

203. If the House of Lords resolves that a treaty should not be ratified, the Government must then lay a statement explaining why it believes the treaty should be ratified. However, in this instance the Government does not need to provide the House of Lords with a further 21 sitting days to consider its statement and can proceed to ratify the treaty as soon as the statement has been laid.

204. *Clause 24* stipulates that a treaty cannot be ratified by the Government unless Parliament has had the opportunity to review the treaty in question for a set time period. To facilitate the review of the treaty, it must be laid before Parliament and published in an appropriate manner.

205. *Subsection (1)* states that a treaty may not be ratified unless (a) a Minister of a Crown has in the first instance laid before Parliament a copy of the treaty, (b) the treaty has been published in a way that he or she thinks appropriate and (c) period A (as to which, see paragraph 206 below) has expired without either House having resolved that the treaty should not be ratified.

206. *Subsection (2)* explains the meaning of period A, which is referred to in *subsection (1)* (above). It is a defined as a period of 21 sitting days beginning with the first sitting day after the date on which the treaty has been laid.

207. *Subsection (3)* then explains that a further procedure, which is set out in *subsections (4) to (6)* (see below), will apply if the House of Commons resolves that the treaty should not be ratified (whether or not the House of Lords did so too).

208. *Subsection (4)* provides that a treaty may still be ratified if, after the House of Commons has resolved that a treaty should not be ratified during period A, (a) a Minister of the Crown has laid before Parliament a statement explaining why the treaty should nevertheless be ratified, and (b) period B (as to which, see below) has expired without the House of Commons having (again) resolved that the treaty should not be ratified.

209. *Subsection (5)* then explains that period B is a period of 21 sitting days beginning with the first sitting day after the date on which the Minister has laid the statement referred to in *subsection (4)(a)*(a statement as to why the treaty should nevertheless be ratified).

210. *Subsection (6)* states that such a statement as to why the treaty should be ratified may be laid more than once. This means that the process outlined in *subsection (4)* can start again, should the House of Commons resolve during the second 21 sitting day period that a treaty should not be ratified.

211. *Subsections (7) and (8)* then explain the condition that must be met in order for a treaty to be ratified if the House of Lords has resolved to the contrary (but the House of Commons did not do so). The condition is that a Minister of the Crown should lay before Parliament a statement explaining why the treaty should nevertheless be ratified.

212. *Subsection (9)* explains that a "sitting day", as referred to in *subsections (2) and (5)*, means a day on which both Houses of Parliament sit.

Clause 25: Extension of 21 sitting day period

213. This clause provides a mechanism for Parliament to request extensions to the 21 sitting day period. Extensions are to be granted in blocks of up to 21 sitting days and will be at the discretion of the relevant Minister of the Crown. By *subsection (1)* the Minister may extend the period by 21 days or less. *Subsections (2) and (3)* provide that this can be done by laying a statement before Parliament before the expiry of the relevant period that indicates the period to be extended and the length of that extension. *Subsection (4)* requires the Minister to publish the statement in a way that the Minister thinks appropriate. *Subsection (5)* provides that the period can be extended more than once.

Clause 26: Section 24 not to apply in exceptional cases

214. This clause makes provision for exceptional cases. This clause provides an alternative procedure for treaties to be scrutinised by Parliament in exceptional cases where it is not possible for a treaty to be laid for the full 21 sitting day period before it is ratified.

215. *Subsection (1)* provides that the procedure does not apply if a Minister of the Crown is of the view that, for exceptional reasons, a treaty should be ratified without having to meet the conditions for which that clause provides.

216. *Subsection (2)* provides that *subsection (1)* may not be invoked where either House has resolved against ratification in accordance with *clause 24(1)(c).*

217. *Subsection (3)* provides that if, exceptionally, the treaty is to be, or has been, ratified without fulfilling the conditions in *clause 24*, the Minister of the Crown must either before, or as soon as practicable after, the treaty is ratified, lay before Parliament a copy of the treaty and a statement indicating why the conditions in *clause 24* are not met. The Minister of the Crown must also arrange for the treaty to be published in a way that he or she thinks appropriate.

Clause 27: Section 24 not to apply to certain descriptions of treaties

218. This clause makes provision in respect of those classes of treaties that have traditionally been dealt with outside the Ponsonby Rule, because they are scrutinised by other means. These are (i) treaties covered by the European Parliamentary Elections Act 2002 and European Union (Amendment) Act 2008, (ii) double taxation conventions and arrangements, and international

tax enforcement arrangements and (iii) treaties concluded under an authority given by the UK Government by any of the Channel Islands or of the Isle of Man or any of the Overseas Territories.

219. *Subsection (1)* states that the procedure does not apply to a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (which provides for treaties resulting in an increase in the European Parliament's powers not to be ratified unless approved by Act of Parliament) or by section 5 of the European Union (Amendment) Act 2008 (which provides for amendments to the founding treaties not to be ratified unless approved by Act of Parliament).

220. *Subsection (2)* exempts treaties in relation to which an Order in Council may be made under section 158 of the Inheritance Tax Act 1984 (double taxation conventions), section 2 of the Taxation (International and Other Provisions) Bill (double taxation arrangements) or section 173 of the Finance Act 2006 (international tax enforcement arrangements).

221. *Subsection (3)* states that the procedure does not apply to treaties concluded by the government of a British Overseas Territory, the Channel Islands or the Isle of Man where that treaty is concluded under the authority given by the United Kingdom Government.

222. *Subsection (4)* provides for treaties that have already been laid before Parliament for 21 sitting days before the legislation comes into force. It states that these treaties will not be covered by section 24. This means that the legislation does not cover treaties that have already been laid under the Ponsonby Rule.

Clause 28: Meaning of "treaty" and "ratification"

223. This clause defines "ratification" and "treaties". "Treaty" is defined as being an agreement between states (or between states and international organisations) which is binding under international law. *Subsection (2)* clarifies that certain instruments made under a treaty are not within the definition given in *subsection (1)*. But amendments to a treaty are within the definition of "treaty".

224. *Subsection (3)* provides a definition for "ratification" to include those acts that are considered equivalent to ratification (accession, approval or acceptance, or deposit of a notification that domestic procedures have been completed) and which establish as a matter of international law the consent of the United Kingdom to be bound by the treaty.

PART 3: REFERENDUM ON VOTING SYSTEMS

Clause 29: Referendum on voting systems

225. *Clause 29* provides that a referendum is to be held no later than 31st October 2011 on a change to the voting system for parliamentary elections. *Subsection (2)(a)* provides that the

Secretary of State must present a Command Paper to Parliament describing an 'alternative-vote' system for consideration by voters in the referendum. Subsection (2)(b) provides that the date and question for the poll are to be set by order made by statutory instrument. *Subsection (7)* provides that such an Order must be subject to the affirmative resolution procedure. *Subsection (8)* provides that, if an order to set the date or question for a referendum poll is not approved by Parliament, the obligation to hold the referendum falls away as does any obligation imposed by the provisions relating to the referendum in *clauses 30* to *35*. Under this subsection, the Secretary of State can lay another draft order or re-lay the same order but is not obliged to do so.

226. *Subsection (3)* provides that the question in the referendum must ask voters whether they would prefer the alternative-vote system described in the Command Paper to be used for parliamentary elections instead of the existing voting system (commonly referred to as "first past the post").

227. *Subsection (4)* defines "alternative-vote system" and sets out how the system would operate at a parliamentary election and how the winning candidate would be determined. *Subsection (5)* concerns the situation where there are two or more candidates with fewer votes than the other candidates but who have the same number of votes, and *subsection (6)* concerns the situation where the two remaining candidates have the same number of votes. In these circumstances, the candidate to be eliminated or elected would fall to be determined in accordance with whatever provision was made for that case.

Clause 30: Entitlement to vote

228. *Clause 30* provides for who is entitled to vote in the referendum under *clause 29*. Under *subsection (1)(a)*, a person is entitled to vote in the referendum if, on the date of the referendum, he or she would be entitled to vote as an elector at a parliamentary election in any constituency. *Subsection (1)(b)* provides that peers who, on the date of the referendum, would be entitled to vote in European Parliamentary elections can also vote in the referendum.

229. *Subsection (2)* provides that the entitlement to vote in the referendum set out in *subsection (1)* is subject to provision that may be made in an Order under *clause 37* for disregarding alterations to the registers of electors if they are made after a specified date. This means that the electoral registers to be used in the referendum may be closed to amendments made after a certain date. This is a common provision in electoral law.

Clause 31: Referendum period

230. *Clause 31* sets out what will be the referendum period – that is, the period of time during which controls on the donations and spending of permitted participants will apply – for the referendum on voting systems proposed in *Clause 29. Subsection (2)* of the clause provides that the referendum period will run from the date that the order which sets the date of the poll is made until the date of the poll itself. Where the order which sets the date of the poll is made

more than six months ahead of the poll, then *subsection (3)* of the clause provides that the referendum period will run for six months, counted back from the date of the poll. Further detail about who qualifies as a permitted participant for these purposes is at paragraphs 634 and 635 of these Notes.

Clause 32: Role of Electoral Commission

231. *Clause 32* sets out the role of the Electoral Commission in providing public information in connection with the referendum under *clause 29*. Under *subsection (1)* the Commission has a duty to promote public awareness of the referendum and how to vote in it. *Subsection (2)* provides the Commission with a discretionary power to provide voters with information about the two voting systems which will be the subject of the referendum.

Clause 33: Regional Counting Officers

232. This clause introduces the role of Regional Counting Officers specifically for the referendum on the voting system in parliamentary elections (under *clause 29*) and will apply in addition to the requirements for the Chief Counting Officer and counting officers as set out in section 128 of the Political Parties, Elections and Referendums Act 2000 (*subsection (1)).* The Chief Counting Officer is required to appoint a Regional Counting Officer for each region in Great Britain (s*ubsection (2)). Subsection (3)* specifies that the regions for which Regional Counting Officers are to be appointed are those used for the purposes of European Parliamentary Elections in relation to England, Scotland and Wales (specified in section 1 of and schedule 1 to the European Parliamentary Elections Act 2002).

233. *Subsection (4)* provides that each Regional Counting Officer is responsible for certifying the total number of ballot papers and total votes in favour of each answer to the referendum question, as counted by the counting officers, in respect of the region for which the Regional Counting Officer is appointed. *Subsection (5)* provides that the Chief Counting Officer may delegate the appointment of counting officers in the region for which the Regional Counting Officer is appointed to that Regional Counting Officer. Appointment made under such delegation has the effect of discharging the duty of the Chief Counting Officer to appoint counting officers under section 128(3) of the Political Parties, Elections and Referendums Act 2000 (*subsection (6)).*

234. *Subsection (7)* applies the provisions in relation to payments to counting officers (*clause 34*), taxation of accounts (*clause 35*) and restriction on legal challenge to the referendum result (*clause 36*) to Regional Counting Officers as they apply to counting officers (subject to the exclusion of *36(4)* which relates to Northern Ireland).

Clause 34: Payments to counting officers

235. *Clause 34* makes provision for payments to counting officers in respect of the referendum. Under *subsection (1)* counting officers are entitled to recover their charges in respect of the

referendum provided they relate to services necessarily rendered, or expenses necessarily incurred, for the efficient and effective conduct of the referendum and they do not exceed the overall maximum recoverable amount specified in an order ("the charges order") made by the Secretary of State. The charges order may also specify, or make provision for determining, the maximum amount which counting officers may recover for services or expenses of a specified description (*subsection (2)*). The Secretary of State is required to obtain the consent of Treasury to the making of the charges order.

236. The Electoral Commission is required to pay to counting officers the charges that they are entitled to recover in accordance with *clause 34* on an account being submitted to them (*subsection (5)*). However, the Electoral Commission can apply for the account to be taxed under *clause 34* before payment. *Subsection (6)* provides for the Electoral Commission to pay to local authorities any amounts required to reflect an increase in superannuation contributions that result from a fee paid as part of a counting officer's charges.

237. There is provision in *subsection (3)* for the Electoral Commission, with the consent of Treasury, to authorise payment of more than the amounts specified in the charges order if the conditions in *subsection (4)* are satisfied. The Electoral Commission is also empowered in *subsection (7)* to pay advances to counting officers upon request.

238. Under *subsection (8)* the Electoral Commission may make regulations regarding the time when and the manner and form in which accounts are to be rendered to the Commission for the purpose of payment of counting officers' charges.

239. *Subsection (10)* provides that any sums required by the Electoral Commission for making payments under *clause 34* are to be charged on and paid out of the Consolidated Fund.

240. *Clause 34* is modelled on section 29 of the Representation of the People Act 1983, which provides for payments to returning officers in the context of Parliamentary elections. Section 29 currently provides for these payments to be made by the Secretary of State but uncommenced amendments to that section made by paragraph 107 of Schedule 1 to the Electoral Administration Act 2006 transfer this function to the Electoral Commission. In making provision for payments to counting officers to be made by the Electoral Commission, *clause 34* is consistent with this aspect of the uncommenced amendments to section 29 as well as with the approach taken in section 10 of the Regional Assemblies (Preparations) Act 2003, which provides for payments to counting officers by the Electoral Commission in the context of referendums held under that Act.

Clause 35: Taxation of counting officer's account

241. *Clause 35* makes provision in respect of applications for a counting officer's account to be taxed before payment and is based on section 30 of the Representation of the People Act 1983 which provides for the taxation of returning officers' accounts in the context of parliamentary

elections. *Subsection (2)* provides that the court may tax the account as it thinks fit and finally determine the amount payable to the counting officer.

242. Where an application for taxation of a counting officer's account has been made, *subsection (3)* allows the counting officer to apply to the court to examine any claim made by a person ("the claimant") against the officer in respect of any charges included in the account. In this situation, the court may allow, disallow or reduce the claim against the counting officer, but must first give the claimant the opportunity to be heard and to tender evidence (*subsection (4)*).

Clause 36: Restriction on legal challenge to referendum result

243. *Clause 36* relates to how the formal result of a referendum under *clause 29* may be challenged in legal proceedings. It provides that any challenge in respect of the number of ballot papers or votes cast as certified by the Chief Counting Officer or a counting officer must be brought by way of judicial review (*subsection (1)(a)).* In addition, the challenge must be commenced within six weeks of the date of the relevant certificate (*subsections (1)(b) and (2)*). The six week period is intended to ensure that sufficient time is allowed for challenges to be brought while avoiding prolonged delay in the final result of the referendum being known.

Clause 37: Conduct etc of referendum

244. This clause enables the Secretary of State to make by order provision for and in connection with the referendum and for the combination of the poll at the referendum with the poll at an election or at another referendum (or both). *Subsections (2) and (3)* set out, in a non-exhaustive list, some of the provisions that may be included in such an Order. *Subsection (4)* specifies that the power to make an order under this clause is exercisable by statutory instrument. *Subsection (5)* requires the Secretary of State to consult the Electoral Commission before making an order under this clause. *Subsection (6)* provides that an order under this clause will be subject to the affirmative resolution procedure.

PART 4: PARLIAMENTARY STANDARDS ETC

Clause 38: Compliance Officer

245. *Subsection (1)* substitutes subsections (3) and (4) of section 3 of the Parliamentary Standards Act 2009 ("the 2009 Act"). These existing subsections establish the Commissioner for Parliamentary Investigations. The substituted subsections establish the office of Compliance Officer in place of the Commissioner for Parliamentary Investigations. *Subsection (2)* introduces Schedule 4 which substitutes a new Schedule 2 to the 2009 Act.

Schedule 4: Parliamentary Standards Act 2009: Substituted Schedule 2

246. The substituted Schedule 2 to the 2009 Act makes provision for the appointment of the Compliance Officer, for his or her terms and conditions, resignation and removal from office, remuneration and status.

247. *Paragraph 1* provides for the Compliance Officer to be appointed by IPSA. Whilst the Compliance Officer will be appointed by IPSA, he or she will be an independent office holder and not an employee of IPSA.

248. *Paragraph 3* sets limits on the term of office of the Compliance Officer. The Compliance Officer will be appointed for a single fixed term not exceeding five years.

249. *Paragraph 4* provides that the Compliance Officer may resign his or her office by giving written notice to the IPSA. The Compliance Officer may be removed from office by the IPSA on one of the grounds specified in *paragraph 4(2)* namely, following conviction for an offence, bankruptcy or if the Compliance Officer is otherwise unfit or unable to carry out the functions of the office.

250. *Paragraph 7* places a duty on IPSA to provide the Compliance Officer with adequate resources to discharge his or her functions. Because the Compliance Officer's staffing and other resources will be provided by the IPSA there is no requirement on the Compliance Officer to prepare annual accounts.

251. *Paragraph 8* requires the Compliance Officer to prepare an annual report which he or she must send to IPSA which must, in turn, send it to the Speaker to be laid before Parliament. The Compliance Officer must publish the annual report in such manner as he or she considers appropriate.

252. *Paragraph 9* enables IPSA to appoint a temporary Compliance Officer for a period of up to 6 months in the event that there is a vacancy in the office of Compliance Officer. The appointee must be from amongst the staff of the Compliance Officer's office.

253. *Paragraph 11* extends the Freedom of Information Act 2000 to cover the Compliance Officer. This will mean that the Compliance Officer will have to introduce a publication scheme explaining how he or she intends to handle the information in his or her possession, as well as being obliged to consider requests for information in accordance with the provisions of that Act.

Clause 39: Membership of Speaker's Committee

254. This clause amends Schedule 3 to the 2009 Act which makes provision for the Speaker's Committee for the Independent Parliamentary Standards Authority which has the functions of approving the selection of candidates for appointment as a member of the IPSA and

scrutinising the IPSA's annual estimate of the use of resources. Schedule 3 to the 2009 Act currently provides that the membership of the Speaker's Committee shall comprise the Speaker of the House of Commons, the Leader of the House of Commons, the chair of the Committee on Standards and Privileges, and five MPs who are not Ministers of the Crown. The clause amends Schedule 3 so as to augment the membership of the Speaker's Committee by adding three lay members. The lay members must be persons who are not, or have never been, MPs (new paragraph 2A(1) of Schedule 3). Lay members will be appointed for a single fixed term not exceeding 5 years (new paragraph 2A(4) of Schedule 3); as such their appointment will not terminate with the dissolution of a Parliament. The lay members may be paid by the IPSA such remuneration and allowances as the Speaker may determine (new paragraph 2A(8) and (9) of Schedule 3).

Clause 40: Transparency etc

255. *Subsection (2)* inserts a new section 3A into the 2009 Act which places the IPSA under a general duty to have regard to the principles that it should act in a way which is efficient, cost-effective and transparent. This general duty will replace the narrower duty on IPSA to do things efficiently and cost-effectively set out in paragraph 10 of Schedule 1 to the 2009 Act (that paragraph will be repealed by *paragraph 7(2)* of Schedule 6 to the Bill). IPSA will also be required to have regard to the principle that MPs should be supported in efficiently, cost-effectively and transparently carrying out their parliamentary functions.

256. *Subsection (3)* amends section 5 of the 2009 Act (which requires the IPSA to prepare and keep under review an allowances scheme) so as to require the IPSA to publish alongside the allowances scheme, and any revisions to it, a statement of its reasons for adopting the scheme or making revisions to it.

257. *Subsection (4)* amends section 6 of the 2009 Act (which sets out the framework for dealing with claims under the allowances scheme) to require the IPSA to publish information about each claim for an allowance submitted by an MP and each payment made by the IPSA in response to such a claim. The precise information to be published and the frequency of publication will be a matter for the IPSA in accordance with the procedures it determines for this purpose. The IPSA is required to consult specified consultees, and other persons it considers appropriate, before determining such procedures (new section 6(10) of the 2009 Act).

Clause 41: MPs' salaries

258. *Subsection (1)* substitutes a new section 4 and 4A for section 4 of the 2009 Act (which provides that IPSA is to pay MPs' salaries in accordance with resolutions of the House of Commons). The new section 4 gives the IPSA responsibility for paying the salaries of MPs and provides that the amounts of the salaries are also to be determined by the IPSA. New section 4 also sets out the circumstances under which salaries will be paid. Section 4A makes further provision about the determination of MPs' salaries.

259. New section 4(1) provides for salaries to be paid to MPs. The salaries are to be paid by the IPSA monthly in arrears (new section 4(2) and (3)). New section 4(5) provides that the salaries will be determined by the IPSA in accordance with the provisions of new section 4A.

260. New section 4(5) sets out the definition of "relevant period" for the purpose of new section 4(1) and therefore the period for which MPs are to receive a salary. By virtue of new section 4(6) no salary is payable until the MP has made and subscribed the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).

261. New section 4(7) provides that the duty to pay a salary is subject to anything done in the exercise of the disciplinary powers of the House of Commons so that a salary can be withheld, or deductions made from it, as a consequence of the exercise of the disciplinary powers of the House of Commons.

262. New section 4A(2) allows the IPSA to determine that the salaries of those holding an office or position specified in a resolution of the House of Commons, such as a Chairman of a Select Committee, are to be paid at a higher rate than for other Members of the House. New section 4A(3) permits IPSA to make different provision under new section 4A(2) for different offices or positions. This will allow the amount of the additional salary paid to be tailored to the office or position.

263. New section 4A(4) gives the IPSA the authority to include a formula or mechanism in the determination so as automatically to adjust salaries without the need for a further determination.

264. A determination may have retrospective effect so that, for example, an increase in salary could be backdated to a point before the determination was made (new section 4A(5)). But the first determination may not have retrospective effect.

265. Under new section 4A(6) IPSA is required to carry out a review of MPs' salaries in the first year of each Parliament (subject to *subsection (2)*). It also permits the IPSA to carry out a review at any other time it considers appropriate.

266. New section 4A(7) lists those persons that the IPSA must consult as part of its process in reviewing salaries and making determinations. These include the Senior Salaries Review Body, representatives of those likely to be affected by the determination or the review, the Minister for the Civil Service, HM Treasury and any other person that the IPSA considers appropriate.

267. IPSA is required to publish both any determination of salaries it might make and a statement explaining how it reached such a determination (new section 4A(8)). New section 4A(9) creates a duty on the IPSA to publish a statement explaining why it has not changed its

determination on salaries if it carries out a review but decides not to make a new determination.

268. *Subsection (2)* provides that any determination made by the IPSA does not have to come into effect before 1st April 2012. It also removes the need for the IPSA to carry out a review in the first year of any Parliament beginning before 1st April 2012.

269. *Subsection (3)* ensures that the amount of salaries of MPs will continue to be paid in accordance with resolutions of the House of Commons until the IPSA makes its first determination.

Clause 42: MPs' allowances scheme

270. This clause amends section 5 of the 2009 Act (which requires the IPSA to prepare and keep under review an allowances scheme). It provides that the duty on IPSA to pay an allowance to an MP in accordance with the allowances scheme is subject to any disciplinary actions taken against the MP by the House of Commons. Such action could, amongst other things, include the withholding of one or more allowances for a specified period. Substituted section 4(7) of the 2009 Act (which replicates existing section 4(2)) makes equivalent provision in respect of the payment of MPs' salaries by IPSA.

Clause 43: Allowances claims

271. *Subsections (1)* to *(4)* of this clause amends section 6 of the 2009 Act (which sets out the framework for dealing with claims under the allowances scheme). *Subsection (5)* inserts a new section 6A which makes further provision in respect of determinations by IPSA to refuse an MP's expenses claim or to pay such a claim in part only. New section 6A(1) and (2) provide for a review mechanism if IPSA determines that a claim should be refused or paid only in part. The mechanism builds on and supersedes that contained in subsections (4) and (5) of current section 6 (which provide for a review by IPSA) of the 2009 Act which are repealed by *subsection (2)*. Under new section 6A(1) an MP, after having given IPSA a reasonable opportunity to reconsider its decision to refuse (in whole or in part) an expenses claim, may ask the Compliance Officer to review IPSA's decision (including any modification of that decision following IPSA's own review). On completion of the review by the Compliance Officer, he or she may either confirm that IPSA's determination of the expenses claim was correct or alter that determination. Where the Compliance Officer decides to alter IPSA's determination, the Compliance Officer may also make findings about the way in which IPSA dealt with the expenses claim (new section 6A(3)).

272. An MP may appeal to the First-tier Tribunal against the outcome of the Compliance Officer's review (new section 6A(6)). Such an appeal is by way of a rehearing (new section 6A(8)). Under the provisions of the Tribunals, Courts and Enforcement Act 2007 there is a right of appeal on a point of law to the Upper Tribunal against the decision of the First-tier Tribunal. An appeal must be lodged within 28 days of the day the Compliance Office sends notice of

his or her decision to the MP; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (new section 6A(7)).

273. IPSA is required to give effect, as necessary, to the outcome of the Compliance Officer's review but not before the period for making an appeal has lapsed and, if an appeal is lodged, before the appeal (and any further in time appeal) has been withdrawn or determined (new section 6A(4) and (5)).

274. New section 6(6)(b) and (c) and (6A), as inserted by *subsections (3) and (4)*, enable the allowances scheme to include provision for deducting from allowances due to an MP, or from an MP's salary, overpaid expenses which the MP has voluntarily agreed to repay (including under an agreement made with the Compliance Officer under substituted section 9(8)) or is required to repay pursuant to a repayment direction (issued under paragraph 1 of new Schedule 4 to the 2009 Act). The scheme may also include provision for the recovery of amounts payable by virtue a penalty notice imposed under paragraph 6 of new Schedule 4 to the 2009 Act.

275. *Subsection (6)* amends section 7 of the 2009 Act (which requires IPSA to provide MPs with guidance about taxation issued by Her Majesty's Revenue and Customs) so as to place a duty on IPSA to prepare and publish guidance for MPs about making claims under the allowances scheme. The IPSA must additionally provide to any member on request such further advice about making claims as the IPSA considers appropriate.

Clause 44: MPs' code of conduct relating to financial interests

276. This clause repeals section 8 of the 2009 Act which requires IPSA to prepare, and keep under review, a code of conduct relating to MPs' financial interests. Responsibility for maintaining such a code of conduct will, as a result, be retained by the House of Commons.

Clause 45: Investigations

277. This clause replaces the existing section 9 of the 2009 Act (which made provision for investigations by the Commissioner for Parliamentary Investigations) with new sections 9 and 9A which provide for investigations by the Compliance Officer.

278. New section 9(1) provides that the Compliance Officer may conduct an investigation if he or she has reason to believe that a member of the House of Commons may have been overpaid an allowance under the allowances scheme.

279. New section 9(2) sets out who may initiate an investigation. This can be either the Compliance Officer on his or her own initiative, at the request of IPSA or the MP concerned, or as the result of a complaint from an individual.

280. New section 9(3) requires the MP concerned and the IPSA to provide any information reasonably required by the Compliance Officer for the purposes of the investigation and to do so within the period specified by the Compliance Officer. Such information may include documents and may extend to providing explanations as to the information contained in such documents.

281. New section 9(4) to (8) deal with the conduct of investigations by the Compliance Officer.

282. New section 9(4) and (5) set out a two stage process whereby the Compliance Officer, following his or her investigation, prepares provisional findings and then concludes the investigation by issuing a statement of his or her definitive findings. The MP concerned and IPSA will have an opportunity to make representations to the Compliance Officer during the course of the investigation and following receipt of the Compliance Officer's provisional findings. By virtue of procedures made under new section 9A(2)(b) and (3), in making representations during the investigation phase an MP will have an opportunity to give oral evidence to the Compliance Officer and to call and examine witnesses.

283. New section 9(6) provides that the findings of the Compliance Officer may include a finding that the MP concerned has failed to co-operate with the investigation by not providing the Compliance Officer with requested information within the timeframe specified. Findings may also include findings about the role of IPSA in respect of the matters under investigation. The Compliance Officer may, therefore, make a finding that the MP concerned had been paid expenses which should not have been paid under the allowances scheme but that this is either wholly or partly the responsibility of the IPSA.

284. By virtue of new section 9(7) and (8) the Compliance Officer need not make a definitive finding if the MP has accepted the provisional finding, such other conditions as may be specified by the IPSA are met and the MP repays the IPSA such amount as the Compliance Officer considers reasonable. The Compliance Officer will have discretion whether to terminate an investigation through this procedure.

285. New section 9A requires the IPSA to determine procedures for the conduct of investigations by the Compliance Officer. Such procedure must, amongst other things, cover the handling of complaints from individuals. This may, for example, include procedures for refusing to conduct an investigation in response to a complaint where the complaint is vexatious or is frivolous. The IPSA must also determine procedures about the circumstances in which findings of the Compliance Officer and agreements reached between the Compliance Officer and an MP as to the voluntary repayment of overpaid expenses are to be published (new section 9A(4)). IPSA must also determine procedures in respect of the publication of the Compliance Officer's conclusions of his or her review of a decision by IPSA not to pay (in part or in full) an MP's expenses claim and of his or her decision to issue a penalty notice under new Schedule 4 (new section 9A(5)).

286. New section 9A(6) requires that such procedures must be fair and also requires the IPSA to consult the Speaker, the Leader of the House of Commons, the Committee on Standards and Privileges, the Compliance Officer and any other person the IPSA considers appropriate, in determining its procedures.

Clause 46: Enforcement

287. This clause inserts new section 9B into the 2009 Act and introduces Schedule 5 to the Bill which inserts a new Schedule 4 into the 2009 Act. New section 9B(1) introduces new Schedule 4 to the 2009 Act which sets out the enforcement powers of the Compliance Officer. In addition to those enforcement powers, new section 9B(2) provides that the Compliance Officer may also provide information to the Parliamentary Commissioner for Standards. For example, if the Compliance Officer discovered information about an MP which was relevant to the work of that Commissioner, the Compliance Officer would be able to provide that information to him or her.

Schedule 5: Parliamentary Standards Act 2009: new Schedule 4

288. New Schedule 4 to the 2009 Act sets out the enforcement powers of the Compliance Officer. These take two forms. Part 1 of the Schedule sets out powers to recover overpaid expenses and Part 2 confers powers to impose a civil penalty on MPs in defined circumstances.

289. *Paragraph 1* of new Schedule 4 confers power on the Compliance Officer to issue an MP with a repayment direction. The power is exercisable where, following an investigation under section 9 of the 2009 Act, the Compliance Officer has found that an MP has been paid an amount under the allowances scheme which should not have been paid and that the amount has not been repaid (*sub-paragraph (1)*). Where the Compliance Officer makes a finding that IPSA was wholly or partly at fault in making an overpayment, he or she has a discretion whether or not to issue a repayment direction; where there is no such finding the Compliance Officer must issue a repayment direction (sub-paragraphs (2) and (3)). Where the Compliance Officer issues a repayment direction in circumstances where he or she has made a finding that IPSA is wholly or partly at fault, the direction must specify such amount to be repaid as the Compliance Officer considers reasonable; in all other cases the repayment direction must specify the full amount of the overpayment which is to be repaid (*sub-paragraph (4)*). A repayment direction must specify the date by which the required repayment must be made (*sub-paragraph (5)*). A repayment direction may also require the MP concerned to pay interest on the amount overpaid and the costs of IPSA in relation to the amount to be repaid, including the costs of the Compliance Officer's investigation *(sub-paragraph (6)*).

290. The decision whether to require an MP to pay interest on the overpayment or the costs of the investigation will be at the discretion of the Compliance Officer. However, the Compliance Officer will be required to have regard to guidance issued by IPSA under *paragraph 2*. Such guidance must, in particular, cover whether, if at all, the Compliance Officer should require

an MP to pay interest or costs in circumstances where the Compliance Officer has found IPSA to be wholly or partly at fault (*paragraph 2(2)*). Where the Compliance Officer imposes a requirement to pay costs, the amount is to be calculated in accordance with a scheme prepared by IPSA (*paragraph 2(3)*).

291. *Paragraph 3* provides for appeals against a repayment direction. An appeal will be to the First-tier Tribunal. An MP will be able to challenge a finding by the Compliance Officer that there has been an overpayment of expenses; a decision by the Compliance Officer to require the MP to pay interest on the overpayment and/or the costs of the investigation; a decision by the Compliance Officer to impose a repayment direction in circumstances where the Compliance Office has made a finding that IPSA was wholly or partly at fault; and, in cases where such a finding has been made, the amount specified in the repayment direction (*sub-paragraph (1)*). An appeal must be lodged within 28 days of the repayment direction being sent to a member; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (*sub-paragraph (2)*). An appeal to the First-tier Tribunal will be by way of a rehearing (*sub-paragraph (3)*). Where the First-tier Tribunal allows an appeal it may revoke the repayment direction (and, by implication, the decision of the Compliance Officer that there has been an overpayment), revoke or vary any requirement contained in the repayment direction (for example, the requirement to pay interest or costs may be overturned or reduced, or the amount of expenses to be repaid by the MP could be reduced), or make any other order it thinks fit (*sub-paragraph (5)*).

292. *Paragraph 4* enables an MP subject to a repayment direction to apply to the Compliance Officer to extend (or further extend) the repayment period specified in the repayment direction. Such an application must be made before the expiry of the repayment period (*sub-paragraph (1)*). An MP may appeal to the First-tier Tribunal against the decision of the Compliance Officer (in practice, a decision to refuse to extend the repayment period or to extend it by the duration requested by the MP). An appeal must be lodged within 28 days of the day the Compliance Office sends notice of his or her decision to the MP; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (*sub-paragraph (5)*). The appeal will be by way of a rehearing (sub-paragraph (6)). The Tribunal may revoke or vary (for example, by substituting a new repayment period) the Compliance Officer's decision and make such other order as it thinks fit (*sub-paragraph (8)*).

293. *Paragraph 5* provides for the enforcement of a repayment direction. Enforcement action can only be taken on the expiry of the 28 day period for bringing an appeal against a repayment direction or, if an appeal is lodged in time, on the withdrawal or determination of that appeal (and any subsequent in time appeal) (*sub-paragraphs (1)* and *(2)*). IPSA may recover the amount specified in the repayment direction (that is, the overpaid expenses and any interest or costs) by deducting the amount from the MP's salary or any allowances payable to the MP (*sub-paragraph (3)*). It is expected that this method of recovery will be used in the majority of cases. Where this method of recovery is not possible, for example, where the person subject to a repayment direction is no longer an MP, the Compliance Officer may seek to enforce

payment through an order of the county court or, in Scotland, the sheriff's court (*sub-paragraphs (4)* and *(5))*.

294. *Paragraph 6* enables the Compliance Officer to impose a civil monetary penalty if he or she has made a finding that the MP has, without reasonable excuse, failed to provide the Compliance Officer with information pursuant to his or her investigation (*sub-paragraph (3)*). A penalty notice may also be imposed if an MP has failed to comply with the requirements of a repayment direction (that is, that the MP has failed to pay the amount specified or failed to do so within the repayment period) (*sub-paragraph (4)*).

295. Under *paragraph 7* the maximum amount of the penalty that the Compliance Officer may impose is £1,000 (*sub-paragraph (2)*). This amount may be increased (but not decreased) by order subject to the affirmative resolution procedure (*sub-paragraphs (3)* to *(5)*).

296. A penalty notice must include specified information, including the amount of the penalty, the reasons for imposing the penalty, the deadline for paying the penalty and the procedure for appealing (*paragraph 8*).

297. *Paragraph 9* requires IPSA to prepare guidance about the circumstances in which the Compliance Officer should impose a penalty and how the Compliance Officer should determine the amount of the penalty (subject to the statutory maximum) (*sub-paragraph (1)*). The Compliance Officer will be required to have regard to such guidance.

298. *Paragraph 10* enables the Compliance Officer to review the decision to impose a penalty notice. Such a review may be at the request of the MP concerned or on the Compliance Officer's own initiative.

299. *Paragraph 11* confers a right of appeal to the First-tier Tribunal against the imposition of a penalty notice (*sub-paragraph (1)*). An appeal must be lodged within 28 days of the penalty notice being sent to a member; although the First-tier Tribunal may give permission for an out of time appeal to be lodged (sub-paragraph (2)). The appeal is by way of a rehearing (*sub-paragraph (3)*). Where it allows an appeal, the Tribunal may either cancel the penalty notice or reduce the penalty (sub-paragraph (4)).

300. *Paragraph 12* makes similar provision for the enforcement of penalty notices as paragraph 5 does for the enforcement of repayment directions.

301. *Paragraph 13* provides for the payment of moneys paid in pursuance of a penalty notice to be paid into the Consolidated Fund.

Clause 47: Relationships with other bodies etc

302. This clause inserts new section 10A into the 2009 Act. New section 10A(1) requires IPSA and the Compliance Officer to prepare a joint statement detailing how they will work with the

Parliamentary Commissioner for Standards, the Director of Public Prosecutions, the Metropolitan Police and such other persons as they consider appropriate. IPSA and the Compliance Officers must consult the same persons before preparing the joint statement (new section 10A(2)).

303. New section 10A(3) provides that the investigatory and enforcement powers of the Compliance Officer do not affect the disciplinary functions of the House of Commons. It will, therefore, be open to the House to impose its own parliamentary sanctions on an MP who has been the subject of enforcement action by the Compliance Officer. Conversely the Compliance Officer may exercise his or her investigatory and enforcement powers in respect of an MP who is, or has been, prosecuted for an offence or disciplined by the House in respect of the same conduct (new section 10A(4)).

Clause 48: Further functions of the IPSA and Commissioner

304. This clause repeals section 11 of the 2009 Act which would permit the IPSA to take over the functions of the non-statutory Parliamentary Commissioner for Standards concerning registers held by the Standards Commissioner, for example, the Register of Interests of Members' Secretaries and Research Assistants. Section 11 would also have permitted the Commissioner for Parliamentary Investigations to take over functions of the Standards Commissioner. The repeal is consequential upon the repeal of section 8 of the 2009 Act and the removal of the office of the Commissioner for Parliamentary Investigations.

Clause 49: Expiry of provisions of the Parliamentary Standards Act 2009

305. This clause repeals section 15 of the 2009 Act which provides for the expiry of sections 3(3) and (4) and 8 to 11 of (and Schedule 2 to) that Act two years after the coming into force of section 8 (subject to a power of extension exercisable by Order). These provisions relate to the Commissioner for Parliamentary Investigations, the functions of that Commissioner, the code of conduct relating to financial interests and the offence of providing false or misleading information for allowances claims. These provisions, save for that containing the offence, are repealed or substantially revised by the other amendments to the 2009 Act.

Clause 50 and Schedule 6: Consequential amendments

306. *Clause 50* and Schedule 6 make consequential amendments to the 2009 Act and other Acts.

307. *Paragraph 7(3)* and *(4)* of Schedule 6 amends paragraph 18 of Schedule 1 to the 2009 Act which, together with paragraph 17 of that Schedule, separate the IPSA's administration and regulation functions. IPSA may delegate its administrative functions but not its regulation functions. The payment of MPs' salaries under the new sections 4 and 4A will (as now under the 2009 Act) be an administrative function, whilst the determination of MPs' pay will be a regulation function. The following will also be classed as regulation functions: determining procedures for the publication of allowances claims; determining conditions which must be

met before the Compliance Officer and an MP may agree the voluntary repayment of overpaid expenses; determining procedures for investigations; the appointment and removal of the Compliance Officer; determining a scheme setting out how any costs imposed on an MP as part of a repayment direction are to be calculated; specifying additional matters to be contained in a penalty notice; and preparing guidance in respect of penalty notices.

308. *Paragraphs 8 to 12* of Schedule 6 amend references to the payment of MPs' salaries under resolutions of the House of Commons to the payment of salaries under section 4 of the 2009, and makes other amendments as a consequence of new sections 4 and 4A of the 2009 Act.

Clause 51: Resettlement grants for MEPs

309. *Clause 51* substitutes new subsections (1) to (3) and (3A) to (3D) of section 3 for the current section 3(1) to (3) of the European Parliament (Pay and Pensions) Act 1979 ("the 1979 Act"). The existing provisions set out the amount payable in the form of a resettlement grant to former MEPs.

310. New section 3(1) of the 1979 Act provides for the IPSA to make a scheme for the paying of an allowance, to those eligible, when they cease to be a MEP.

311. New section 3(2) provides that the IPSA may only make such a scheme if a scheme made under section 5 of the 2009 Act (the MPs' allowances scheme) makes provision for the payment of allowances to those who cease to be MPs following the dissolution of Parliament.

312. New section 3(3) requires the provision made in respect of MEPs to be as equivalent as the IPSA considers practicable to the provision made under the MPs' allowances scheme.

313. New section 3(3A*)* provides for the scheme and a statement of reasons for making the scheme to be laid before both Houses of Parliament. New section 3(3B) requires the IPSA to publish the scheme and the statement of the reasons for it.

314. New section 3(3C) limits the eligibility for payment of the allowance to those MEPs who either stand down at a European Election or who fail to be re-elected.

315. New section 3(3D) provides that the IPSA may amend or revoke any previous scheme.

316. The existing provisions, and amendments, only apply to those MEPs who have opted-out of the arrangements under the single Statute for MEPs (which came into effect on 14th July 2009), see section 3(5) of the 1979 Act.

317. *Subsection (3)* omits section 3A of the 1979 Act which provided the power for the Leader of the House of Commons to, by order, amend section 3 so that the amount of grant payable was as equivalent as possible to that payable to MPs .

318. *Subsection (4)* amends section 7(1)(b) of the 1979 Act so as to continue to allow the resettlement payments to be made from the Consolidated Fund.

Clause 52 and Schedule 7: Parliamentary and other pensions

319. *Clause 52* introduces Schedule 7 which makes provision about pensions for MPs, ministers and certain other office-holders.

320. The current provisions in relation to MPs' and Ministers' etc pensions are found in the Parliamentary and other Pensions Act 1987 ("the 1987 Act") which sets out that there is a Parliamentary Contributory Pension Fund ("the Fund"). The 1987 Act provides that the Leader of House of Commons may make regulations making provision with respect to the application of the assets of the Fund in relation to the provision of pensions for MPs, Ministers and certain other office holders.

321. Schedule 7 provides for the continuation of the Fund. It further provides for the IPSA to make a scheme making provision with respect to the application of the assets of the Fund in relation to the provision of pensions for MPs. The Minister for the Civil Service will be responsible for making a scheme in relation to the provisions of pensions for Ministers and other office holders currently covered by the 1987 Act. The IPSA will also be responsible for making a scheme in relation to the overall administration and management of the Fund.

322. Schedule 7 largely replicates the structure of the 1987 Act but with necessary changes given the transfer of responsibility for the oversight of MPs' pensions to a body independent of Government; the IPSA.

Part 1: Parliamentary and Other Pensions

323. *Paragraph 1(1)* of Schedule 7 provides for the Parliamentary Contributory Pension Fund ("the Fund") to continue.

324. *Paragraph 2* provides that there are to be 10 trustees including one person appointed by the IPSA, one person appointed by the Minister for the Civil Service and 8 persons nominated and selected under paragraph 3.

325. *Paragraph 3* provides that the trustees of the Fund must make arrangements for the nomination and selection of member-nominated trustees as provided for in paragraph 3.

326. *Paragraph 4* provides that the IPSA may with the consent of the Treasury provide for remuneration and allowances to be payable to the trustees out of the assets of the Fund.

327. *Paragraph 5* makes provision in relation to the resignation and removal of the trustees.

328. *Paragraph 6* provides that subject to anything in the administration scheme the trustees may determine their own procedure and that the validity of proceedings of the trustees is not affected by a vacancy among or defect in the appointment of a trustee.

329. *Paragraph 7(1)* provides that the trustees may invest the assets of the Fund. *Paragraph 7(2)* provides that they may settle or compromise any claim or dispute relating to the Fund, with the consent of the IPSA in relation to the MPs' pension scheme or an administration scheme, and the consent of the Minister for the Civil Service in relation to the Ministers' etc pension scheme. The IPSA must consult the Minister for the Civil Service before consenting to any settlement or compromise in relation to an administration scheme. The Parliamentary Pensions (Consolidation and Amendment) Regulations 1993 ("the 1993 Regulations") currently provide that the trustees may settle or compromise any dispute relating to the Fund with the consent of the Leader of the House of Commons. *Paragraph 7(4)* also provides that the trustees must prepare a statement of investment principles, having consulted the IPSA and the Minister for the Civil Service. Paragraph 10 of Schedule 1 to the 1993 Regulations currently requires the trustees to consult the Leader of the House of Commons.

330. *Paragraph 8(1)* provides that the IPSA may, with the consent of the trustees, make a scheme containing provision about the administration and management of the Fund, the indemnification of the trustees (and former trustees) and the proceedings of the trustees. *Paragraph 8(2)* describes what provisions, in particular, may be included in such a scheme including by reference to *paragraphs 31* to *33* of the Schedule. Section 2(1) of the 1987 Act currently provides that the Leader of the House of Commons may make provision relating to these matters by regulations, with the consent of the Minister for the Civil Service.

331. *Paragraph 9* provides the procedure for making an administration scheme. *Paragraph 9(2)* provides that before making such a scheme, the IPSA must consult the Treasury, the Minister for the Civil Service, persons the IPSA considers to represent those likely to be affected, and any other person the IPSA considers appropriate. *Paragraph 9(3)* provides that the IPSA must send to the Speaker of the House of Commons for laying before the House of Commons any scheme and a statement of the reasons for making it. Under *paragraph 9(4)* the IPSA must publish the scheme and statement of reasons.

332. *Paragraph 10* provides for an Exchequer contribution to be paid into the Fund, calculated in accordance with recommendations by the Government Actuary, who is required to make a report to the trustees, the IPSA, the Minister for the Civil Service and the Treasury every three years. Section 3(3) of the 1987 Act currently requires the report to be made to the trustees and the Minister for the Civil Service (further to a transfer of function from the Treasury).

333. *Paragraph 11(1)* provides that the IPSA, with the relevant consents, may make provision for determining the Exchequer contribution in respect of any financial year, outside of the procedure described in *paragraph 10*. Under *paragraph 11(3)* the IPSA must consult the trustees (where their consent is not otherwise required), the Government Actuary and persons appearing to the IPSA to represent persons likely to be affected by the provision. Under

paragraph 11(5) the IPSA must send to the Speaker of the House of Commons for laying before the House of Commons any provision and a statement of the reasons for making it, together with any representations made by the trustees. Under *paragraph 11(6)* the IPSA must publish the provision and statement of reasons. Section 6(1) of the Ministerial and other Pensions and Salaries Act 1991 currently provides that the Leader of the House of Commons may, with the consent of the Treasury, make provision by regulations for determining the Exchequer contribution in respect of any financial year where this will not simply be in accordance with recommendations by the Government Actuary.

334. *Paragraph 12(1)* provides that the IPSA may make a scheme containing provision about the provision of pensions out of the Fund in respect of service as an MP. Under *paragraph 12(2)* such a scheme may not make provision about the provision of pensions for someone with service as Lord Chancellor. *Under paragraph 12(3)* such a scheme may only make provision for someone with service as Prime Minister or Speaker of the House of Commons in respect of service as an MP on or after 28th February 1991. Section 2 of the 1987 Act currently provides that the Leader of the House of Commons may make provision about the provision of pensions in respect of service as an MP (but not for someone with service as Lord Chancellor, and only for the Prime Minister or Speaker of the House of Commons in respect of service as an MP on or after 28th February 1991) by regulations with the consent of the Minister for the Civil Service.

335. *Paragraph 13* defines a person's "service as a member of the House of Commons" by reference to the time that a salary was payable under section 4 of the Parliamentary Standards Act 2009 or, in relation to a time before that section is in force, under resolutions of the House of Commons.

336. *Paragraph 14(1)* describes what provisions, in particular, may be included in MPs' pension schemes including by reference to *paragraphs 24* to *32* of the Schedule, and provides that they may be retrospective in effect. Certain provisions may only be included with the consent of the trustees of the Fund.

337. *Paragraph 15* defines the procedure for making a MPs' pension scheme. *Paragraph 15(1)* provides that before making such a scheme, the IPSA must consult the Treasury, the Minister for the Civil Service, the trustees, persons the IPSA considers to represent those likely to be affected, the Government Actuary, the Review Body on Senior Salaries and any other person the IPSA considers appropriate. Under *paragraph 15(2)*, the IPSA must send to the Speaker of the House of Commons for laying before the House of Commons any scheme and a statement of the reasons for making it, together with any representations made by the trustees. Under *paragraph 15(3)*, the IPSA must publish the scheme and statement of reasons.

338. *Paragraph 16(1)* provides that the Minister for the Civil Service may make a scheme containing provision about the provision of pensions out of the Fund in respect of service as a Minister or other office-holder. *Paragraph 16(2)* defines the offices concerned, and *paragraph 16(3)* makes clear that they do not include the Lord Chancellor, Prime Minister or

Speaker of the House of Commons. Section 2(1) of the 1987 Act currently provides that the Leader of the House of Commons may make such provision by regulations with the consent of the Minister for the Civil Service.

339. *Paragraph 17(1)* describes what provisions, in particular, may be included in Ministers' pension schemes by reference to *paragraphs 24* to *32* and *34* of the Schedule, and provides that they may be retrospective in effect. Certain provisions may only be included with the consent of the trustees of the Fund.

340. *Paragraph 18* defines the procedure for making a Ministers' pension scheme. *Paragraph 18(1)* provides that before making such a scheme, the Minister must consult the IPSA, the Government Actuary, the trustees and any other person the Minister considers appropriate. Under *paragraph 18(2)* the Minister must lay before the House of Commons any scheme and a statement of the reasons for making it, together with any representations made by the trustees. Under *paragraph 18(3)* the Minister must publish the scheme and statement of reasons. Section 2(1) of the 1987 Act currently provides that the Leader of the House of Commons may make provision about the provision of pensions for Ministers and other office-holders by regulations with the consent of the Minister for the Civil Service.

341. *Paragraph 19* makes provision for the protection of accrued rights of scheme members when the IPSA makes a MPs' pension scheme, or where the Minister for the Civil Service makes a Ministers' etc pension scheme. Under *paragraphs 19(2)* and *19(3)* schemes must not make any provision in relation to an accrued right which puts (or might put) a person in a worse position than the person would have been in apart from the provision, unless the trustees of the Fund consent to the scheme making the provision and the person making the new scheme is satisfied that the consent requirements set out in sub-paragraphs (4), (5) and (6) are met.

342. *Paragraph 20* defines accrued rights.

343. *Paragraph 21(1)* provides that the Minister for the Civil Service may by order modify any enactment or subordinate legislation if he considers it appropriate as a result of any provision of a scheme made by him or the IPSA. Paragraph 13 of Schedule 1 to the 1987 Act currently provides that the Leader of the House of Commons may make such modification by regulations with the consent of the Minister for the Civil Service.

344. *Paragraph 22(1)* provides that schemes made by IPSA or the Minister for the Civil Service can amend or revoke previous schemes they have made.

Part 2: Provisions which may be included in schemes

345. *Paragraph 23(1)* defines relevant service, and *paragraph 23(2)* provides for the use in Part 2 of the expressions defined in Part 1.

346. *Paragraphs 24* to *34* describe the provisions which may be included in schemes made by the IPSA or the Minister for the Civil Service in accordance with *paragraphs 8(2)(a), 14(1)(a)* and *17(1)(a)* of the Schedule.

Part 3: Amendments, transitional provision etc

347. *Paragraph 35* makes consequential amendments to Part 1 of Schedule 2 of the Pensions (Increase) Act 1971 so that the provisions of that Act continue to apply to pensions payable out of the Parliamentary Contributory Pension Fund.

348. *Paragraphs 36* and *37* make consequential amendments to section 27 of the Parliamentary and other Pensions Act 1972 so that the Minister for the Civil Service can designate provisions in the Ministers' etc pension scheme made under paragraph 16 of Schedule 7 to apply for the purpose of calculating pensions for dependants of the Prime Minister or Speaker of the House of Commons. Section 27 of the Parliamentary and other Pensions Act 1972 currently provides that provisions in the Parliamentary pension scheme can be designated by regulations made by the Leader of the House of Commons.

349. *Paragraphs 38* to 41 make amendments to the European Parliament (Pay and Pensions) Act 1979 ("the 1979 Act"). *Paragraph 38* provides that the IPSA may make a scheme containing provision with respect to pensions payable to or in respect of persons who have ceased to be United Kingdom representatives at the European Parliament, but only in relation to those who have opted-out of arrangements under the single Statute for MEPS which came into effect on 14th July 2009 ("opted-out MEPs"). The 1979 Act currently provides that the Leader of the House of Commons may make such provision by order. *Paragraph 38* provides that before making such a scheme, the IPSA must consult the Treasury, the Minister for the Civil Service, persons the IPSA considers represent those likely to be affected, the Government Actuary and any other person the IPSA considers appropriate. The IPSA must send to the Speaker of the House of Commons for laying before both Houses of Parliament any scheme and a statement of the reasons for making it.

350. *Paragraph 39* provides that the IPSA may, with the consent of the Treasury and the Minister for the Civil Service, direct that a block transfer value representing the aggregate value of the accrued pension rights of all United Kingdom Representatives may be paid into an overseas fund or scheme. The 1979 Act currently provides such a direction may be made by the Leader of the House of Commons by order.

351. *Paragraph 42* makes consequential amendments to the House of Commons Members' Fund and Parliamentary Pensions Act 1981.

352. *Paragraph 43* makes consequential amendments to the Parliamentary and other Pensions Act 1987.

353. *Paragraph 44* provides that, subject to an order made under clause 94 of the Bill, the 1993 Regulations (or any other regulations made under the 1987 Act in force immediately before the date specified in an order under sub-paragraph 8) will continue to have effect as if they were the MPs', Ministers' etc or administration scheme. This provision will also be subject to the powers of the IPSA and the Minister for the Civil Service under Schedule 7 to make new schemes. Paragraph 44 also provides that an order under clause 94 may provide that provisions in the 1993 Regulations that could not otherwise be contained in the MPs, Ministers' etc or administration scheme can continue as if they were contained in those schemes.

354. *Paragraph 45* makes consequential amendments to the Ministerial and other Pensions and Salaries Act 1991.

355. *Paragraph 46* makes consequential amendments to the Pensions Act 2004.

356. *Paragraph 47* makes consequential amendments to the 2009 Act.

357. *Paragraph 48* provides that an order under section 13 of the 2009 Act may make provision mentioned in section 13(6) (provision for transfer schemes) in connection with the changes in responsibilities for the administration scheme and the MPs' pension scheme. An order under section 13(6)(b) or (c) of the 2009 Act does not apply to property, rights and liabilities, or documents and information, held by or on behalf of the trustees of the Fund.

358. *Paragraph 49* provides that if paragraph 2 comes into force for the purpose of appointing the trustees of the Fund appointed by the IPSA or the Minister for the Civil Service before it comes into force for other purposes, then the trustees who must be consulted under paragraphs 2(1)(a) or (b) are those persons who are trustees by virtue of section 1 of the 1987 Act.

359. *Paragraph 50* makes transitional provision in relation to the trustees, including that the first 8 member-nominated trustees should be selected from those persons who are trustees immediately before the beginning of the transitional period (as defined in paragraph 50(1) of Schedule 7).

PART 5: THE HOUSE OF LORDS

Clause 53: Ending of by-elections for hereditary peers

360. *Clause 53* removes the provision for by-elections to elect hereditary peers to make up the number of 90 excepted hereditary peers when one of their number dies. Section 2(2) of the House of Lords Act 1999 provides that 90 hereditary peers shall be excepted from the effect of section 1 of that Act, which ended membership of the House by virtue of a hereditary peerage. Section 2(4) provides the mechanism for replacing excepted hereditary peers when they die, so that the number is maintained. *Clause 53* replaces section 2(4) so that instead of the number of 90 being fixed, it is reduced by one every time an excepted hereditary peer

dies. It also replaces section 2(4) so that there is no longer a mechanism for selecting new hereditary peers for membership of the House. *Subsection (2)* makes it clear that if a death occurs before the section comes into force, but the necessary by-election has not yet been held, then the by-election will proceed.

Clause 54: Removal of members of the House of Lords etc

361. *Subsection (1)* identifies the persons to whom the clause applies. It provides that the clause applies to anyone who is an excepted hereditary or a life peer and who either:

(a) meets a condition set out in Part 1 of Schedule 4 (that is, is convicted of a serious criminal offence, is subject to a bankruptcy restrictions order or undertaking or debt relief restrictions order or undertaking in England and Wales or the corresponding provisions in Scotland or Northern Ireland); or
(b) is the subject of an expulsion resolution of the House; or
(c) has resigned from the House.

362. *Subsection (2)* provides that a person to whom the clause applies shall cease to be a member of the House of Lords. Any writ of summons issued to that person shall cease to have effect and no further writs shall be issued to that person. A writ of summons is the mechanism by which an eligible peer takes up his or her seat in the House of Lords. It requires the peer to attend the sitting of the Parliament for which it is issued. It cannot be issued to anyone who is not a peer, but may not be withheld from any peer who is eligible to receive one.

363. *Subsection (5)* provides definitions of the terms used in the clause. In relation to hereditary peers, it defines those to whom the clause applies as those excepted from the effect of the House of Lords Act 1999. Under that Act, the majority of hereditary peers ceased to be members of the House. However, 90 hereditary peers, to be chosen by ballot, together with the Earl Marshal and the person holding the office of Lord Great Chamberlain, were excepted from the effect of the Act and remained members of the House. *Subsection (5)* therefore provides that for the purposes of this Bill, the term "excepted hereditary peer" applies only to those 92 peers. It defines life peers as both those appointed to the House under the Life Peerages Act 1958 and those appointed under the Appellate Jurisdiction Act 1876 ("the 1876 Act"). The latter, commonly known as the Law Lords, are appointed specifically to carry out the judicial business of the House. They are full members of the House even after they retire from judicial business under the statutory retirement provisions for members of the judiciary. The clause confirms that their appointment to the House counts as a peerage for the purposes of the Bill. Under the Constitutional Reform Act 2005, the active judicial members will transfer to the new UK Supreme Court and will be disqualified for sitting and voting in the House while they are members of that Court. However, retired judicial members who were appointed under the 1876 Act will continue to sit as members of the House.

364. *Subsection (6)* provides that peers in certain categories who are temporarily barred from receiving a writ of summons are not, by virtue of that bar, taken outside the provisions of the

Bill. Under the Forfeiture Act 1870, anyone convicted of treason is ineligible to receive a writ of summons until he has served his sentence or received a pardon. Under the Insolvency Act 1986, peers who are subject to a bankruptcy restrictions order or a debt relief restrictions order, or corresponding provision in Scotland and Northern Ireland, are disqualified for sitting and voting in the House and from receiving a writ of summons while so disqualified. Under the European Parliament (House of Lords Disqualification) Regulations 2008, a life peer who is elected as a member of the European Parliament is disqualified for sitting and voting in the House and no writ of summons is to be issued to them while so disqualified. A peer who has not received a writ of summons because he is suspended from the House is also not, by virtue of that, taken outside the provisions of the Bill.

Clause 55: Expulsion and suspension of members of the House of Lords

365. *Subsection (1)* provides that the House may make Standing Orders under which the House may expel or suspend a member. Although the House of Commons has a power to expel or suspend a member, the consistent view of those who have considered the issue in relation to the House of Lords (for example, in the 1955-6 Report on The Powers of the House in Relation to the Attendance of its Members (HL 67), and the 2009 Report on the Powers of the House of Lords in respect of its Members (First Report 2009-10, HL 87)) is that the House of Lords has lost the power permanently to expel members when sitting in a legislative capacity. The 2009 Report also concluded that the House did have the power to suspend a member temporarily, but only within a lifetime of a Parliament. It had no power to suspend a member in such a way that a writ of summons could be withheld from a member at the beginning of a Parliament. The purpose of the clause is therefore to confer a power on the House to expel a member permanently and to impose a period of suspension which would remove entitlement to receive a writ of summons at the beginning of a Parliament.

366. *Subsections (2) and (3)* define an expulsion resolution and suspension resolution respectively. They make it clear that the resolution must contain a statement that the resolution is passed on the basis of the conduct of the peer in question.

367. *Subsection (4)* provides that a writ of summons issued to a person subject to a suspension resolution ceases to have effect for the period of the suspension. If a new Parliament is summoned and therefore a new writ would be issued during the course of the suspension, no writ is to be issued until the period of suspension is completed.

368. *Subsection (8)* provides that an expulsion or suspension resolution can contain provisions other than those mentioned in *subsections (2) and (3)*.

Clause 56: Resignation from House of Lords

369. There is presently no mechanism by which a peer can resign from the House of Lords. The clause sets in place a mechanism for either an excepted hereditary peer or a life peer to resign from the House.

Clause 57: Disclaimer of peerage

370. *Subsection (1)* provides for a person who has resigned from the House of Lords, or who has been expelled or disqualified for membership, also to disclaim the peerage by virtue of which he or she had been a member of the House.

371. *Subsections (2) to (5)* set out the procedure which the peer must follow.

372. *Subsection (6)* provides that where an excepted hereditary peer disclaims, the peer (and his wife) loses all rights, interest, titles, offices, privileges and precedence associated with the peerage (such as the title of Lady for the wife). It will also relieve the peer of all obligations and disabilities arising under it. The most significant effect of this latter provision is that the peer will cease to be disqualified by virtue of the peerage from voting at elections to the House of Commons and being, or being elected as, a member of that House.

373. *Subsection (7)* makes related provision to subsection (6) in relation to a life peer who disclaims.

Clause 58: Supplementary provision

374. *Subsection (1)* provides that the proceedings of the House are not invalidated if a peer who is not a member has taken part in the proceedings. For example, if a peer concealed an overseas conviction that means he or she were not a member of the House, his or her participation in proceedings would not affect their validity.

375. *Subsection (2)* provides that the Bill does not apply to the Lords Spiritual. The Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester and the 21 next most senior diocesan bishops in the Church of England are *ex officio* members of the House of Lords. They are not peers. They lose their seats as Lords Spiritual when they leave episcopal office. There are internal discipline mechanisms within the Church of England which apply in similar circumstances to the mechanisms provided for in the Bill concerning Lords Temporal. A Lord Spiritual adjudged to be unfit to hold episcopal office and deprived of that office will automatically lose his seat in the House of Lords.

SCHEDULE 8: CONDITIONS FOR REMOVAL OF MEMBERS OF THE HOUSE OF LORDS ETC

Part 1: Conditions for removal

Condition 1: serious criminal offence

376. *Paragraph 1(1)* sets out condition 1 for the purposes of *clause 53*. Condition 1 is met where a person has been convicted of a criminal offence committed after *clause 54* comes into force,

has been sentenced to be imprisoned or detained for the offence for more than a year or indefinitely, and is so imprisoned or detained, or would be if the person were not unlawfully at large.

377. *Paragraph 1(2)* provides that condition 1 is met when the person is first imprisoned or detained after conviction in pursuance of the sentence or order or would have been were the person not unlawfully at large.

378. *Paragraphs 1(3) and (4)* provide that the Bill applies regardless of whether the offence or the subsequent conviction, sentence or imprisonment have occurred in the United Kingdom or elsewhere.

Condition 2: bankruptcy restrictions orders etc

379. *Paragraph 2* sets out the conditions under which a person is disqualified by reason of insolvency. These are where a person is subject to either a bankruptcy restrictions order or undertaking, in England and Wales, Scotland or Northern Ireland, or a debt relief restrictions order or undertaking in England and Wales.

Part 2: Supplementary provision for section 54(2)

Supplementary provision relating to expected hereditary peers

380. *Paragraph 3* provides that if an excepted hereditary peer is removed from the House under the terms of *clause 54* of the Bill, or resigns in accordance with *clause 56*, then he or she ceases to be excepted from the effect of the House of Lords Act 1999. A vacancy in the number of 90 excepted peers is not created. Instead, the number is reduced by one.

Supplementary provision relating to life peers

381. *Paragraph 4(2)* provides that where a life peer resigns from the House but does not choose to disclaim his or her peerage, that person ceases to be disqualified by virtue of that peerage from voting at elections to the House of Commons or being, or being elected as, a member of that House. The barrier on peers voting, standing or sitting is a common law one and it applies to the peerage, not to membership of the House. Therefore, unless it is removed, a peer outside the House will be unable either to take part in the deliberations of the House or to take part in elections to the House of Commons. An excepted hereditary peer who ceases to be an excepted hereditary peer through resignation from the House will cease to be disqualified by virtue of that peerage from voting at elections to the House of Commons, or being, or being elected as, a member of that House under the terms of the House of Lords Act 1999.

Representation of the People Act 1985

382. *Paragraph 5* provides that where a peer who has resigned from or been permanently excluded from the House wishes to be included on the register of electors as an overseas elector, he may qualify to do so on the basis of previous registration as a local government elector. Ability to register as an overseas elector is otherwise dependent on previous inclusion on the register of parliamentary electors, to which a peer is not entitled.

New peerages

383. Under *paragraph 6* anyone who has previously been excluded from the House can have a new peerage conferred on them which will entitle them to sit and vote in the House. The fact of having been removed is not itself a reason for a lifetime bar, if the Appointments Commission concludes that the person is, by reason of the passage of time or for other reasons, a fit and proper person to sit in the House. *Paragraph 6(4)* makes provision for a hereditary peer who inherits the office of Earl Marshal or Lord Great Chamberlain. Under the terms of the 1999 Act, these hereditary office holders are entitled to membership of the House and the provisions on hereditary by-elections do not apply to them.

Part 3: Reversal of effect of section 54(2)

Claims for reversal

384. *Paragraph 7(1)* provides that a peer who has been disqualified from the House on the grounds of conviction for a criminal offence can seek reinstatement to the House if the conviction is overturned or quashed, or the sentence is reduced so that the condition is no longer met.

385. Under *paragraph 7(2)* a peer who has been disqualified from the House on the grounds of insolvency can seek reinstatement to the House if the bankruptcy restrictions order or undertaking or the debt relief restrictions order or undertaking is annulled.

386. *Paragraph 7(3) to (5)* provide that it is for the Lord Chancellor to determine whether a claim for reversal is justified and sets out the procedure which must be followed in making that determination.

387. *Paragraph 8* provides for the Lord Chancellor's powers under this Part to be included in paragraph 4 of Schedule 7 to the Constitutional Reform Act 2005. This means that they can be transferred to another minister only with the agreement of Parliament.

Convictions outside the United Kingdom

388. *Paragraph 9* provides that the House of Lords may resolve that an overseas conviction and sentence does not have the effect of disqualifying the peer.

PART 6: TAX STATUS OF MPS AND MEMBERS OF THE HOUSE OF LORDS

Clause 59: Tax status of MPs and members of the House of Lords

389. *Clause 59* provides that MPs and members of the House of Lords are to be deemed resident, ordinarily resident and domiciled in the UK ("ROD") for the purposes of income tax, capital gains tax and inheritance tax. This means that they will be liable to pay these taxes in the UK on their worldwide income, gains and assets regardless of their actual status in the UK, and they will be unable to access the remittance basis of taxation.

390. The clause provides that MPs and peers are deemed ROD for the whole of each tax year in which they are a member of either House (including those tax years in which they are a member for only part of the year). This means that they will be deemed ROD from the start of the tax year in which they take up their seat and to the end of the tax year in which they stand down. *Subsections (7)* and *(8)(a)* provide that the clause applies from the start of the tax year 2010-2011, but only for members of the new Parliament meeting in 2010. *Subsection (9)* defines a tax year for the purposes of inheritance tax as running from 6th April to 5th April (the phrase is already defined in other legislation for the other taxes).

391. *Clause 59* applies to a person who has been elected as an MP after they have taken the oath of allegiance at the start of a new Parliament (as they are required to do under the Parliamentary Oaths Act 1866). For the purposes of the clause, an MP ceases to be a member when the Parliament to which they were elected has been dissolved or their seat is otherwise vacated (by resignation, death or disqualification).

392. For the purposes of *clause 59*, a member of the House of Lords is someone who is entitled to receive a writ of summons. *Subsection (6)(a)* specifically disapplies the provision for members of the judiciary who are disqualified from sitting and voting in the House under section 137 of the Constitutional Reform Act 2005. If such an individual were to leave the House on assuming judicial office during the course of a tax year, or return to the House after retiring during the course of a tax year, they will be deemed ROD for the whole of the tax year in question. *Subsection (6)(b)* disapplies the provision for the Lords Spiritual.

393. *Subsection (10)* provides that any temporary suspension or disqualification from entitlement to receive a writ imposed in the circumstances set out in paragraphs (a), (b) and (c) are discounted when determining whether a person is entitled to receive a writ of summons, and is a member of the House of Lords for the purposes of the clause. While a peer is subject to such temporary suspension or disqualification, the deeming provision would still apply to them.

Clause 60: Tax status of members of the House of Lords: transitional provision

394. *Clause 60* provides for a period of three months during which members of the House of Lords may give notice in writing to the Clerk of the Parliaments that they are not willing to be

subject to the deeming provision, and if they do so their membership of the House of Lords will end at that point. *Clause 59(8)(b)* provides that the deeming provision will only apply to peers who are members of the House of Lords at the end of this transitional period (and so will not apply to any peers who have left via the transitional mechanism or who otherwise leave the House before the end of the transitional period). For peers who remain, it will then apply from the beginning of the tax year (6th April 2010).

395. *Clause 60(2)* to *(8)* provides that a peer who leaves the House under the transitional provision:

- may disclaim their peerage under *clause 57* of the Bill,
- will be enfranchised to vote and stand in general elections,
- may subsequently receive a new life peerage and once again be entitled to receive a writ of summons to attend the House,
- may once again be entitled to receive writs of summons if they become the Earl Marshal or Lord Great Chamberlain,
- will not, if they were an excepted hereditary peer, be replaced by another hereditary peer elected under the House of Lords Act 1999 (reducing the number of excepted hereditary peers in the House by one).

396. A peer is not entitled to receive a writ of summons if they are a Member of the European Parliament, but they do receive writs of summons once they step down from the European Parliament. Therefore, a peer who is an MEP would not be deemed ROD under *clause 59*, but once entitled to receive writs again they would be deemed ROD. *Clause 60(9)* allows such MEPs to avoid being deemed ROD in these circumstances by making the transitional provision available to such MEPs in the same way as to those peers currently entitled to receive writs of summons.

PART 7: PUBLIC ORDER

Clause 61: Demonstrations etc in the vicinity of Parliament

397. *Subsection (1)* repeals sections 132 to 138 of the Serious Organised Crime and Police Act 2005 ("the 2005 Act") which regulate demonstrations and the use of loudspeakers in a designated area around Parliament. Repeal of sections 132 to 138 of the 2005 Act means that it will no longer be a requirement to give notice of demonstrations in the designated area and there will no longer be an offence for such demonstrations to be held without the authorisation of the Metropolitan Police Commissioner. There will no longer be an offence under the 2005 Act for a person to use a loudspeaker in the designated area; the use of loudspeakers will continue to be governed by section 62 of the Control of Pollution Act 1974 and section 8 of the Noise and Statutory Nuisance Act 1993. Repeal of sections 132 to 138 of the 2005 Act also means that there will no longer be a designated area around Parliament as set out in the Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005 (S.I. 2005/1537). Additionally, repeal will restore the applicability of section 14 of the Public

Order Act 1986 (imposition of conditions on public assemblies) to a public assembly in the vicinity of Parliament.

398. *Subsection (2)* gives effect to Schedule 9 which inserts new powers on maintaining access to Parliament into Part 2 of the Public Order Act 1986 and makes other consequential amendments.

SCHEDULE 9: AMENDMENT TO PART 2 OF THE PUBLIC ORDER ACT 1986 ETC

399. Schedule 9 amends Part 2 of the Public Order Act 1986 which regulates public processions and assemblies. *Paragraph 1* inserts, after section 14 of the Public Order Act 1986, a new section 14ZA which provides the police with discretionary powers to impose conditions to maintain access to and from the Palace of Westminster.

Section 14ZA: Access to and from the Palace of Westminster

400. New section 14ZA (1) applies to public processions which are wholly or partly within the area around Parliament or a public assembly which is held or intended to be held within that area.

401. *Subsection (2)* provides that the senior officer may give directions imposing conditions on those organising or taking part in a procession or assembly, if it is the officer's reasonable opinion that such conditions are necessary for ensuring that the specified requirements are met in relation to maintaining access to and from the Palace of Westminster. *Subsection (3)* provides the Secretary of State with power to make an order specifying the requirements that must be met in relation to maintaining access to and from the Palace of Westminster. *Subsection (4)* describes those requirements which may include specifying the relevant entrances at or by the Palace of Westminster or Portcullis House which must be kept open, and to and from which there must always be an access route for pedestrians and vehicles through the area around Parliament. *Subsection (6)* provides that an order would be subject to the negative resolution procedure.

402. *Subsections (7) and (8)* apply to section 14ZA the same limitations on the conditions that may be imposed on a public procession and a public assembly as exist in sections 12(1) and 14(1) of the Public Order Act 1986. *Subsections (9) and (10)* apply elements from sections 12 and 14 of the Public Order Act to section 14ZA. These include the definition of the senior police officer, the requirement for a direction given by a chief officer to be in writing and the offences and penalties for failing to comply with a condition imposed.

Section 14ZB: The area around Parliament

403. *Paragraph 1* also inserts a new section 14ZB into the Public Order Act 1986. *Subsection (1)* of that new section provides for the area around Parliament to be specified in an order made by the Secretary of State. *Subsection (3)* states that no point in the area around Parliament

may be more than 300 metres in a straight line from the nearest relevant entrance. *Subsection (4)* lists the relevant entrances which are Carriage Gates; St Stephen's Entrance; Peers' Entrance; Black Rod's Garden Entrance and the main entrance to Portcullis House on Victoria Embankment. *Subsection (5)* provides that the order under Section 14ZB made by statutory instrument will be subject to the negative resolution procedure.

Section 14ZC: Special provision if a House meeting outside Palace of Westminster

404. New section 14ZC mirrors the powers in new sections 14ZA and 14ZB in the event that either or both Houses of Parliament (including committees) are sitting or conducting meetings outside the Palace of Westminster which may happen should, for example, the Palace of Westminster undergo large-scale refurbishment.

405. *Subsection (1)* provides that the Secretary of State may, by order, specify a building situated outside the Palace of Westminster and specify an area, which can be no further than 300 metres in a straight line from the point nearest to it on the specified building.

406. *Subsection (3)* makes it clear that the special provisions in new section 14ZC apply to public processions or public assemblies held wholly or partly within the specified area. *Subsection (4)* provides that a senior officer may give directions imposing on persons organising or taking part in a procession or assembly any conditions which in the officer's reasonable opinion are necessary to ensure that specified requirements are met. *Subsection (5)* provides that the Secretary of State may, by order, specify the requirements that must be met in order to maintain access to and from the specified building in relation to a week during which the building is used or planned to be used by a House of Parliament. *Subsection (7)* provides that the requirements may include requirements specifying entrances at or by the specified building which must be kept open and to and from which there must be access routes for pedestrians and vehicles through the specified area. *Subsection (9)* provides that an order made by statutory instrument will be subject to the negative resolution procedure. *Subsection (10)* applies subsections (7) to (11) of new section 14ZA to new section 14ZC. This applies the various aspects of the Public Order Act regime to this new provision.

407. *Paragraph 2* of Schedule 9 is a consequential amendment which removes the reference to section 137(1) of the 2005 Act (loudspeakers in designated area) from paragraph 1(1) of Schedule 2 to the Noise and Statutory Nuisance Act 1993. *Paragraph 3* is a consequential amendment which removes the entries in the Table in section 175(3) of the 2005 Act relating to the penalties in section 136 of that Act. Section 175 contains transitional modifications to penalties for certain offences committed in England and Wales. *Paragraph 4* makes a consequential amendment by omitting paragraph 64 of Schedule 6 to the Serious Crime Act 2007, which deals with penalties for inchoate offences committed in relation to offences under section 136 of the 2005 Act. *Paragraph 5* sets out a transitional provision which makes it clear that the new sections will apply to any public assemblies or processions which started or were being planned before the new sections 14ZA to 14ZC came into force.

PART 8: HUMAN RIGHTS ACTIONS AGAINST DEVOLVED ADMINISTRATIONS

Clause 62: Time limit for human rights actions against Scottish Ministers etc

408. *Subsections (1) to (2)* repeal the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 (asp 11), and the amendments made by that Act of the Scottish Parliament to section 100 of the Scotland Act 1998. These amendments to the Scotland Act inserted a one year time limit for claims involving Convention rights against Scottish Ministers and their effect is preserved by this clause.

409. *Subsection (4)* revokes the Scotland Act 1998 (Modification of Schedule 4) Order 2009, an Order made under section 30(2) of the Scotland Act which enabled the Scottish Parliament to pass the Convention Rights Proceedings (Amendment) (Scotland) Act 2009 on an emergency basis.

410. *Subsection (5)* provides that subsections (1) to (4) (above) do not apply to any proceedings brought before this section comes into force. The effect of this is that the amendments made by the Act of the Scottish Parliament will continue to apply to such proceedings.

411. *Subsection (6)* inserts new section 100(3A), (3B), (3C), (3D) and (3E) into the Scotland Act 1998.

412. New section 100(3A) and (3B) set out a one year time limit for claims involving Convention rights against the Scottish Ministers. This time limit may be extended to such longer time as a court or tribunal considers necessary to achieve fairness, taking into account all the circumstances of the case. These provisions are subject to any other rule which imposes a stricter time in relation to the procedure in question. This is equivalent to section 7(5) of the Human Rights Act 1998. New section 100(3E) provides that "rule" has the same meaning as it has in section 7(5).

413. New section 100(3C) confirms that new section 100(3A) and (3B) do not apply to proceedings brought by the Law Officers listed in section 100(3C). This preserves the power without time limit of those officers to challenge the actions of the Scottish Ministers if they believe they have acted incompatibly with the Convention rights.

414. New section 100(3D) means that the one year time limit does not apply to claims in respect of secondary legislation made by the Scottish Ministers.

415. *Subsection (8)* applies the time limit as set out in new section 100(3A), (3B) (above) to all proceedings brought by claimants after this clause comes into force, whenever the act complained of took place.

Clause 63: Time limit for human rights actions against Northern Ireland Ministers etc

416. *Subsection (1)* inserts new sections 71(2D), (2E) and (2F) into the Northern Ireland Act 1998.

417. New section 71(2D)(a) and (b) sets out a one year time limit for claims involving Convention rights against Northern Ireland Ministers and Departments. This time limit may be extended to such longer time as a court or tribunal considers necessary to achieve fairness, taking into account all the circumstances of the case. These provisions are subject to any other rule which imposes a stricter time limit in relation to the procedure in question. This is equivalent to section 7(5) of the Human Rights Act 1998.

418. New section 71(2E)(a) and (b) mean that the one year time limit does not apply to claims that secondary legislation made, approved or confirmed by the Northern Ireland Ministers is incompatible with Convention rights, and nor does it apply to proceedings brought by the Law Officers listed in section 71(2). This preserves the power of those officers to challenge the actions of the Northern Ireland Ministers or Departments if they believe they have acted incompatibly with the Convention rights.

419. New section 71(2F) provides that "rule" has the same meaning as it has in section 7(5) of the Human Rights Act.

420. *Subsection (2)* applies the time limit as set out in new section 71(2D) to (2F) to all proceedings brought by claimants after this clause comes into force, whenever the act complained of took place.

Clause 64: Time limit for human rights actions against Welsh Ministers etc

421. *Subsection (1)* inserts new sections 81(3A), (3B) and (3C) into the Government of Wales Act 2006.

422. New section 81(3A)(a) and (b) sets out a one year time limit for claims involving Convention rights against the Welsh Ministers. This time limit may be extended to such longer time as a court or tribunal considers necessary to achieve fairness, taking into account all the circumstances of the case. These provisions are subject to any other rule which imposes a stricter time limit in relation to the procedure in question. This is equivalent to section 7(5) of the Human Rights Act 1998. New section 81(3C) provides that "rule" has the same meaning as it has in section 7(5). The time limit will also apply to any claims that maybe be brought under the Government of Wales Act 1998, despite its repeal (subsection (4)).

423. New section 81(3B)(a) and (b) mean that the one year time limit does not apply to claims that secondary legislation made, approved or confirmed by the Welsh Ministers is incompatible with Convention rights, and nor does it apply to proceedings brought by the Law Officers listed in section 81(3). This preserves the power of those officers to challenge the actions of the Welsh Ministers if they believe they have acted incompatibly with the Convention rights.

424. *Subsection (3)* amends section 81(5) of the Government of Wales Act 2006 to ensure that the reference to the Welsh Ministers in new section 81(3B) includes the First Minister for Wales and Counsel General to the Welsh Assembly Government.

425. *Subsection (5)* applies the time limit as set out in new section 81(3A) to (3C) (above) to all proceedings brought by claimants after this clause comes into force, whenever the act complained of took place.

PART 9: COURTS AND TRIBUNALS

Clause 65: Judicial appointments etc

426. *Clause 65* gives effect to Schedule 10.

Clause 66: Salary protection for members of tribunals

427. *Clause 66* provides that the salaries of certain tribunal office holders once determined may not be reduced. The purpose is to provide similar protection for these office holders as is already available to office holders in the courts.

428. The protection applies to those with salaries determined under the following provisions:

- Section 5(1)(a) to (c) of the Employment Tribunals Act 1996 (Presidents and Chairmen of Employment Tribunals);
- The specified provisions in Schedules 1, 2, 3 and 4 to the Tribunals, Courts and Enforcement Act 2007 (Senior President of Tribunals; those serving on the First-Tier Tribunal and Upper Tribunal; and Chamber Presidents, Deputy Chamber Presidents and acting Chamber Presidents).

Clause 67: Salary protection for office holders in Northern Ireland

429. *Clause 67* provides that the salaries of certain judicial office holders in Northern Ireland once determined may not be reduced. The purpose is to provide equivalent protection for these judicial office holders as is already available to most salaried judicial office holders in England and Wales.

430. The protection applies to those with salaries determined under the following provisions:

- Section 106(1) of the County Courts Act (Northern Ireland) 1959;
- Section 12(1) of the Magistrates' Courts Act (Northern Ireland) 1964 as it applies in relation to persons appointed under section 9(1) of that Act;
- Section 2(1) of the Coroners Act (Northern Ireland) 1959 as it applies in relation to the remuneration of coroners (but not deputy coroners);

- Section 70 of the Judicature (Northern Ireland) Act 1978;
- Paragraph 2 of Schedule 4 to the Child Support Act 1991 as it applies in relation to persons appointed under section 23(1) of that Act;
- Paragraph 7 of Schedule 2 to the Social Security Administration (Northern Ireland) Act 1992 as it applies in relation to persons appointed under section 50(1) of that Act.

SCHEDULE 10: JUDICIAL APPOINTMENTS ETC

The Courts Act 1971 (c.23) – Section 21(5).

431. This corrects a typographical error in section 21(5) of the Courts Act 1971, which deals with the extension of the term of appointment of recorders. Section 21(5) refers to subsection (4) whereas it should refer to subsection (4A).

Paragraphs 2, 3, 4 and 9: Amendments to Part 3 of the Constitutional Reform Act 2005 – Sections 26, 29, 60 and Schedule 8

432. These provisions remove the Prime Minister from the appointment process of the President, Deputy President and Justices of the Supreme Court. *Paragraph 2* amends section 26 of the Constitutional Reform Act 2005 with the effect that, when presented with a candidate chosen by a Selection Commission, recommendations for appointment will now be made by the Lord Chancellor instead of the Prime Minister. Instead of notifying a selection to the Prime Minister, the Lord Chancellor is to make a recommendation for appointment.

433. *Paragraphs 3, 4 and 9* make various consequential amendments to sections 29 and 60(5) of, and paragraphs 10, 13(2) and 14(2) of Schedule 8 to, the Constitutional Reform Act 2005.

Paragraphs 5 and 6: Amendments to Chapter 2 of Part 4 of the Constitutional Reform Act 2005 – Sections 96 and 97

434. Sections 96 and 97 of the Constitutional Reform Act 2005 provide for medical assessments of those who have been selected for appointments, to be conducted by the Judicial Appointments Commission. These amendments transfer the responsibility for medical assessments to the Lord Chancellor.

435. *Paragraph 5* of the Schedule makes amendments to the provisions in section 96 of the Constitutional Reform Act 2005 relating to medical assessments. *Sub-paragraph (3)* adds new subsections (2A) and (2B) to section 96 to enable the Lord Chancellor to request a person who has been selected for appointment by the Judicial Appointments Commission ("the candidate") to provide information about his or her physical or mental condition. The Lord Chancellor may specify a period in which the information has to be supplied.

436. *Sub-paragraph (4)* amends section 96(3). The amendment made to section 96(3) provides that the Lord Chancellor may also request a candidate to undergo a medical assessment and for a report of that assessment to be made available to the Lord Chancellor.

437. These provisions replace the existing section 96(3) under which the Lord Chancellor may direct the Judicial Appointments Commission to make arrangements for any assessment of the health of those who have been selected for appointment.

438. *Sub-paragraph (5)* modifies section 96(4) and *Sub-paragraph (6)* inserts new subsections (4A) and (4B). These provide that the Lord Chancellor may after consultation with the Lord Chief Justice notify the Judicial Appointments Commission that he is not proceeding with an appointment if the circumstances specified in the new subsection (4A) apply. These circumstances are if the candidate does not comply with a request to provide information under the new subsection (2B) or to undergo a medical assessment under subsection (3)(a); or if the Lord Chancellor is not satisfied on the basis of a medical report under subsection (3)(b) that it would be appropriate to proceed with the appointment. Selections can also be disregarded where the candidate does not accept an appointment when it is offered or is not available within a reasonable time to take up a post.

439. *Sub-paragraph (7)* amends section 96(5) to make it clear that if a candidate is rejected then any other selection for the same appointment or recommendation is to be disregarded; and the candidate must not be selected again pursuant to that request for the same appointment or recommendation.

Paragraph 8: Amendment to Part 7 of the Constitutional Reform Act 2005 – Section 139

440. *Paragraph 8* amends section 139(4) to make explicit that information obtained during the appointments or disciplinary process of certain judicial office holders can be disclosed to the police for the purposes of a criminal investigation or criminal proceedings, or for the purpose of preventing crime without the necessity for a court order.

Paragraphs 7 and 10: Amendment to Chapter 3 of Part 4 of, and Part 2 of Schedule 14 to, the Constitutional Reform Act 2005

441. Magistrates were included in Schedule 14 (under the title of Justices of the Peace) as it was originally intended that recruiting and selecting for the role should be a part of the Judicial Appointments Commission's remit. By removing Magistrates from Schedule 14, *Paragraph 10* removes them from the list of offices that comprise the statutory recruitment and selection remit of the Judicial Appointments Commission. This follows an agreement between the Lord Chancellor, the Judicial Appointments Commission, the Lord Chief Justice and the Magistrates' Association that the Judicial Appointments Commission will not in future take responsibility for the recruitment and selection of magistrates. This function will remain for the foreseeable future with the Lord Chancellor's Advisory Committees on Justices of the Peace.

442. *Paragraph 7* amends section 118 to ensure that even though Magistrates have been removed from Schedule 14 they will remain within the scope of the disciplinary powers exercised by the Lord Chief Justice and the Lord Chancellor.

PART 10: NATIONAL AUDIT

Clause 68: The office of the Comptroller and Auditor General

443. This clause provides for the office of Comptroller and Auditor General ("C&AG") to continue. It carries forward the appointment process of section 1 of the National Audit Act 1983 ("the 1983 Act") under which the C&AG is appointed by Her Majesty by Letters Patent following an Address of the House of Commons. The Prime Minister moves the motion for that address with the agreement of the Chairman of the Committee of Public Accounts. Because by convention the Chairman of the Public Accounts Committee is from an opposition party, this requirement means that the choice of C&AG requires cross-party agreement. *Subsections (7) and (8)* limit the term of office to a single ten-year appointment instead of an unlimited term, as now.

Clause 69: Status of the Comptroller and Auditor General etc

444. This clause sets out the status of the C&AG as a corporation sole and officer of the House of Commons. The C&AG may not be a member of the House of Lords; is not to be regarded as a servant or agent of the Crown, and may not hold any other position which is appointed by or on the recommendation of the Crown. Subject to other statutory provisions, the C&AG is to have complete discretion in the carrying out of the office's functions.

445. *Subsection (8)* sets out some specific limitations to the C&AG's powers and in particular signposts the provisions in the Bill that affect how the C&AG carries out the functions of the office.

Clause 70: Provision of services

446. This clause sets out the broad framework within which the functions of the C&AG are to be carried out. It gives the C&AG a general power to enter into agreements and arrangements to provide services in the United Kingdom and elsewhere. This power is additional to specific powers which the C&AG has under other legislation.

Clause 71: Remuneration package of the Comptroller and Auditor General

447. This clause provides for the determination of the C&AG's remuneration package.

448. Subsections (1) to (2) provide that the C&AG will have a remuneration package that may include an annual salary, allowances, provision for a pension and other benefits. To preserve

the independence of the C&AG, the remuneration package has to be agreed by the Prime Minister and the Chairman of the Committee of Public Accounts ("PAC") before the C&AG is appointed.

449. By *subsection (3)*, the C&AG will continue to be eligible for a pension under the Principal Civil Service Pension Scheme. Alternative pension agreements may also be agreed as part of the remuneration package. These provisions are simplified from the current arrangements under section 13 of the Superannuation Act 1972.

450. Together the powers in this clause allow some flexibility over the terms and conditions which may be offered to the C&AG, to suit the requirements of different possible appointees. As happens for the Directors of Public Prosecutions and of the Serious Fraud Office, the Bill does not specify the level of remuneration itself. The remuneration package may include arrangements for automatic uprating during the term of the C&AG's appointment, for example through a formula or a link to an established uprating mechanism. However, by *subsection (4)*, performance-based incentives are not permitted since they could constrain the operational independence of the C&AG.

451. *Subsection (6)* provides that the remuneration package will be charged on and paid out of the Consolidated Fund, as now, with no need for the resources to be voted annually by Parliament.

452. *Subsection (7)* allows the Treasury to make regulations to give supplementary effect to any agreed pension arrangements under this clause by disapplying or modifying other statutory provisions. Such regulations are subject to annulment by the House of Commons, by *subsection (9)*. A similar power currently exists under section 13(10) of the Superannuation Act 1972.

Clause 72: Resignation or removal of the Comptroller and Auditor General

453. This clause sets out the procedure for the resignation or removal of a C&AG from the office. *Subsection (1)* provides that a C&AG may resign from the office by giving written notice to the Prime Minister. *Subsection (2)* carries forward the procedure from section 3 of the Exchequer and Audit Departments Act 1866 by which the C&AG can be removed from office following Addresses to The Queen of each House of Parliament.

Clause 73: Employment etc of a former Comptroller and Auditor General

454. This clause creates restrictions on the public sector employment of former C&AGs. These restrictions apply to former C&AG's who have been appointed under the provisions of this Bill.

455. Under *subsections (2) to (3)*, a former C&AG will have to consult a person specified for that purpose by the Public Accounts Commission before taking up any other office or position, or

entering into an agreement or other arrangement of a type specified by the Commission. This arrangement would allow the Commission an opportunity to make its views clear in public if a former C&AG should ever contemplate employment it considers inappropriate after leaving office.

456. *Subsections (4) to (6)* provide a stricter regime to prevent conflicts of interest during the two years immediately after a C&AG's term of office ends. A former C&AG must not within two years of leaving office hold any Crown office or position, or provide services to persons acting on behalf of the Crown or a body whose accounts are required to be audited by, or are open to examination and inspection by, the C&AG.

457. There is an exception in *subsection (7)* which allows former C&AGs to hold office as Auditor General in Wales or Scotland, or as Comptroller and Auditor General in Northern Ireland during the two years after they leave office.

Clause 74: Incorporation of the National Audit Office

458. This clause establishes a new corporate body, the National Audit Office ("NAO"). Further detail of the new NAO's constitution and functions, including rules on membership and status and the appointment of members and staff are set out in Schedule 11.

459. The existing NAO is not a corporate body. Instead it is composed of the C&AG (who is a corporation sole) and the staff appointed by the C&AG. The new corporate NAO will be a separate legal entity with a newly-established governance structure and constitution, and functions which include providing resources for the C&AG. These structures are based on established good practice, adapted for the unique role of the C&AG.

Clause 75: Interaction between NAO and the Comptroller and Auditor General

460. This clause introduces Schedule 12, which provides more detail on the relationship between the NAO and the C&AG.

Clause 76: NAO's expenditure

461. This clause sets out the arrangements for the NAO's expenditure and approval of its estimates.

462. The new NAO will be funded from money voted annually by Parliament for that purpose. There are three exceptions to that. The remuneration packages of the C&AG and the chair of the NAO will both be paid directly from the Consolidated Fund (under *clause 71* and *paragraph 6(2)* of Schedule 11 respectively, as will any sums necessary to pay for the indemnities given under *clause 78(1)* in respect of liabilities for audits, examinations and inspections carried out as part of the C&AG's functions.

463. *Subsections (2) and (3)* provide that the NAO and the C&AG must jointly prepare an estimate of the resources it requires for each financial year. That estimate must in particular cover the resources that are required for C&AG functions, as set out in *paragraph 2(1)* of Schedule 12.

464. *Subsections (4) to (6)* provide that the chair of the NAO and the C&AG must jointly submit the estimate to the Commission. The Commission must review the estimate and lay it before the House of Commons with any modifications that it thinks appropriate. In doing this, the Commission must have regard to any advice given by the Public Accounts Committee or the Treasury.

Clause 77: Efficiency etc

465. *Subsection (1)* requires both the C&AG and the NAO to aim to carry out their respective functions in an efficient and cost-effective manner.

466. *Subsection (2)* requires the C&AG to have regard to the standards and principles that an expert professional provider of accounting and auditing services would be expected to apply insofar as the C&AG thinks it appropriate to do so.

Clause 78: Indemnification

467. This clause provides for the liabilities of certain persons to be indemnified by the Consolidated Fund. Those persons are the C&AG; the NAO; past and present members of the NAO; and past and present employees of the NAO. The indemnity covers liabilities which are incurred by those persons for a breach of duty which arises from an audit, examination or inspection which is carried out as part of the C&AG's functions. This indemnity is based on one currently set out in section 4(6) of the National Audit Act 1983.

Clause 79: Definitions

468. This clause defines certain terms used in this Part of the Act.

Clause 80: Transitional provision and consequential amendments

469. This clause introduces Schedules 13 and 14, which respectively contain transitional provisions and consequential amendments.

Clause 81: Power to make Companies Act companies subject to audit of Comptroller and Auditor General

470. This clause amends section 25 of the Government Resources and Accounts Act 2000 ("GRAA 2000"). The Treasury can, by an order under subsection (6) of that section, provide for bodies that exercise functions of a public nature or which are wholly or substantially funded from public money to be audited by the C&AG. New provisions in section 482 of the

Companies Act 2006 allow companies that have been made subject to public audit under section 25 to be exempt from the statutory audit requirements that otherwise apply to companies.

471. These amendments provide for orders under section 25 of the GRAA 2000 to be subject to annulment by a resolution of either House of Parliament provided such an order only covers non-profit-making companies. This would provide a simpler procedure for enabling the C&AG to audit those non-profit-making companies which exercise functions of a public nature or receive substantial public funding.

Clause 82: Powers of National Assembly for Wales: Auditor General for Wales

472. This clause confers legislative competence on the National Assembly for Wales by adding a new matter 14.1 to Part 1 of Schedule 5 to the Government of Wales Act 2006 in the field of public administration. The competence conferred would allow the National Assembly to pass legislation, known as Assembly Measures, to put in place new governance arrangements for the Auditor General for Wales and the Wales Audit Office. The Assembly's legislation could be similar to provisions set out elsewhere in Part 10 in relation to the Comptroller and Auditor General and the National Audit Office.

473. The clause also adds a new paragraph 6A to Part 2 of Schedule 5 to the 2006 Act. This provides for an exception to the prohibition on Assembly Measures being able to modify certain provisions of the Government of Wales Acts 1998 and 2006, and will enable those Acts to be amended by Assembly Measure if the purpose of the amendment is about putting in place governance arrangements relating to the Auditor General for Wales. Paragraph 6A also makes provision to ensure that the Auditor General's independence from the National Assembly and Welsh Assembly Government is preserved.

SCHEDULE 11: THE NATIONAL AUDIT OFFICE

474. This schedule is in seven parts: Part 1 sets out the membership and status of the NAO; Part 2 provides for the appointment of non-executive members; Part 3 provides for a Chief Executive; Part 4 makes provision for the appointment and termination of NAO employee members; Part 5 deals with NAO employees; Part 6 deals with the regulation of NAO procedure; and Part 7 deals with some miscellaneous matters.

Part 1: Membership and status

475. *Paragraph 1* provides for the NAO to have nine members consisting of five non-executives, the C&AG and three employee members.

476. *Paragraph 2* states that NAO, its members and its employees are not to be servants or agents of the Crown, nor to enjoy any status, immunity or privilege of the Crown. NAO property is not to be regarded as Crown property.

Part 2: Non-executive members

477. *Paragraph 3* provides for the NAO to have a non-executive chair. The appointment process follows that for the C&AG in *clause 68*. The chair is appointed by Her Majesty by Letters Patent following an Address of the House of Commons. The motion for the Address has to be moved by the Prime Minister with the agreement of the Chairman of the PAC. The Queen may extend the appointment on the recommendation of the Prime Minister with the agreement of the Chairman of the PAC. In the case of an extension, there is no requirement for a motion in the Commons or an address to the Queen but an extension counts towards the two-term limit (see *paragraph 5*) so the chair can serve a maximum of six years in total.

478. *Paragraph 4* provides that the other non-executive members of the NAO are to be appointed by the Commission, following a recommendation by the NAO chair. In the event that the Commission chooses not to appoint a recommended individual, the Commission may require the chair to recommend another person until an appointment is made.

479. *Paragraph 5* provides that NAO non-executive members are appointed for a period of up to three years. They may be appointed for a second term of up to three years.

480. *Paragraph 6* deals with the remuneration of non-executive members.

481. Under *sub-paragraph (1)* the chair's remuneration package is to be jointly determined by the Prime Minister and the chair of the PAC. *Sub-paragraph (2)* provides for the NAO chair's remuneration package to be paid from the Consolidated Fund rather than annually voted resources. *Sub-paragraph (3)* provides for the Commission to determine the remuneration packages of the other non-executives. Under *sub-paragraph (4)*, those packages are to be paid for by the NAO from voted resources. By *sub-paragraph (5),* the remuneration package of the non-executive members package may include an annual salary, allowances and other benefits, but not a pension.

482. *Paragraph 7* states that the Commission may determine terms of appointment for non-executive members that are not specifically provided for in the Bill. Those terms may include restrictions on the offices and other positions that non-executive members can hold during and after their terms of appointment. Restrictions can also be imposed on other agreements and arrangements which non-executives can be party to during and after their appointment. Those agreements might include, for example, arrangements which fall short of holding office or employment but which share similar characteristics, such as consultancy agreements.

483. *Paragraph 8* requires the Commission to consult an appropriate person who has oversight of public appointments before setting remuneration or other terms under *paragraphs 6 and 7*.

484. *Paragraph 9* deals with the resignation of non-executive members. Under *sub-paragraph (1)*, the chair may resign by giving written notice to the Prime Minister. The other non-executive members may resign by giving written notice to the Commission.

485. *Paragraph 10* provides for the termination of the appointments of non-executive members of the NAO. *Sub-paragraph (1)* provides that the NAO chair's appointment may be terminated following an Address of each House of Parliament. This is the same process that applies to the C&AG.

486. *Sub-paragraph (2)* sets out the bases on which the Commission may terminate the appointment of the other non-executive members of the NAO. In all cases, the Commission must give the member written notice.

Part 3: Chief Executive

487. *Paragraph 11* provides for the C&AG to be the chief executive of the NAO. The C&AG is not, however, to be an NAO employee.

Part 4: Employee members

488. This part of the Schedule provides for the appointment, terms and termination of the three employee members of the NAO.

489. *Paragraph 12* provides that NAO employee members are to be appointed by NAO non-executive members, on a recommendation by the C&AG. When there is a vacancy for an employee member, the C&AG is to recommend a person for appointment to the non-executive members. The non-executive members may appoint that person or require the C&AG to recommend someone else. That process can be repeated until an appointment is made.

490. By *paragraph 13*, the terms of appointment for the employee members are set by the non-executive members. The terms may provide for an annual salary, allowances and other benefits, but not a new pension. Employee members will have the same pension entitlements as they had as NAO employees, including a pension under the Principal Civil Service Pension Scheme.

491. *Paragraph 14* provides that an employee member's appointment shall terminate either at the end of any period set for the appointment, or in any case when the employee member ceases to be employed by the NAO.

492. *Paragraph 15* provides that an employee member may resign by giving written notice to the non-executive members.

493. *Paragraph 16* sets out the bases on which the non-executive members may terminate the appointment of employee members of the NAO. They are the same as those on which the Commission can terminate the appointments of non-executive members under *paragraph 10(2)*.

Part 5: Employees

494. *Paragraph 17* gives the NAO a power to employ staff. The terms of employment for NAO staff are to be kept broadly in line with those of civil servants. NAO employees are barred from holding any office or position that is made or recommended by the Crown.

Part 6: Procedural rules

495. *Paragraph 18* requires the NAO to make internal procedural rules.

496. *Paragraph 19* provides that if the procedural rules set a quorum for any NAO meetings, a majority of those present must be non-executive members to constitute a quorum.

497. *Paragraph 20* allows the NAO to establish committees and sub-committees and to make rules for regulating those committees. NAO employees may serve as committee and sub-committee members. Provided no functions of the NAO are delegated to a committee or sub-committee, those committees may also include persons who are neither NAO employees nor members of the NAO.

Part 7: Other matters

498. This part deals with a number of miscellaneous provisions for the carrying out of NAO functions.

499. *Paragraph 21* is an incidental power which permits the NAO to do anything which is calculated to facilitate, or which is incidental or conducive to the carrying out of its functions.

500. By *paragraph 22,* a vacancy or a defective appointment does not affect the validity of the proceedings of the NAO, its non-executive members, its committees or its sub-committees.

501. *Paragraph 23* deals with the powers of the NAO to delegate its functions. The NAO is permitted to delegate functions to members, employees or committees. Its committees may delegate functions to sub-committees. In either case, a delegation does not prevent the NAO or one of its committees from carrying out a delegated function itself.

502. Under *sub-paragraph (4)* the following exceptions to the general power of delegation apply:

- the preparation of resource estimates under *clause 76(2)*;
- making rules for regulating NAO procedure under *paragraph 18* of Schedule 11;
- the appointment of the NAO's auditor under *paragraph 25(1)* of Schedule 11;
- the preparation and review of NAO strategy under *paragraph 1(1)* of Schedule 12
- approval of, and the resources to be given to the C&AG to carry out services under *paragraph 3(1) or (3)* of Schedule 12;

- authorising (with the Commission's agreement) an employee to carry out C&AG functions in the event of a vacancy or ill health under *paragraph 7(3)* of Schedule 12;
- the preparation of an annual report under *paragraph 9(1)* of Schedule 12; and
- with the C&AG, the responsibility under *paragraph 10(1) to (5)* of Schedule 12 to prepare, review and revise the code of practice.

503. The NAO is required by *paragraph 24* to prepare resource accounts for each financial year. Those accounts must be of the type described in section 5 of the Government Resources and Accounts Act 2000. That is, they must be resource accounts which detail the resources acquired, held or disposed during that year by the NAO and the use by the NAO of those resources. By *sub-paragraph (2),* the Commission must appoint the C&AG or another appropriate person to be the Accounting Officer who is to be responsible for preparing the NAO's resource accounts. By *sub-paragraph (3),* the Accounting Officer must also carry out any other functions determined by the Commission.

504. *Paragraph 25* sets out the arrangements for the audit of NAO's resource accounts. *Sub-paragraph (1)* requires the NAO to appoint an auditor for each financial year. *Sub-paragraph (2)* makes the appointment of the auditor and the terms of the auditor's appointment subject to the approval of the Commission. Under *sub-paragraph (3)*, the auditor must be eligible to audit companies under chapter 2 of Part 42 of the Companies Act 2006. *Sub-paragraph (5)* requires the auditor to examine the NAO's resource accounts for each financial year.

505. *Sub-paragraph (6)* provides that the provisions of sections 6(1) and 25(2) of the Government Resources and Accounts Act 2000 apply to the NAO's auditors in their examination of the NAO accounts as if it was the C&AG carrying out the examination. This means that the auditor must operate to professional standards and that it must examine the accounts with a view to being satisfied that:

- the accounts present a true and fair view;
- money provided by Parliament has been expended for the purposes approved by Parliament;
- resources authorised by Parliament to be used have been used for the purposes for which the resources were authorised; and
- the NAO's financial transactions are in accordance with any relevant authority.

506. *Sub-paragraphs (7) and (8)* require that, once the accounts have been examined, the auditor must certify them and send them, together with the auditor's report on the accounts, to the Commission. The Commission must then lay the accounts and the report before the House of Commons.

507. *Paragraph 26* provides that the NAO's auditor may be required to carry out value for money examinations on the use of NAO resources and send its report to the Commission. This power is a parallel one to the C&AG's own power to carry out value for money examinations on other bodies under Part 2 of the National Audit Act 1983. The Commission must lay any

value for money reports prepared by the NAO's auditor before Parliament. This allows the Commission to satisfy itself that the NAO is operating professionally and acceptably.

508. *Paragraph 27* gives the auditor information and access powers to carry out its functions of audit under *paragraph 25* and value for money examinations under *paragraph 26*. The auditor may require access to any document which the auditor considers is necessary to carry out its functions. Any person holding or who is accountable for any document may be required to provide any information or explanation that the auditor thinks necessary.

509. *Paragraph 28* provides that the NAO seal may be authenticated by a member of the NAO or any person authorised for that purpose by a member of the NAO. *Sub-paragraph (2)* provides that a document executed under NAO seal or signed on its behalf is to be received in evidence and is taken to be executed or signed in that way, unless the contrary is proven.

SCHEDULE 12: INTERACTION BETWEEN NAO AND THE COMPTROLLER & AUDITOR GENERAL

510. Schedule 12 contains provisions that govern the relationship between the NAO and the C&AG. These include:

- the preparation by the NAO and the C&AG of a national audit strategy;
- the obligation of the NAO to provide resources for the carrying out of the C&AG's functions;
- the need for the C&AG to obtain the approval of the NAO to perform certain services;
- the NAO's duty to monitor and provide advice to the C&AG;
- the ability of the C&AG to delegate functions;
- the arrangements for dealing with vacancy in office or the incapacity of the C&AG;
- powers to charge fees;
- the obligation to prepare an annual report; and
- the preparation and contents of a code of practice to deal with the relationship between the CA&G and the NAO.

Strategy

511. *Paragraph 1* provides for the preparation and approval of a strategy for the exercise of the national audit functions. The strategy will serve as the business plan for the NAO and the C&AG. By *sub-paragraph (1),* the NAO and C&AG must jointly prepare a strategy for the national audit functions. Those functions consist of the NAO's functions and those of the C&AG. The strategy must be reviewed and revised at least once every 12 months.

512. *Sub-paragraph (2)* provides that the strategy is to include a plan for the use of resources. In addition it must specify the amount of resources which the NAO will provide for the C&AG functions for the purposes of *paragraph 2(1)* of Schedule 12. In particular, for each financial

year covered by the strategy, it must specify a maximum amount of resources which the NAO is to provide to the C&AG.

513. *Sub-paragraphs (3) to (6)* require the strategy to be approved by the Commission. The process for achieving that is for the NAO chair and the C&AG jointly to submit the strategy to the Commission. Before approving the strategy, the Commission must review and may modify it. In doing so, the Commission must have regard to any advice given by the Treasury.

514. *Sub-paragraph (7)* requires the NAO and the C&AG each to carry out the strategy.

NAO to provide resources for the Comptroller and Auditor General's functions

515. *Paragraph 2* gives the NAO a duty to provide the resources to the C&AG that that C&AG requires to carry out the functions of the office. A maximum level of resource will be agreed by the NAO and the C&AG, and approved by the Commission, under *paragraph 1(2)* of Schedule 12. The resources that are thus available for the C&AG's functions fall into two categories:

- those whose allocation is at the discretion of the C&AG; and
- those for services which require NAO approval.

516. For the activities that are set out in *paragraph 3(2)* of Schedule 12, the C&AG will determine the level of resources that are required without needing approval from NAO. In such cases, the NAO must provide the resources that the C&AG asks for. These functions are mainly those which the C&AG is given by statute, including services as Comptroller of the issue of public funds, as auditor of government departments and many other public bodies, and in the exercise of powers under Part 2 of the National Audit Act 1983 to carry out value for money examinations. The C&AG will be bound by the maximum resource provision set out in the strategy (under *paragraph 1(2)* of Schedule 12) and by the resources voted by Parliament to NAO for the year under *clause 76*. Subject to that, the C&AG's independence will be guaranteed by giving the C&AG the final say in setting the resources required for these functions.

517. For other activities, including audit and consultancy services provided by agreement, for example to international bodies and other countries, the C&AG will require the NAO's approval before providing such services. For these "NAO-approved" services, the NAO (not the C&AG) will be responsible for setting the maximum resource provision, under *paragraph 3(3)* of Schedule 12. The NAO must work within the maximum headroom set by the strategy and the annual provision voted by Parliament. In addition, those resources whose allocation is at the discretion of the C&AG have a prior claim.

518. *Sub-paragraph (2*) gives the NAO responsibility in particular for:

- employing staff to assist in carrying out the C&AG's functions;

- buying in services to support the functions;
- holding information; and
- keeping records.

519. *Sub-paragraph (3)* limits the maximum amount of resources that the C&AG may require under *sub-paragraph 1* in any financial year to the maximum amount set out in the strategy for that year.

Provision of certain services by the Comptroller and Auditor General to require NAO's approval

520. *Paragraph 3* provides for the C&AG to seek the approval of the NAO before providing certain services. These "NAO-approved services" are services other than those set out in *sub-paragraph (2).*

521. *Sub-paragraph (3)* explains that the NAO is to set a maximum amount of resources for the "NAO approved services". In respect of NAO-approved services, then, the C&AG's ability to provide and resource these services is subject to the need for prior approval by the NAO board, and to the level of resource agreed by NAO.

NAO to monitor and provide advice

522. *Paragraph 4* gives the NAO a duty to monitor the carrying out of the C&AG's functions. The NAO's monitoring function can be expected to provide it with the information it needs as a precursor to discharging its duty under *paragraph 5* to provide advice to the C&AG.

523. Under *paragraph 5* the NAO must provide such advice as it considers appropriate to the C&AG on the exercise of the C&AG's functions. The C&AG must have regard to any advice given by the NAO.

Delegation of the Comptroller and Auditor General's functions

524. *Paragraph 6* provides that the C&AG may prepare a scheme for the delegation of the functions of that office to NAO employees. The scheme and any revisions of it must be approved by the Commission. If the Commission approves the scheme, the C&AG may delegate functions in accordance with it. A delegation does not prevent the C&AG from doing anything personally.

Vacancy in office of the Comptroller and Auditor General or incapacity of Comptroller and Auditor General

525. *Paragraph 7* makes provision for the C&AG's functions to be carried out by a duly authorised employee of NAO on a temporary basis if the office is vacant or the C&AG is incapable.

526. In the case of incapacity, before NAO can authorise an employee to carry out the C&AG's functions, a certificate from the Speaker of the House of Commons is required. Under *sub-paragraph (2)(b)*, the Speaker would certify that in the Speaker's view the current C&AG's ability to carry out that office's functions was seriously impaired because of ill health. The period of ill health starts when the Speaker certifies to the House that the C&AG is impaired and ends when the Speaker certifies to the House that the C&AG is able to carry out the office's functions.

527. NAO must obtain the Commission's agreement before authorising an employee to carry out the C&AG's functions. The temporary arrangement may last no more than six months (by *sub-paragraph (6)*) and is available only once during a C&AG's term of appointment. For longer vacancies and periods of incapacities, or for repeated incapacity, therefore, the expectation is that the gap would be filled by a new appointment.

Audit fees etc

528. *Paragraphs 8(1) to (4)* authorise the NAO to charge fees for audits carried out by the C&AG in accordance with a scheme prepared by the NAO and approved by the Commission. The agreement of a minister of the Crown is required if the accounts to be audited are those of a body or other person who acts on behalf of the Crown. *Sub-paragraph (5)* provides that those arrangements do not apply to audits that are carried out as part of NAO approved services. In such cases, the C&AG may charge fees and other amounts but only in accordance with the relevant agreement or arrangement. The fee powers in this paragraph may be used to recover the costs of providing the services in question but not to cross-subsidise other costs of the NAO or the C&AG.

529. *Sub-paragraphs (6) and (7)* require that fees and other amounts received by the C&AG must be paid to the NAO and that the NAO must pay them into the Consolidated Fund.

Reports

530. *Paragraph 9* provides that NAO and the C&AG must, as soon as practicable after the end of each financial year, jointly prepare a report on the carrying out of the NAO and C&AG functions. This annual report must be submitted to the Commission jointly by the chair of the NAO and the C&AG. The Commission must lay the report before Parliament.

Code of practice

531. *Paragraphs 10 to 12* provide for the preparation, approval and content of a code of practice which is to set out the relationship between the NAO and the C&AG. The code will allow detailed arrangements for the operation of the new NAO and its relationship with the C&AG to be set in a flexible and transparent manner. The code will not be a source of further powers for either. Rather it will seek to give practical effect to the provisions of Part 10 of the Bill. It

is intended to be a practical way of setting out how the powers are to be used in practice, and may be adjusted from time to time to reflect the evolving requirements of NAO's business and the C&AG's priorities.

532. *Paragraph 10* provides that the NAO and C&AG must jointly prepare a code of practice dealing with the relationship between the NAO and the C&AG. The code is required to reflect the principle enunciated in *clause 69(6) and (7)* of this Bill that, subject to any other statutory provision, the C&AG has complete discretion in carrying out the C&AG's functions.

533. Once it has been prepared, the code must be reviewed regularly by the NAO and C&AG and revised as appropriate. In preparing and revising the code, they must consult the Treasury. They must also consider any proposals for revision made by the Commission.

534. The code requires the approval of the Commission. The chair of the NAO and C&AG are jointly to submit the code or any revision to the Commission. If the Commission approves the code, it must lay it before Parliament.

535. *Sub-paragraph (9)* requires the NAO and the C&AG to comply with the code.

536. *Paragraph 11* provides that the code must be approved by the NAO at a meeting of NAO. Approval can only be given if at least one-half of the non-executive members present and voting vote in favour.

537. *Paragraph 12* sets out a non-exhaustive list of what is to be covered by the code.

538. By *sub-paragraph (1)*, the code must deal with:

- the way in which the strategy is to be prepared, reviewed and revised, and the matters and the periods it should cover;
- the way in which resources are to be provided for the C&AG functions under *paragraph 2(1)* of Schedule 12;
- the way in which estimates for NAO resources under *clause 76* are to be prepared;
- the way in which the NAO makes decisions on approving and setting resources for NAO approved services under *paragraph 3* of Schedule 12;
- the way in which the NAO monitors the C&AG functions under *paragraph 4* of Schedule 12;
- the way in which advice is to be given by the NAO for the purposes of *paragraph 5* of Schedule 12;
- the way in which the C&AG charges fees under *paragraph 8* of Schedule 12; and
- the extent of the delegation of NAO's functions to the C&AG under *paragraph 23* of Schedule 11.

539. The code must also place restrictions on the public comments that a NAO non-executive member may make in relation to the carrying out of the C&AG's functions.

540. *Sub-paragraph (2)* sets out some other matters that may be dealt with in the code. These are:

- the way in which the annual reports required by *paragraph 9* are to be prepared;
- the matters about which the NAO and/or the C&AG are to consult the Commission from time to time; and
- any standards of corporate governance.

Documents and information

541. *Paragraph 13* provides a general power for the NAO to receive information on behalf of, and from, the C&AG. By *sub-paragraph (2)*, information held by NAO on behalf of the C&AG will be treated as being held by NAO for the purposes of section 3(2) of the Freedom of Information Act 2000. This means NAO will be responsible for discharging obligations under that Act both for itself and for the C&AG.

SCHEDULE 13: TRANSITIONAL PROVISION

542. This schedule makes transitional provision to preserve the continuity of rights and obligations between the old NAO and the new. In particular, it provides for the transfer of property rights and employment obligations. While obligations under audit contracts are expected to remain with the C&AG, the intention is that all other property, rights and liabilities will transfer to the new NAO whose responsibility it will be to provide and manage the resources that the C&AG requires.

Transfer of property etc

543. *Paragraph 1* provides for the C&AG to determine which property, rights and liabilities of the C&AG are to be transferred to the NAO as a consequence of this Bill and to prepare a scheme which describes that property and those rights and liabilities. The scheme has to be approved by the Commission. At the appointed time, (which by *sub-paragraph (12)* is a date set for that purpose by the Treasury), the property, rights and liabilities described in the scheme are transferred to the new NAO.

544. *Sub-paragraphs (5) and (6)* provide for the continuity of employment of NAO staff. The rights and liabilities that may be transferred to the NAO include those under contracts of employment in relation to staff of old NAO (who were appointed under section 3(2) of the 1983 Act). Periods of employment with old NAO are to be treated as employment by new NAO, as are periods of employment in the former Exchequer and Audit Department (for those employees who transferred to old NAO as a result of section 3(2) and paragraph 2 of Schedule 2 to the 1983 Act). A transfer to new NAO is not to be treated as a break in service.

545. *Sub-paragraphs (7) and (8)* provide for the continuing effect of things done by or for the C&AG in relation to anything that is transferred to NAO under *sub-paragraph (3)* so far as is

appropriate. This means, for example, that actions or procedures taken by the C&AG will not need be renewed or retaken by NAO to continue their effectiveness. Things that were in the process of being done by the C&AG in relation to anything transferred (such as ongoing legal proceedings) may be continued after the appointed time by the new NAO. So far as is appropriate as a result of the transfer, by *sub-paragraph (9)* references in agreements to the C&AG are to be read as or including a reference to new NAO. *Sub-paragraphs (10) and (11)* allow a person's employment by old NAO to be treated as employment by new NAO before new NAO comes into existence for limited purposes in connection with the establishment of new NAO.

Tax consequences of transfers by virtue of paragraph 1(3)

546. *Paragraphs 2 to 4* make provision for corporation tax consequences of the transfer. The effect is to remove tax consequences that would otherwise have arisen only because of the transfer and to provide continuity of tax treatment.

Old Comptroller and Auditor General to continue to be Comptroller and Auditor General

547. *Paragraph 5* provides that the person who is C&AG at the appointed time will continue to hold the office of C&AG and be treated as if appointed under the provisions of this Bill. Although that person will have been appointed under the old legislation for an unlimited term, *sub-paragraph (2)* provides for the ten-year period of office of *clause 68(7)* to apply. The ten-year period begins from the day that person took office under the current legislation. The new remuneration arrangements under *clause 71* will apply but will not cover any period before the appointed time, that is, a time appointed for the purposes of this paragraph by an order made by the Treasury. The appointment of a new C&AG designate was announced in January 2009. On 1st June, Amyas Morse was appointed as the new C&AG under the current legislation. He understands the revised terms of appointment and has agreed to accept them.

Provision of services

548. *Paragraph 6* provides for continuity of the powers under which the C&AG acts. Anything done under power which is no longer available is to be treated as having been done under the general power of *clause 70*, so far as necessary or appropriate.

549. *Paragraph 7* provides that existing contracts for the C&AG to provide services will not become subject to the new approval regime of *paragraph 3* of Schedule 12 when that regime first comes into effect. However, the charging provisions of *paragraph 8* of that Schedule will apply as if they were NAO approved services. When a current contract expires or is renewed, it would then become subject to the approval regime.

Indemnification

550. *Paragraph 8* provides for the indemnities in *clause 78* to extend to liabilities that arise before the coming into force of that clause, and liabilities that arise in relation to acts or omissions that occur before then. They also cover persons who were formerly members of NAO staff. This provision is needed to ensure that there is no break in cover between the indemnity set out in section 4(6) of the National Audit Act 1983 and that in *clause 78* of this Bill.

NAO's procedural rules before rules made under paragraph 18 of Schedule 11

551. *Paragraph 9* sets out the procedural rules that apply to meetings of NAO before it has drawn up internal rules under *paragraph 18* of Schedule 11. These provisions on the quorums, majorities and casting votes will apply to meetings at which the NAO prepares its internal rules and the draft code under *paragraph 10* of Schedule 12.

SCHEDULE 14: CONSEQUENTIAL AMENDMENTS

552. This schedule contains amendments which are minor or consequential on the measures in the Bill.

Exchequer and Audit Departments Act 1866

553. *Paragraph 2* repeals sections of the Exchequer and Audit Departments Act 1866 that relate to the appointment and tenure of the C&AG. New provision is made in this Bill, in particular in *clauses 68, 69 and 72*.

Exchequer and Audit Departments Act 1957

554. *Paragraph 3* repeals the Exchequer and Audit Departments Act 1957. New provision for the C&AG's salary and powers of delegation are made in *clause 71* of, and *paragraph 6* of Schedule 12 to, this Bill.

Public Records Act 1958

555. *Paragraph 4* provides for the reference in Schedule 1 to the Public Records Act 1958 to be read as a reference to new NAO.

Superannuation Act 1972

556. *Paragraph 5* amends section 13 of the Superannuation Act 1972, which deals with the pension arrangements of the C&AG, so that it will not apply to a C&AG who is appointed under this Bill. New pension arrangements are provided for under *clause 71*. *Paragraph* 6 amends the entry for staff of the NAO in Schedule 1 to the Superannuation Act 1972. This allows NAO employees to continue to be eligible for membership of the Principal Civil

Service Pension Scheme. Any entitlement of a member of staff of the NAO who leaves before the creation of new NAO is not affected.

House of Commons Disqualification Act 1975

557. *Paragraph 7* amends Schedule 1 to the House of Commons Disqualification Act 1975. Members of the NAO (including the C&AG) and NAO employees are disqualified from becoming members of the House of Commons.

Northern Ireland Assembly Disqualification Act 1975

558. *Paragraph 8* amends Schedule 1 to the Northern Ireland Assembly Disqualification Act to disqualify NAO members (including the C&AG) and employees from becoming members of the Northern Ireland Assembly.

Parliamentary and other Pensions and Salaries Act 1976

559. *Paragraph 9* omits section 6(3) of the Parliamentary and other Pensions and Salaries Act 1976. Its provisions on the C&AG's salary are superseded by those in *clause 71*.

Race Relations Act 1976

560. *Paragraph 10* provides for the C&AG and the new NAO to be or continue to be subject to the general statutory duty under section 71 of the Race Relations Act 1976. It also provides for continuity between the old and the new structures for things done or in the process of being done.

Interpretation Act 1978

561. *Paragraph 11* amends the definition of Comptroller and Auditor General in Schedule 1 to the Interpretation Act 1978 to remove the reference to appointments made under Exchequer and Audit Departments Act 1866.

National Audit Act 1983

562. *Paragraph 12* omits a number of sections of the National Audit Act 1983 which are superseded by provisions in this Act. They include provisions on the appointment process of the C&AG (see *clause 68*); the status of the NAO (see *clause 74* and Schedule 11); NAO's expenditure and audit (see *clauses 76* and *paragraph 25* of Schedule 11). The repeal of section 3(4) of the 1983 Act does not affect staff of old NAO who cease to be members of PCSPS before the transfer of property rights and liabilities under *paragraph 1(3)* of Schedule 13 comes into effect.

563. *Paragraph 13* moves a requirement which is currently in section 1 of the 1983 Act to Part 2 of that Act, as a new section 7A. The requirement is for the C&AG to have regard to proposals made by the Committee of Public Accounts, in considering whether to carry out a value for money examination under that Part of the 1983 Act.

Finance Act 1989

564. *Paragraph 14* amends section 182 of the Finance Act 1989 to ensure that an existing offence for disclosing certain types of information (including tax and social security information) held by the C&AG and members of staff of NAO will continue to cover NAO and its employees under the new structure. The offence will also continue to apply to the C&AG for Northern Ireland, and the staff of the Northern Ireland Audit Office.

Social Security Administration Act 1992

565. *Paragraph 15* amends section 23 of the Social Security Administration Act 1992 to ensure that a disclosure offence which protects social security information related to particular persons continues to apply under the new structure of the NAO. The offence also continues to apply to the C&AG for Northern Ireland and the staff of the Northern Ireland Audit Office.

Taxation of Chargeable Gains Act 1992

566. *Paragraph 16* adds *paragraph 4* of Schedule 13 (which provides no gain or loss treatment for a transfer from the C&AG to the new NAO) to a list of "no gain/ no loss provisions" in section 288(3A) of the Taxation of Chargeable Gains Act 1992.

National Lottery etc. Act 1993

567. *Paragraph 17* amends the National Lottery etc. Act 1993 to provide that the National Lottery Commission will continue to be permitted to make disclosures to the C&AG in connection with value for money examinations under Part 2 of the National Audit Act 1983.

Government of Wales Act 1998

568. *Paragraph 18* repeals paragraph 1 of Schedule 12 to the Government of Wales Act 1998. This means that the C&AG will no longer be able to hold the office of Auditor General for Wales at the same time.

Government Resources and Accounts Act 2000

569. *Paragraph 19* amends paragraph 18 of Schedule 1 to the Government Resources and Accounts Act 2000 to omit provisions related to the preparation of the NAO's accounts which have been superseded by those in *paragraphs 24 and 25* of Schedule 11 to this Bill.

Freedom of Information Act 2000

570. *Paragraphs 20 and 21* provide for the continuity of obligations under the Freedom of Information Act 2000 between the old NAO the new NAO and the C&AG. The new NAO will take on the information obligations of old NAO. It will hold information on behalf of the C&AG under the new structure and be responsible for dealing with requests under that Act.

Constitutional Reform Act 2005

571. *Paragraph 22* omits paragraph 7 of Schedule 6 to the Constitutional Reform Act 2005. This provision is superseded by the new arrangements for delegation of the C&AG's functions in *paragraph 6* of Schedule 12 to this Bill.

Government of Wales Act 2006

572. *Paragraph 23* adds the National Audit Office to paragraphs 5 and 8 of Schedule 5 to the Government of Wales Act 2006 to reflect the fact that certain functions currently carried out by the C&AG will in future be carried out by the NAO. The Assembly in Wales will not be able to modify functions of either the C&AG or the NAO without the consent of the Secretary of State.

Companies Act 2006

573. *Paragraph 24* omits section 1230(3)(a) of the Companies Act 2006 which is superseded by the new duty for NAO to provide the C&AG with resources under *paragraph 2* of Schedule 12 to the Bill.

Corporate Manslaughter and Corporate Homicide Act 2007

574. *Paragraph 26* omits the reference to old NAO from Schedule 1 to the Act, but enables proceedings to be taken against old NAO in the event that offences are alleged to have been committed by old NAO before this provision comes into force. The offence in section 1 of the 2007 Act automatically applies to new NAO because it is a body corporate.

Court Funds Rules 1987 (S.I. 1987/821)

575. *Paragraph 27* provides for the C&AG to authenticate a copy of an account relating to a fund in court that has been issued by the Accountant General in response to a request under rule 63 of the Court Funds Rules 1987.

Official Secrets Act 1989 (Prescription) Order 1990 (S.I. 1990/200)

576. *Paragraph 28* amends the Official Secrets Act 1989 (Prescription) Order 1990 so that members and employees of the new NAO will be treated as if they were Crown servants for the purposes of the Official Secrets Act 1989.

Race Relations (Prescribed Public Bodies) (No. 2) Regulations 1994 (S.I. 1994/1986)

577. *Paragraph 30* provides that new NAO will continue to be prescribed for the purposes of section 75(5) of the Race Relations Act 1976. Prescription allows NAO to apply certain employment restrictions notwithstanding that Act.

Scotland Act 1998 (Transitory and Transitional Provisions) (Publications and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379)

578. *Paragraph 31* amends the definition of the C&AG for the purposes of interpreting legislation made by the Scottish Parliament, by removing the reference to the C&AG's appointment under the Exchequer and Audit Departments Act 1866.

Public Interest Disclosure (Prescribed Persons) Order 1999 (S.I. 1999/1549)

579. *Paragraph 32* amends the description of the C&AG in the Schedule of prescribed persons to whom a protected "whistleblowing" disclosure may be made.

Greater London Authority (Disqualification) Order 2000 (S.I. 2000/432)

580. *Paragraph 33* provides that members and employees of the NAO may not be mayor of London or a member of the London Assembly.

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188)

581. *Paragraph 34* allows the National Lottery Commission to disclose confidential information, within the meaning of the Financial Services and Markets Act 2000, to the C&AG for the purposes of value for money examinations under Part 2 of the National Audit Act 1983.

Race Relations Act 1976 (Statutory Duties) Order 2001 (S.I. 2001/3458)

582. *Paragraph 35* provides for the C&AG and the new NAO to be or continue be subject to the obligation to prepare a Race Equality Scheme under article 2 of this Order. It also provides for continuity between the old and the new structures for things done or in the process of being done.

Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 (S.I.2005/2966)

583. *Paragraph 36* provides for the C&AG and the new NAO to be or continue to be subject to the duty to prepare and implement a Disability Equality Scheme under article 2 of these Regulations. It also provides for continuity between the old and the new structures for things done or in the process of being done in relation to that duty.

Public Contracts Regulations 2006 (S.I. 2006/5)

584. *Paragraph 37* ensures that the new NAO like the old NAO is subject to the procurement obligations and thresholds that apply to a body listed in Schedule 1 to the Public Contracts Regulations 2006 ("GPA Annex 1A contracting authorities").

Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 (S.I. 2006/2930)

585. *Paragraph 38* provides for the C&AG and the new NAO to be or continue to be subject to the general statutory duty to prepare and implement a Gender Equality Scheme. It also provides for continuity between the old and the new structures for things done or in the process of being done in relation to that duty.

Child Support Information Regulations 2008 (S.I. 2008/2551)

586. *Paragraph 3*9 provides that the offence for disclosure of information under section 50 of the Child Support Act 1991 will continue to apply to current and former members and employees of NAO.

PART 11: TRANSPARENCY OF GOVERNMENT FINANCIAL REPORTING TO PARLIAMENT

Clause 83: Inclusion in departmental estimates of resources used by designated bodies

587. *Subsection (1)* provides that the clause amends the Government Resources and Accounts Act 2000 ("the GRAA 2000").

588. *Subsection (2)* inserts a new section 4A into the GRAA 2000. Its provisions are as follows:

589. *New section 4A(1) g*ives the Treasury powers to give directions regarding how a government department must prepare a Supply Estimate for approval by the House of Commons in respect of a financial year.

590. *New section 4A(2)* gives the Treasury powers to direct that the departmental Supply Estimate include information relating to resources expected to be used by any body that is a designated body in relation to that department.

591. *New section 4A(3)* provides that a body is a designated body in relation to a government department either if it is designated by an order made by the Treasury or it falls within a description of body designated in relation to the department by a Treasury order.

592. *New section 4A(4)* provides for a body to be designated either for a particular financial year or generally.

593. *New sections 4A(5)* to *4A(8)* make provision in relation to bodies funded out of a devolved Consolidated Fund. *Section 4A(5)* provides that *sections 4A(6) and (7)* apply if the Treasury expect the use of resources by a body in a financial year to involve payments out of a devolved Consolidated Fund to or for the benefit of a body but do not expect the use of resources by the body to involve payments out of the Consolidated Fund of the United Kingdom to or for the benefit of that body. Examples of such bodies would include Sportscotland (an NDPB funded entirely by the Scottish Executive) and the Higher Education Funding Council for Wales (also an NDPB, which provides funding to higher education institutions in Wales and is funded by the National Assembly for Wales). There is no intention of designating any body that is wholly funded from a devolved Consolidated Fund. Where, exceptionally, a UK government department were to make a payment to a body operating in a devolved area and largely funded by a devolved administration, the Treasury plans to agree administrative arrangements that would ensure such a body was not designated.

594. *New section 4A(6)* provides that if the conditions in *section 4A(5)* are met the Treasury must notify the relevant government department that the conditions are met and treat the body as though it were not designated for that year.

595. *New section 4A(7)* prevents the Treasury from making an order designating a body if the conditions in *section 4A(5)* are met and no order is already in force in relation to that body.

596. *New section 4A(8)* provides for the Treasury, where appropriate, to consult the Scottish Ministers, the Welsh Ministers or the Department of Finance and Personnel for Northern Ireland before designating a body or a description of body.

597. *New section 4A(9)* provides that in determining for any purpose whether a body has a particular relationship with a government department the fact that a departmental Supply Estimate includes information relating to that body, or departmental resource accounts include information relating to the body, is to be disregarded. This provision is intended to make it clear that designating a body does not of itself alter the existing relationship between that body and the government department.

598. *New section 4A(10)* provides that an order made by the Treasury under *section 4A(3)* must be made by statutory instrument.

599. *New section 4A(11)* provides that a statutory instrument containing such an order will be subject to the negative resolution procedure.

600. New section 4A(12) defines what is meant by 'a devolved Consolidated Fund' (see section 4A(5)).

601. *Subsection (3)* amends section 5(1) of the GRAA 2000. Section 5(1), as amended, will require a government department to include the resources acquired, held or disposed of by any designated body when preparing resource accounts.

602. *Subsection (4)* amends section 6(1) of the GRAA 2000. That section requires the Comptroller and Auditor General to satisfy himself of certain matters when examining any resource accounts which he receives from a department. Section 6(1), as amended, will require the Comptroller and Auditor General to satisfy himself, amongst other things, that the financial transactions of the department and the financial transactions of any designated body are in accordance with any relevant authority.

Clause 84: Corresponding provision in relation to Wales

603. *Subsection (1)* provides that the clause amends Part 5 of the Government of Wales Act 2006 ("GOWA 2006").

604. *Subsection (2)* inserts a new section 126A into the GOWA 2006. Its provisions are as follows:

605. *New section 126A(1)* gives Welsh Ministers the power to include information relating to the use of resources by a designated body in a Budget Motion for the financial year.

606. *New section 126A(2)* provides Welsh Ministers with the power to designate bodies for these purposes. Ministers can designate individual bodies, or categories of bodies. Designation must be made by order.

607. *New section 126A(3)* provides for a body to be designated either for a particular financial year or generally.

608. *New sections 126A(4)* requires the Welsh Ministers to obtain the consent of the Treasury before designating any body that they expect will receive funding from a "relevant Consolidated Fund" in a particular financial year. Section 126A(5) defines a "relevant Consolidated Fund" as the UK Consolidated Fund, the Scottish Consolidated Fund or the Consolidated Fund of Northern Ireland.

609. *New section 126A(6)* requires the Welsh Ministers to consult with the Treasury before designating a body or a description of body, in cases where Treasury consent is not needed but the Welsh Ministers consider it appropriate to consult.

610. *New section 126A(7)* provides that in determining for any purpose whether a body has a particular relationship with a "relevant person", the fact that the budget motion, or the "relevant person's" resource accounts, include information relating to the body, is to be disregarded. This provision is intended to make it clear that designating a body does not of itself alter the existing relationship between that body and the Welsh Ministers (or other "relevant person").

611. New section *126A(8)* provides that an order made by the Welsh Minister under *subsection (2)* must be made by statutory instrument.

612. *New section 126A(9) and (10)* provides that a statutory instrument containing such an order will be subject to either the affirmative or negative resolution procedure in the Assembly. The choice of procedure will be made by Welsh Ministers as appropriate in recognition of their key budgetary responsibilities. For instance, the Welsh Ministers may choose to use the affirmative procedure where they are proposing major changes to designated bodies, and it is appropriate for the Assembly to have the opportunity to debate these fully; while Ministers may choose the negative procedure in cases where minor or uncontroversial amendments are to be made.

613. *Subsection (3)* provides that the clause amends Schedule 8 to the GOWA 2006.

614. *Subsection (4)* inserts a new paragraph 13(1A). Paragraph 13(1) of Schedule 8 to the GOWA 2006 provides that the Auditor General for Wales must, for each financial year, prepare accounts in accordance with directions given by the Treasury. The new paragraph 13(1A) provides that such directions to prepare accounts may include directions to prepare accounts relating to financial affairs and transactions of persons other than the Auditor General. This would allow the inclusion of information about bodies designated in relation to the Auditor General.

615. *Subsection (5)* amends paragraph 15 of Schedule 8 to the GOWA 2006, which relates to the audit of accounts prepared by the Auditor General. Subsection (5) makes consequential amendments to paragraph 15 to allow the auditors of the Auditor General for Wales's accounts to obtain necessary information concerning transactions of designated bodies which are included in those accounts.

616. *Subsection (6)* amends paragraph 17(8) of Schedule 8 to the GOWA 2006 to allow the Auditor General for Wales to have access to documents and financial information relating to the financial affairs of any designated body included in the accounts of the Public Services Ombudsman for Wales.

617. *Subsection (7)* amends Schedule 1 to the Public Services Ombudsman (Wales) Act 2005. Paragraph 16(1) of that Schedule provides that the Ombudsman must, for each financial year, prepare accounts in accordance with directions given to him by the Treasury. Subsection (7) inserts a new paragraph 16(1A) to allow such directions to include directions to prepare accounts relating to financial affairs and transaction of persons other than the Ombudsman. This would allow the inclusion of information about bodies designated in relation to the Ombudsman.

PART 12: PUBLIC RECORDS AND FREEDOM OF INFORMATION

Clause 85: Transfer of records to Public Record Office

618. *Subsection (1)(a)* amends section 3(4) of the Public Records Act 1958 to reduce the time within which any public record selected for permanent preservation and not required for an administrative purpose or other special reason must be transferred to the Public Record Office or other place of deposit from 30 years to 20 years after its creation.

619. *Subsection (1)(b)* inserts in section 3 of the Public Records Act 1958 a new subsection (4A) which provides that, during the ten years after the commencement of this clause of the Bill, the amended subsection (4) is to be read subject to any transitional provisions made by order under subsection (2) of the clause.

620. *Subsection (2)* creates a power for the Lord Chancellor to make transitional arrangements by order relating to the reduction from 30 to 20 years. *Subsection (3)* enables any such order to make provision about the time within which particular records must be transferred and to make different provision for records of different descriptions. Without the power in *subsection (2)*, the effect of the amendment of section 3(4) would be to require all records which were then more than 20 years but less than 30 years old to be transferred immediately after the coming into force of the amendment. *Subsections (2)* and *(3)* enable provision to be made for the gradual transfer of these records and of those for which the new 20-year period would otherwise end soon after commencement.

621. *Subsections (4) and (5)* provide that any such order is to be made by statutory instrument under the negative resolution procedure.

Clause 86: Freedom of information

622. *Clause 86* gives effect to Schedule 15.

Schedule 15: amendments of the Freedom of Information Act 2000

623. *Schedule 15* amends the Freedom of Information Act 2000.

624. *Paragraph 2* amends subsection (3) of section 2 of the Freedom of Information Act 2000, which lists the exemptions which are absolute exemptions, meaning that they are not subject to the public interest test under that section. The effect of the amendment is to make the exemption in section 37 of the Act an absolute exemption so far as it relates to information about communications with the Sovereign, the heir to the Throne, the second in line to the Throne or a person who, after the communication but before the request is made, becomes Sovereign, heir or second in line.

625. *Paragraph 3* amends section 37(1)(a) of the Freedom of Information Act 2000 substituting five categories of communication for those previously set out in section 37(1)(a). Information relating to the communications described will be exempt information. These are communications:

- with the Sovereign (new paragraph (a)).

- with the heir to the Throne or the second in line to the Throne (new paragraph (aa)).

- with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne. This provides an exemption for information which relates to communications with such a person from the date they accede to the Throne or become heir to or second in line to the Throne. The exemption will also apply to all relevant information created before that date. Should that person cease to be The Sovereign, heir to or second in line to the Throne otherwise than by death and remain a member of the Royal Family then new paragraph (ac) will apply to information relating to communications with that person created on or after the date of that change (new paragraph (ab)).

- with members of the Royal Family who do not themselves fall within paragraphs (a) to (ab) other than when those communications are made or received on behalf of the persons referred to in paragraphs (a) to (ab), (new paragraph (ac)).

- with the Royal Household other than where those communications are made or received on behalf of the persons referred to in paragraphs (a) to (ac), (new paragraph (ad)).

626. The exemptions in the new paragraphs (a) to (ab). are absolute and those in the new paragraphs (ac) and (ad) are qualified.

627. *Paragraph 4* amends the Freedom of Information Act 2000 to change the meaning of "historical record" so that a record becomes an "historical record" at 20 years rather than 30 years as previously.

628. *Paragraph 5* amends section 63 of the Freedom of Information Act.

629. *Sub-paragraphs (2) and (3)* reduce from 30 years to 20 years the maximum duration of some of the main exemptions. This period starts on the date on which the record containing the information is created. The exemptions affected are those in sections 30(1) (investigations and proceedings conducted by public authorities), 32 (court records), 33 (audit functions), 35 (formulation of government policy) and 42 (legal professional privilege).

630. *Sub-paragraph (4)* inserts into section 63 of the Freedom of Information Act 2000 new subsections making detailed provision about the maximum duration of the exemptions in section 28 (relations within the UK), section 36 (prejudice to effective conduct of public affairs), section 37 (relating to the Royal Family) and section 43 (commercial interests). In each case the period begins on the date on which the record containing the information is created. The new subsections are as follows:

a. Subsections (2A) and (2B): these subsections reduce the time period beyond which the section 36 exemption (prejudice to effective conduct of public affairs) ceases to be applicable from 30 to 20 years for all parts of that exemption except for subsection (2)(a)(ii) (information which would or would be likely to prejudice the work of the Executive Committee of the Northern Ireland Assembly) and, in so far as disclosure would prejudice the effective conduct of public affairs in Northern Ireland, subsection (2)(c).

b. Subsections (2C) and (2D): these subsections preserve 30 years as the maximum duration of the exemptions contained at section 28 (relations within the UK), section 43 (commercial interests), section 36(2)(a)(ii) (information which would or would be likely to prejudice the work of the Executive Committee of the Northern Ireland Assembly) and section 36(2)(c), in so far as disclosure would prejudice the effective conduct of public affairs in Northern Ireland.

c. Subsections (2E) and (2F): these subsections create time limits after which the exemptions at section 37(1)(a) to (ad) of the Freedom of Information Act 2000 (information relating to communications with the Royal Family and Royal Household) can no longer apply:

- for information relating to communications with the Sovereign, the heir to the Throne and the second in line to the Throne and all other Members of the Royal Family or those acting on their behalf this is a period of 20 years from the creation of the record in which the information is contained or a period of 5 years from their date of the death of the relevant member of the Royal Family, whichever is longer.

- for information relating to communications with the Royal Household, when that information does not relate to communications on behalf of the Sovereign, the heir to the Throne, the second in line to the Throne or other members of the Royal Family, a period of 20 years from the creation of the record in which the

information is contained or a period of 5 years from the date of the death of the Sovereign reigning when the record containing the information was created.

631. *Paragraph 6* amends the Freedom of Information Act 2000 to provide that these amendments to the Freedom of Information Act 2000 will not apply to information held by the Northern Ireland Assembly, any Northern Ireland department and any Northern Ireland public authority. The Freedom of Information Act 2000 will apply to these bodies as if these amendments had not been made.

PART 13: MISCELLANEOUS AND FINAL PROVISIONS

Clause 87: Section 3 of the Act of Settlement

632. *Clause 87(1)* provides that the repeal (made by section 18(7) of the Electoral Administration Act 2006) of an entry in Schedule 7 to the British Nationality Act 1981 (which applied to section 3 of the Act of Settlement) applied only in relation to membership of the House of Commons, and to anything from which a person is disqualified by virtue of a disqualification from membership of the House of Commons. This confirms that the repeal did not apply in relation to membership of the House of Lords, the Privy Council and certain offices under the Crown.

633. *Clause 87(2)* provides that the repeal mentioned in *clause 87(1)* had this effect from the coming into force of section 18 of the Electoral Administration Act 2006. This clause will come into force on Royal assent of this Bill (see *clause 95*).

Clause 88: Referendums: person may not be "responsible person" for more than one permitted participant

634. *Clause 88* makes amendments to the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") to apply new restrictions to permitted participants (that is individuals or organisations who campaign in a referendum) when appointing responsible persons as required by that Act. In doing so this clause seeks to put in place for referendums generally provision equivalent to that already made by the 2000 Act for certain elections.

635. Campaigning entities that wish to spend above the limit set out in section 117(1) of the 2000 Act are required to submit a declaration or notification to the Electoral Commission in accordance with section 106 of the 2000 Act. Campaigning entities that submit such a declaration or notification become permitted participants for the purposes of Part 7 of the 2000 Act and are subject to additional regulation and a spending limit determined in accordance with Schedule 14 to the 2000 Act. The declaration or notification is required to identify the responsible person for each permitted participant, unless the participant is an individual or a registered political party. In the latter cases section 105(2) of the 2000 Act automatically deems the individual or, as the case may be, the treasurer of the registered

political party to be the responsible person. The responsible person for each permitted participant is responsible for compliance with the 2000 Act.

636. *Subsection (2)* of the clause amends subsection (1)(b) of section 105 of the 2000 Act to provide that an individual who is the responsible person in relation to another permitted participant cannot become a permitted participant in their own right.

637. *Subsection (3)* of the clause inserts subsection (4A) into section 106 of the 2000 Act. This new subsection provides that a declaration or notification to the Commission in respect of a permitted participant does not comply with the requirement to name a responsible person, if the responsible person that it names is already the responsible person in relation to another permitted participant (whether as an individual or for another organisation); or is an individual who would become a responsible person by virtue of a notification given for another permitted participant at the same time.

Clause 89: Referendums: expenses incurred by persons acting in concert

638. *Clause 89* makes amendments to the 2000 Act to change the requirements regarding accounting for and reporting of certain referendum expenses incurred by permitted participants. Again, the aim of this clause is to put in place for referendums generally provision equivalent to that already made by the 2000 Act for certain elections.

639. *Subsection (2)* of the clause amends section 118 of the 2000 Act so that expenditure which is incurred by permitted participants acting in concert before the referendum period but used during that period must be treated for certain purposes as though it had been incurred during the referendum period itself.

640. *Subsection (3)* of the clause inserts new section 118A into the 2000 Act. This new section provides that where individuals or organisations incur referendum expenditure together as part of a plan or other arrangement and where those expenses are aimed at promoting or procuring one particular outcome in the referendum, each such permitted participant must include the total level of such common arrangement expenditure when calculating whether the spending limits set out in the Act have been reached. It also requires such expenditure to be included in any return submitted to the Electoral Commission under section 120 regarding their referendum expenses. *Subsection (3)* of the new section makes clear that the requirement to report common arrangement expenditure applies whether or not, at the time, the separate individuals or bodies concerned are registered permitted participants.

641. *Subsection (2)* makes a consequential amendment to section 118 of the 2000 Act.

Clause 90: Parliamentary elections: counting of votes

642. *Clause 90* of the Bill amends the parliamentary elections rules ("the Rules") contained in Schedule 1 to the Representation of the People Act 1983 so as to require a returning officer to take reasonable steps to begin counting the votes given on the ballot papers in a parliamentary election as soon as practicable within four hours of the close of poll (polling closes at 10pm). It does so by inserting a new rule 45(3A) in the Rules (*subsection (3)(a)*). *Subsection (2)* amends rule 44 of the Rules: the effect is that the returning officer must have regard to the new rule 45(3A) duty when (as required by rule 44(1)) making arrangements to commence the counting of votes as soon as practicable following the close of the poll. *Subsection (3)(b)* supplements the new rule 45(3A) duty by requiring the Electoral Commission to produce guidance for returning officers on the new duty.

643. Circumstances – such as local geography – may dictate that it is not possible to begin counting the votes given on ballot papers within four hours of the close of the poll in a parliamentary election. Accordingly, *subsection (4)* inserts a new rule 53ZA in the Rules, requiring a returning officer who has not been able to start the count within the four hour period to publish a statement, within 30 days of the poll date. This must state when the count started, describe the steps taken for the purpose of attempting to begin counting the votes within the four hour period, and explain why the returning officer was unable to start counting the votes given on ballot papers within that period. Under this new rule the returning officer is also required to deliver the statement to the Electoral Commission within the same 30 day period. The effect of paragraphs (3) and (4) of the new rule is that the Commission must list those constituencies that did not start the count within four hours of the close of poll in any report they produce under section 5 of the Political Parties, Elections and Referendums Act 2000 on the conduct of the election.

Clause 91: Electoral Commission accounts in relation to specified matters

644. This clause amends Schedule 1 to the Political Parties, Elections and Referendums Act 2000 in relation to the Electoral Commission's accounts.

645. Paragraph 17(2) of the Schedule currently requires the Electoral Commission to prepare accounts for each financial year. *Subsection (2)* amends this paragraph to provide that, in addition to this requirement, the Electoral Commission must prepare accounts in relation to any matter specified in a direction given to it by the Treasury. This ensures that the Treasury can require the Electoral Commission to prepare separate accounts regarding its expenditure in connection with any particular matter such as a referendum. The amendments in *subsection (3)* provide that accounts prepared by the Commission in respect of each financial year or in relation to a matter specified by the Treasury must be prepared in accordance with any directions given for that purpose by the Treasury.

646. Paragraph 18 of Schedule 1 currently provides for the Electoral Commission's annual accounts to be examined and certified by the Comptroller and Auditor General before being laid before Parliament. *Subsection (4)* amends this paragraph to provide that any accounts prepared by the Electoral Commission in relation to a matter specified by the Treasury will be subject to the same requirements.

Clause 92: Meaning of "Minister of the Crown"

647. *Clause 92* provides that the term "Minister of the Crown" in the Constitutional Reform and Governance Bill will have the same meaning as provided in the Ministers of the Crown Act 1975. This includes Secretaries of State but also, for example, the Attorney General, the Lord Chancellor and the Minister for the Civil Service.

Clause 93: Financial provision

648. *Clause 93* provides that any expenditure incurred by a Minister of the Crown by virtue of the Act can be paid for out of money provided by Parliament.

Clause 94: Power to make consequential provision

649. *Clause 94* contains a power to make changes to primary or secondary legislation in consequence of the Bill by order. *Subsection (1)* provides that the power can be exercised by a Minister of the Crown, or two or more Ministers acting jointly.

650. *Subsection (2)* provides that an order may amend, repeal or revoke provision in primary or secondary legislation and may include transitional, transitory or saving provisions. An order under this clause must be made by statutory instrument (*subsection (3)).* If it amends primary legislation, an order will be subject to the affirmative resolution procedure (*subsection (4))*. Any other order will be subject to negative resolution procedure *(subsection (5)).*

Clause 95: Extent, commencement, transitional provision and short title

651. *Subsection (1)* provides that Part 2 of the Bill (demonstrations in the vicinity of Parliament) extends to England and Wales only.

652. *Subsection (2)* provides that any other amendment or repeal made by the Bill will have the same extent as the Act or relevant part of the Act to which it relates.

653. *Subsection (3)* provides that the Act, with the exception of those provisions set out in *(subsection (4))*, will come into force on a day which a Minister of the Crown or two or more Ministers acting jointly, decide by order and that different provisions may be brought into force at different times.

654. *Subsection (4)* provides that *clauses 29, 31, 59, 60* (and *clause 57* so far as applied by *clause 60*) and Part 13 of the Bill (with the exception of *clause 91*) will come into force on the day the Act is passed.

655. *Subsection (5)* provides that a Minister of the Crown or two or more Ministers acting jointly may make an order making transitional, transitory or saving provisions in relation to the commencement of the provisions of the Act.

656. *Subsection (6)* provides that an order under *subsection (3) or (5)* must be made by statutory instrument.

657. *Subsection (7)* sets out the short title of the Bill.

FINANCIAL EFFECTS

658. The Constitutional Reform and Governance Bill provides for new statutory heads of expenditure, in particular, the establishment of the Civil Service Commission (*clause 2*), the powers to manage the Civil Service (*clause 3*) and the establishment of the new National Audit Office (*clause 76*). However, these new statutory heads of power are replacing non-statutory heads or, in the case of the National Audit Office, replacing a current statutory head of expenditure. There will thus be a minimal net impact on public expenditure.

659. Part 3 of the Bill provides for a referendum to be held on changing the voting system. *Clause 34(10)* provides that sums required for the referendum shall be paid from the Consolidated Fund.

660. The Cabinet Office has estimated that the provisions in Chapter 4 of Part 1 will be broadly cost neutral. The additional costs arising from fewer job applications being sifted out initially and from carrying out of security checks on foreign nationals are expected to be balanced by the reduction in administrative time involved in operating the current complex rules.

661. The changes made by Part 4 of the Bill to the role and functions of the Independent Parliamentary Standards Authority, including the replacement of the Commissioner for Parliamentary Investigations with the Compliance Officer, are expected to be cost neutral. The start up cost of the IPSA in 2009/10 is estimated to be £6.6m. Part 4 of the Bill also creates new appeal rights for MPs against decisions by the Compliance Officer. The avenue of appeal will be to the First-tier Tribunal; the volume of appeals is not expected to be significant. The hearing of such appeals will entail some increase in costs for the Tribunal Service.

662. Reduction of the 30-year rule under Part 12 of the Bill would see a transitional period where the release of official documents is accelerated to a point where two years' worth of records is transferred annually instead of one year's worth. The impact and implications of a reduction

therefore fall largely in three areas, representing additional costs to central Government and to the various other public bodies that are covered under the legislation in terms of:

- departmental review costs;
- information movement costs;
- access costs.

663. Based on figures provided by central government departments and The National Archives, the cost to central government and local authorities is estimated at between £50m and £80m over the 10 year transition period. These figures are based on a number of assumptions about implementation which are subject to review.

664. When implementation of the policy is complete, the rate of release of public documents will probably be broadly the same as at present. It is therefore likely that costs to central government and to local authorities will be the same as at present.

PUBLIC SERVICE MANPOWER

665. The provisions contained with the Constitutional Reform and Governance Bill have no substantial effect on public service manpower.

666. The replacement of the Commissioner for Parliamentary Investigations with the Compliance Officer (*clause 38*) will have a neutral impact on public sector manpower.

667. Reduction of the 30-year rule under Part 12 of the Bill would almost certainly impose departmental review costs to departments and authorities during the transition period. These would largely be made up of the salaries of reviewers. It is highly probable that, given the increased workload during the transitional period, additional manpower would be needed to carry out the reviews. Whether this is achieved by permanent or temporary recruitment is likely to vary between organisations depending on the volume and nature of files to be reviewed.

IMPACT ASSESSMENT

668. An impact assessment has been prepared on the provisions relating to the Public Records Act 1958 and the Freedom of Information Act 2000 in Part 12. These provisions impact on central government departments, local authorities, The National Archives, public record bodies and places of deposit, principally in staffing and equipment costs. The provisions will also affect those who rely on the availability of historical records. The private and voluntary sectors in general are not affected by the provisions. The cost of the provisions is estimated at between £50m and £80m over a 10 year transitional period.

EUROPEAN CONVENTION ON HUMAN RIGHTS

669. 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 before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

670. Lord Bach, the Parliamentary Under-Secretary for Justice, made the following statement of compatibility in accordance with section 19:

"In my view the provisions of the Constitutional Reform and Governance Bill are compatible with the Convention rights."

671. The following paragraphs deal with Convention rights issues raised by the Bill. Where in the Government's view a Part does not give rise to any Convention rights issues it is omitted.

Part 1 – The Civil Service etc

672. *Clause 2* gives effect to Schedule 1 which makes provision about the Commission. *Paragraph 5* of the Schedule concerns the removal from the office of First Commissioner or Commissioner. *Sub-paragraph (3)* provides that Her Majesty may remove the First Commissioner or a Commissioner, on the recommendation of the Minister, if one of the conditions set out in *sub-paragraph (4)* is met. It is considered that the removal of the First Commissioner or Commissioner is likely to engage Article 6 ECHR (as it is likely to constitute the determination of a civil right within Article 6(1)). The Bill itself does not specify the procedure to be adopted in removing the First Commissioner or Commissioner from office. However, it is envisaged that the procedure will be specified in the terms of appointment. The decision of the Minister recommending removal would also be amenable to judicial review. It is considered that the combination of the procedure which will be set out in the terms of appointment and the possibility of judicial review of the decision of the Minister recommending removal, would satisfy the requirements of Article 6.

673. Given the limited impact that dismissal from the post of Commissioners will have on the personal life of the individual, dismissal is not thought to engage Article 8.

674. *Paragraphs 26 and 28* of Schedule 2 preserve the terms and conditions of the First Civil Service Commissioner and Commissioners who are in office at the date of commencement. Consequently, Article 1 Protocol 1 is not thought to be engaged.

675. *Clause 9* makes provision for civil servants to complain to the Commission about breaches of the codes and for the Commission to investigate breaches of the codes. The consideration of breaches of the codes by the Commission does not engage Article 6 ECHR as it does not involve the determination of a civil right within Article 6(1). The Codes will set out the standards of behaviour expected of civil servants based on the core values of the Civil Service rather than create any civil rights.

676. *Clause 9* provides that civil servants may complain to the Commission where they believe that they are being required to act in a way which conflicts with the codes or where they believe that another civil servant has acted in a way which conflicts with the codes. However, the Commission's role after consideration of a complaint or an investigation, is limited to making recommendations. In practice, these recommendations are likely to be made confidentially to the department and civil servants concerned. So even if it were concluded that the codes conferred on civil servants a right within the meaning of Article 6(1), the Commission's role in making recommendations is not likely to be considered as determinative of that right.

677. It should be noted however, that *subsection (5)(a)* of *clause 9* requires the Commission to determine the procedures for the purposes of an investigation or the making of complaints and for the investigation and consideration of complaints. Furthermore, the act of the Commission in making a recommendation would be amenable to judicial review. So it is considered that even if it were concluded that the Commission's consideration of breaches of the codes constituted the determination of a civil right within Article 6(1), the combination of the procedures for consideration of such matters and the possibility of judicial review of the Commission's decisions, would satisfy the requirements of Article 6.

678. *Clause 13* makes provision for a person to complain to the Commission if he or she has reason to believe that a selection for appointment breached the requirement that selections be made on merit on the basis of a fair and open competition. The consideration of these complaints does not engage Article 6 ECHR as it does not involve the determination of a civil right within Article 6(1). In particular, selections for appointment do not amount to a civil right. However, the Commission's role after considering the complaint is limited to making recommendations. In practice, these recommendations are likely to be made confidentially to the department and civil servants concerned. So even if it were concluded that there was a right within the meaning of Article 6(1), the Commission's role in making recommendations is not likely to be considered as determinative of that right.

679. It should be noted however, that *subsection (3)(b) of clause 13* requires the Commission to determine the procedures for the making of complaints and for the investigation and consideration of complaints. Furthermore, the Commission's recommendations would be amenable to judicial review. So it is considered that even if it were concluded that the Commission's consideration of complaints constituted the determination of a civil right within Article 6(1), the combination of the procedures for consideration of such matters and the possibility of judicial review of the Commission's decisions, would satisfy the requirements of Article 6.

680. *Clauses 9(6), 13(4) and 14(2)* include provisions which enable the Commission to require that information be given to them if they reasonably require that information for the performance of their functions relating to complaints about conflicts with the Civil Service or Diplomatic Service Codes, recruitment competitions or carrying out reviews of recruitment practices. The

requirement might result in personal data, for example about an individual's job application, being disclosed to the Commission. This could engage Article 8. However, it is considered that any personal data that is shared under these provisions will be done in a way that complies with Article 8 since it must be done in a way that complies with general information law principles – in particular the Data Protection Act 1998. As a result the data may only be shared in so far as is necessary for the purposes of the Commission's functions (for example, the data could be disclosed in an anonymised form unless it is necessary for the Commission to have information about the individual's identity). In so far as the Commission handles any personal data, they will be bound by general information law principles – including the Data Protection Act 1998 so that, for example, they will only be permitted to keep the data for as long as is necessary.

681. The Government does not consider that the provisions in Chapter 4 of Part 1 (Crown employment: nationality) of the Bill engage Convention rights. It may be argued that Article 6(1) is engaged where rules made under *clause 22(1)* impose requirements as to nationality and those requirements cannot be satisfied by a person already employed or holding office in a civil capacity under the Crown such that the person can no longer hold that post. However, *clause 22(10)* provides that nationality rules may exempt persons who were first employed or held office before a specified date from the nationality requirements and allows the granting of exemptions to the rules by "the appropriate person". This would enable a person already in post, to which rules made under *clause 22(1)* subsequently apply, to remain in post and consequently it could not be argued that Article 6(1) was engaged. The Government therefore does not consider that the provisions of the Bill engage Article 6(1). If an exemption was not granted and a person was required to leave their post (as opposed to, say, the person moving to another post) that decision, not the provisions of the Bill, may engage Article 6(1). In such cases, it is considered that the possibility of bringing a claim in the Employment Tribunal, or judicial review following a fair internal procedure, would satisfy the requirements of Article 6.

682. It may also be argued that Article 8 is engaged where, to evidence compliance with rules made under *clause 22(1)* imposing requirements as to nationality, a person is asked to provide information as to their nationality or the nationality of persons "connected" to them. Such requirements would not flow from the provisions of the Bill and, in any event, the Government does not consider that a requirement to provide such information would amount to an interference with the exercise of the right to respect for private life such that Article 8 is engaged. Even if Article 8 was engaged it is considered that any interference can be justified under Article 8(2). This does not affect the position that any information provided that constituted personal data would have to be handled in compliance with the Data Protection Act 1998 so, for example, it was only kept for as long as was necessary.

683. Consequently, as the Government does not consider that any of the substantive Convention rights are engaged by the provisions of the Bill, Article 14 does not fall to be considered.

684. It should also be noted that the Treaty on the Functioning of the European Union, in particular Article 45, requires member States to secure freedom of movement of workers within the European Union but that Article 45(4) permits member States to reserve employment in the "public service" to their own nationals.

Part 3: Referendum on voting systems

685. *Clause 30* sets out who is entitled to vote in the referendum under *clause 29*. It provides that the franchise includes all those entitled to vote in parliamentary elections *(subsection (1)(a))*, as well as peers who are currently ineligible to vote in parliamentary elections but who are able to vote in European parliamentary elections *(subsection (1)(b))*.

686. *Subsection (1)(a)* has been drafted so that the franchise for the referendum is defined by the franchise for parliamentary elections. Case law establishes that referendums do not fall within the scope of Article 3 of Protocol 1 because they are not "elections concerning the choice of the legislature" and, accordingly, that no right to participate in a referendum is derived from that Article (*X v UK* (application 7096/75), *Castelli v Italy* (applications 35790/97 and 38438/97), *Bader v Austria* (application 26633/95) and *Nurminen v Finland* (application 27881/95)). It follows that the government considers that the provision made in respect of the franchise for the referendum does not engage Article 3 of Protocol 1 and that no issue of incompatibility with the ECHR arises in respect of any ground of disqualification or exclusion from the franchise.

687. *Clause 36* provides that any proceedings questioning the number of ballot papers counted or votes cast in the referendum must be brought by way of judicial review and that the proceedings must be commenced within 6 weeks of the certification of the result. To the extent that the limitation period imposed in *clause 36* constitutes a restriction on access to a court so as to engage Article 6(1), the government considers that it is justified and proportionate in pursuit of a legitimate aim and is, therefore, compatible with Convention rights.

688. In particular, it is considered that the limitation period pursues a legitimate aim, namely to ensure that challenges to the referendum result can be brought but to avoid prolonged uncertainty about the outcome. The 6 week period is considered to be proportionate to this aim as the circumstances likely to give rise to a challenge are likely to be known (or capable of being known) shortly after the certification of the result and the 6 week period therefore allows a reasonable time for any person to bring a challenge. In addition, legal challenges to any aspect of the referendum other than those specifically mentioned in *clause 36* will not be subject to any particular restriction and will therefore be subject to the standard rules which govern the time for bringing judicial review challenges. It follows that the government considers that the provision made in respect of restricting certain types of legal challenges in *clause 36* is justified and proportionate by reference to a legitimate aim and that no issue of incompatibility with the ECHR arises.

Part 4 – Parliamentary Standards etc

689. The enforcement powers of the Compliance Officer for the Independent Parliamentary Standards Authority give rise to issues under Article 6 ECHR (right to fair trial). These powers include a power for the Compliance Officer to direct an MP to repay overpayments, interest and costs, see Schedule 5 to the Bill, which inserts a new Schedule 4 into the Parliamentary Standards Act 2009 ("the 2009 Act"). The direction will be enforceable through a power of the IPSA to recover amounts against future payments of allowances and salaries. Overpayments, interest and costs would also be recoverable through the county court or, in Scotland, the sheriff court.

690. It is arguable that a repayment direction does not amount to a determination of a civil right or obligation. There is authority that disciplinary functions in relation to members of Parliament do not engage Article 6 because of the public law nature of those functions. For example, the Strasbourg court has held that Article 6 is not engaged in cases where members of Parliament were automatically disqualified after being found bankrupt or removed for exceeding the level of elections expenses.[2] An earlier case decided that the right to participate in a legislative chamber "falls into the sphere of 'public law' rights outside the scope of Article 6."[3] Whether these principles apply in the context of an expenses regime, depend on whether the private law features predominate over the public law features (the fact that a dispute is pecuniary is not decisive).[4] There are arguments that the pecuniary interest involved in making a repayment here is so closely related to each MP's responsibilities as an MP that the interests affected are public in nature. On the other hand, it may be argued that the pecuniary interest affected is analogous to pecuniary interests affected in a private law context.

691. Even were a court to find that a repayment direction did determine civil rights or obligations, the Government is satisfied that the process for repayment directions is compatible with Article 6.

- The Compliance Officer will be independent and impartial. The Compliance Officer is appointed by the IPSA on the basis of fair and open competition. A person so appointed is appointed for a fixed term of 5 years, after which he or she may not be reappointed. Furthermore, the person appointed can only be removed during the fixed term on very limited grounds, for example, because he or she is bankrupt or unfit to carry out the functions of office.

- A repayment direction will only be made after the investigation process by the Compliance Officer set out in substituted section 9 and new section 9A.

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[2] *Tapie v France* Application No. 32258/96 (a Commission decision that an application by a former Member of Parliament who was automatically disqualified from elected office for 5 years after becoming insolvent was inadmissible) and *Estrosi v France* Application No. 24359/94; *Pierre-Bloch v France* (1997) p 16 (two cases in which the candidate declared elected was removed by the Conseil Constitutionnel for exceeding the maximum level of elections expenses).

[3] *X v United Kingdom* (1978) Application No. 8208/78.

[4] See *Schouten v Netherlands* (1994) 19 EHRR 432; and see *Pierre-Bloch v France* (1997) p 17.

- An MP will be able to appeal decisions by the Compliance Officer in relation to a repayment direction to the First-tier Tribunal. That appeal would be by way of a full rehearing. Repayments, interest and costs would not be recoverable until the appeal proceedings are completed. These appeal rights provide a right of appeal which stands free of any additional right to seek judicial review. This ensures that matters which may involve the determination of a civil right or obligation are decided by an independent and impartial tribunal which has "full jurisdiction" to rehear all issues of law and fact.

- An MP may also apply to the Compliance Officer to extend the period in which a repayment should be made. If the Compliance Officer decides not to extend the period, an MP may appeal this decision to the First-tier Tribunal.

- The IPSA would be required to set out other procedures in relation to investigations by the Compliance Officer and complaints to the Compliance Officer and set guidance about the imposition of costs as part of a repayment direction. In doing so, the IPSA, a public authority for the purpose of section 6 of the Human Rights Act 1998, would be required to act compatibly with the Convention rights.

- The Compliance Officer will also be a public authority and required to act compatibly with the Convention rights.

692. Accordingly, the Government considers that the provisions relating to repayment directions and their enforcement are compatible with Article 6.

693. The provisions in new Schedule 4 which would provide the Compliance Officer with powers to impose a monetary penalty may also engage Article 6. The Compliance Officer would be able to impose a penalty: (a) where the Compliance Officer has made a finding that an MP has without reasonable excuse failed to comply with a request for information; and (b) where the MP has without reasonable excuse failed to comply with a repayment direction. The penalty is limited to £1,000. As with the repayment direction, the penalty would be recoverable against future payments of pay or allowances, but would also be recoverable through the county court or, in Scotland, the sheriff court.

694. It is likely that these powers will engage the civil limb of Article 6 ECHR as being the determination of a civil right or obligation. However, the following safeguards ensure that the powers are compatible with that Article.

- A penalty will only be imposed after a finding that the MP has failed to provide information to the Compliance Officer or after a failure to comply with a repayment direction. Both circumstances will only arise after there has been an investigation by the Compliance Officer in relation to whether an MP has been overpaid, as set out in substituted section 9. The MP will have the opportunity to make representations during that process.

- The Compliance Officer would be required to provide a penalty notice setting out information about the penalty imposed.

- The MP would have a right of appeal to the First-tier Tribunal against the imposition of a penalty. That appeal would be by way of a full rehearing and so the First-tier Tribunal would have jurisdiction to rehear all issues of law and fact. The penalty would not be recoverable while an appeal against it is on foot.

- The IPSA would be required to prepare guidance about the imposition of penalties. In doing so, the IPSA would be required to act compatibly with the Convention rights.

- The Compliance Officer will be required to act compatibly with the Convention rights.

- The Compliance Officer would be able to review a decision to impose a penalty and would be able to cancel or reduce the amount of the penalty.

695. The Government considers that there are tenable arguments that the monetary penalty regime would not engage the criminal limb of Article 6. The test for whether there is a determination of a criminal charge is whether an act is classified as criminal for the purpose of domestic law; the nature of the offence; and the seriousness of the penalty, *Engel v Netherlands* (1976) 1 EHRR 647. Here, the penalty is of a civil nature in domestic law. The penalty is also designed to ensure compliance with the scheme rather than being of a punitive nature. In addition, the penalty is capped at £1,000. There is no direct connection between the circumstances in which a penalty is imposed and the criminal offence provision in section 10 of the 2009 Act (offence of providing false or misleading information for allowances claims). Even were the criminal limb of Article 6 engaged, the Government considers that this would be at the less serious spectrum of what constitutes a criminal charge. Strasbourg authority suggests that where an offence is a lesser criminal charge, fewer safeguards are needed to secure Article 6 compliance.[5] The Government is therefore confident that the safeguards outlined above, and in particular the right of access to the First-tier Tribunal, would be adequate.

696. Article 1 of the First Protocol may also be engaged by the repayment direction and the imposition of a monetary penalty, given that these will involve the interference with an MP's pecuniary interests. However, the Government considers that any interference is clearly justified given the public interest in MPs not being overpaid allowances, there being appropriate sanctions to enforce such a principle and given the safeguards that surround any interference with the pecuniary interest.

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[5] See for example *Duhs v Sweden (No. 12995/87)*, where a parking offence was imposed before a hearing. Even though this was a criminal charge for Article 6 purposes, the imposition of a penalty before a hearing was not a breach of Article 6 because the offence was minor and the fine was repayable if the applicant's objection succeeded.

697. The investigation procedures of the Compliance Officer are likely to engage Article 8 ECHR (right to respect for private and family life). This is because the provisions permit the Compliance Officer reasonably to require information of MPs in the course of an investigation. The Government is confident that this power is compatible with Article 8. This is because a request for such information is justified as being necessary in the public interest to prevent disorder and crime. It would be impossible for the Compliance Officer to conduct investigations and enforce the new system without such powers. Moreover, the requirement that the request for information must be reasonable means that the power can be exercised compatibly. Accordingly, this provision is compatible with Article 8.

698. *Clause 42* may give rise to Article 6 issues. This clause inserts new subsection (8A) into section 5 of the 2009 Act. It would enable the IPSA to withhold allowances in response to disciplinary measures imposed by the House of Commons. It is arguable that Article 6 is not in fact engaged. This is because, as noted above, the exercise of disciplinary functions of Parliament is essentially a public law matter. The Strasbourg court has shown reluctance to consider internal disciplinary functions in relation to a member of a legislature as engaging Article 6.[6] Even if Article 6 is engaged, the Government considers this provision is compatible. *Clause 42* provides a mechanism through which the disciplinary functions of the House may operate. The Government considers that the safeguards which exist concerning those functions are adequate. In particular, the current disciplinary procedures were designed with an understanding of the potential Article 6 issues involved.[7] Although *clause 42* may engage Article 1 of the First Protocol by affecting certain propriety interests of MPs, the Government considers that any interference with such rights would be justified. This is because it is manifestly in the public interest for the House of Commons to continue to have meaningful sanctions powers in relation to MPs.

699. The duty on the IPSA to publish such information as it considers appropriate in respect of each claim for an allowance and each payment may engage Article 8 ECHR. This is because those duties are likely to require the IPSA to publish personal information concerning MPs. However, the Government is satisfied that these requirements are compatible with Article 8. This is because the publication of such information is justified in the interests of having a transparent system which is essential for ensuring that MPs and the IPSA comply with the rules for the new system. The requirement is also proportionate to the legitimate aims because the duty on the IPSA to publish only extends to publishing some information about each claim and each payment. This gives the IPSA areas of discretion about what to publish and the way in which the information is published. The IPSA can therefore decide not to publish highly sensitive information in respect of a claim.

700. *Clause 41* substitutes a new section 4 of the 2009 Act. New section 4 provides that an MP's salary is to be withheld until he or she has made and subscribed the oath required by the

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[6] *Demicoli v Malta* (1992) 14 EHRR 47, §33. See also *Tapie v France* Application No. 32258/96; *Estrosi v France* Application No. 24359/94 and *Pierre-Bloch v France* (1997) p 16.
[7] See the report of the Joint Committee on Parliamentary Privilege (1998-99) §284.

Parliamentary Oaths Act 1866 (or the corresponding affirmation). This is the oath of allegiance. This provision may give rise to issues concerning Article 1 of the First Protocol as the withholding of salary may affect the way in which an MP enjoys pecuniary interests in relation to their salaries. By long custom, going back to a Speaker's ruling in 1924, any MP who has not made and subscribed the oath (or corresponding affirmation) is not entitled to receive a salary. The requirement to take the oath is found in section 1 of the Parliamentary Oaths Act 1866 and not new section 4 itself. The requirement to take the oath, along with the Speaker's Statement in 1997 that MPs who had not taken the oath would not be entitled to the other services available to all other MPs from the House, has previously been subject to challenge on the basis that Articles 9, 10 and 13 of the Convention were infringed. The arguments were rejected by the European Court of Human Rights.[8]

701. The Government considers that any interference with Article 1 of the First Protocol would be justified as being in accordance with the law and in the public interest. As the European Court of Human Rights has previously held "the requirement that elected representatives to the House of Commons take an oath of allegiance to the reigning monarch can be reasonably viewed as an affirmation of loyalty to the constitutional principles which support, *inter alia*, the workings of representative democracy in the respondent State. In the Court's view it must be open to the respondent State to attach such a condition, which is an integral part of its constitutional order, to membership of Parliament and to make access to the institution's facilities dependent on compliance with the condition."[9] The Government thus considers that the provision would be in the public interest.

702. It is likely that Article 1 of the First Protocol is engaged in relation to the provisions dealing with pension schemes for MPs and Ministers etc, Schedule 7 to the Bill. However, the Government does not consider that there is any interference with these rights. The new provisions are based on the existing provisions of the Parliamentary and other Pensions Act 1987 ("the 1987 Act") which currently deal with pension schemes for MPs and Ministers etc. In particular, section 2(6) of the 1987 Act currently provides the circumstances in which accrued rights, as defined in section 2(10) of the 1987 Act, may be adversely affected. *Paragraph 19* of Schedule 7 also provides the circumstances in which accrued rights, as defined in paragraph 20 of Schedule 7, can be adversely affected and provides for the consent of the trustees and the affected member (or their survivor) to such changes. The other powers given to IPSA and the Minister for the Civil Service to make pension schemes in relation to MPs, Ministers and other office holders largely replicate those powers found in the 1987 Act and the Government considers that these are capable of being exercised compatibly with the Convention rights.

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[8] See *McGuinness v United Kingdom* (1999) ECHR Application No 39511/98.
[9] *McGuinness v United Kingdom* (1999) ECHR Application No 39511/98, p 6.

Part 5 – The House of Lords

703. It may be argued that the provision under which members of the House of Lords are removed on meeting a condition in Part 1 of Schedule 8 (the conditions which cover serious criminal offences and bankruptcy restrictions orders) engages Article 6 ECHR (right to fair trial). The first question is whether membership of the House of Lords constitutes a "civil right or obligation" for the purposes of that Article. The weight of Strasbourg case law points towards the conclusion that it does not. In the admissibility decision of *X v United Kingdom* (Application No 8208/78), an applicant complained that in dismissing his peerage claim to the Barony of Eure, the Home Office had not given him a fair hearing. The Commission decided that the claim was inadmissible on the basis that the right to participate in the work of the Lords "falls into the sphere of 'public law' rights outside the scope of Article 6". In addition, the case of *Matthews v Ministry of Defence* [2003] UKHL 4 is authority for the argument that the substantive content of any rights associated with membership would be extinguished by these new statutory provisions. Article 6(1) is not engaged as it is concerned with procedural guarantees and not the substantive content of national law.

704. Case law supports the notion that membership of a legislative body is not a possession for the purposes of Article 1 of Protocol 1 (protection of property), including the authority of *X v United Kingdom* mentioned above. In addition, there is authority that a nobiliary title is not, of itself, a possession within the meaning of Article 1 of Protocol 1. In particular, there is the case of *De la Cierva Osorio De Moscoso v Spain* (Application Nos 41127/98, 41503/98 and 51717/98). There is however an argument that there may be financial loss associated with being removed from the House, for example, no longer being able to claim expenses and allowances available to peers. Even assuming there was a deprivation of a possession for the purposes of Article 1 of Protocol 1, such a deprivation could be justified on the basis that it is in the public interest and subject to conditions provided by law.

705. It may be argued that Article 14 is engaged on the basis that the provisions do not apply to Lords Spiritual. Even if another Convention right was engaged, it is difficult to identify a prohibited ground in this case, although a life peer subjected to the disqualification or expulsion provisions may seek to argue that there is discrimination on the grounds of religion. The justification for this difference in treatment is that the Lords Spiritual are members *ex officio*. Any reputational damage caused by a Lord Spiritual falling into one of the categories where a life peer would be removed would be primarily to the Church and not the House of Lords. In addition, the Church has in place a range of measures to deal with disciplinary issues among the archbishops and bishops.

706. It may be argued that the operation of the expulsion and suspension provisions in *clause 55* engage Article 6 on the basis that, as far as those provisions affect membership of the House, they result in the determination of a civil right. However, the Government considers that for the reasons above concerning the other removal provisions, the contrary view is the better one.

707. Even assuming that expulsion or suspension is regarded as the determination of a civil right or obligation and Article 6 is engaged there are good arguments that the proposals would be compatible with that Convention right. In particular, members of the House of Lords whose conduct is impugned are accorded procedural safeguards. Members subject to these proceedings are judged against a Code of Conduct which has been in place since 2002, and was designed with ECHR compliance in mind. Investigations are conducted by a Sub-Committee of the Committee for Privileges – a cross-party committee of five members appointed by the Committee for Privileges – and are carried out in accordance with procedures in paragraph 19 of the Code of Conduct, which provides that "Members of the House have the right to safeguards as rigorous as those applied in the courts and professional disciplinary bodies". To this end, impugned members have a right of appeal to the Committee for Privileges.

Part 6 – Tax status of MPs and Members of the House of Lords

Article 1 of Protocol 1 (protection of property)

708. Taxation is expressly permitted by, but not excluded from the scope of, Article 1 of Protocol 1. However, it is clear from case law that a very wide margin of appreciation is permitted, and that the courts will generally be slow to find that tax measures are incompatible. The relevant question is whether a tax provision places "an individual and excessive burden" such as to render the provision "devoid of reasonable foundation". [10]

709. Factors that could support an argument that the provision is incompatible with Article 1 of Protocol 1 are the length of the deemed tax status being longer than the period of membership (running from the beginning of the tax year in which membership starts to the end of the tax year in which membership ends) and the commencement of the provision immediately on Royal Assent, with potential for the provision to have retrospective effect if Royal Assent is granted after 6th April 2010.

710. However the Government considers that the provision is compatible with the Article. This is because the aim of the provision is legitimate (ensuring that UK legislators pay UK taxes so as to strengthen the electorate's confidence in the legislature), and the provision addresses that aim fairly and proportionately, without imposing arbitrary or excessive requirements:

(a) It is impracticable to amend a tax status in the middle of a tax year, and the policy aim would not be achieved if the status did not cover the beginning and end of membership. Therefore, an "overhang" at each end of membership is inevitable.

[10] *R (Federation of Tour Operators) v HM Treasury [2008] EWCA Civ 752.*

(b) To achieve the aim of the provision, the new provision should have effect from the start of the new Parliament in 2010, so that it is linked to, and has immediate effect on MPs elected at, the general election in 2010.

(c) Because those affected are members, or prospective members, of the legislature, they have advance notice of legislative proposals to amend their status.

(d) Because the provision takes effect only on taking the oath of allegiance, those MPs who are unwilling to take the oath, and so not able to vote on legislation, are not subject to the deemed status.

(e) The deemed tax status can be avoided. Candidates for election as an MP or excepted hereditary peer, or for appointment as a life peer, would be aware in advance of the consequences of becoming a member. Incumbent members of the House of Lords affected are able to make use of the transitional provision to leave the House.

(f) Most members will already pay tax in the UK on an ROD basis. For those members who do not do so, Double Taxation Agreements and unilateral relief for tax paid overseas will mitigate the effects of the provision by acting to prevent them being taxed twice on the same income or gains.

Article 3 of Protocol 1 (free and fair elections)

711. Article 3 of Protocol 1 protects the right to stand for election, which also comprises the right to act as a member of the legislature if elected. A condition imposed on this right will be compatible provided that the condition does not curtail the rights to such an extent as to impair their very essence and deprive them of their effectiveness, is in pursuit of a legitimate aim, and the means employed are not disproportionate, and this is a field in which a wide margin of appreciation is permitted.[11]

712. The deemed tax status does not prevent any individual standing or being elected as an MP, so does not impair the essence of the rights or deprive them of their effectiveness. The legitimacy of the aim and proportionality of the means employed to meet that aim are discussed above. Any engagement of the Article can be justified on these grounds.

Article 14 (discrimination)

713. Since another Article is engaged by the tax status provisions, Article 14 may be relevant. Individuals in different situations may be treated differently under the provision, however with one exception (discussed in the following paragraph) none of the circumstances in which

[11] *Gitonas v Greece (1997) 26 E.H.R.R 691 (para 39).*

different treatment might arise involve any of the grounds mentions in Article 14, and the Government does not consider that any such circumstances could be said to involve an "other status" for the purposes of Article 14.

714. In relation to the exclusion of the Lords Spiritual from the deemed status, this raises the question of whether there could be said to be discrimination on grounds of religion, a ground specified in Article 14. However, the Lords Spiritual are in a different position from other members of the House of Lords and as such the two may not be in an objectively comparable position. The ex officio membership of the Lords Spiritual is tied to their positions in the Church. If the deeming provision were to apply to them, in order to avoid the provision they would have to resign from their position outside of Parliament. It is difficult to identify a prohibited ground on which a Lord Temporal might claim to be discriminated against, but in any event the different treatment of the Lords Spiritual reflects, and is justified by, the different nature of their membership of the House of Lords.

Part 7 – Public Order

715. Part 7 contains provisions which repeal sections 132 to 138 of the Serious Organised Crime and Police Act 2005 ("SOCPA").

716. The repeal of sections 132 to 136 means that the statutory regime governing public assemblies in the vicinity of Parliament will be the same as that which applies in the rest of the country, being that which applied in the vicinity of Parliament prior to SOCPA. Under section 14 of the Public Order Act 1986 no advance notice or authorisation is required for public assemblies, only limited conditions may be imposed by the police and the restrictions only apply in respect of assemblies of 2 or more people.

717. The regime under section 14 has already been deemed compatible with the ECHR most recently in the case of *R (on the application of Louise Brehony) v Chief Constable of Greater Manchester* [2005] EWHC 640 (Admin). Conditions may be imposed on such an assembly only where they are reasonably believed to be necessary to prevent serious public disorder, serious damage to property, serious disruption to the life of the community or unjust intimidation. Insofar as the conditions may only pertain to the place of the demonstration, its maximum duration and the maximum number of persons who may constitute it, they are proportionate in respect of legitimate aims. These conditions may only be imposed by the police who are themselves bound to act compatibly with the ECHR as a public authority under the Human Rights Act.

718. Schedule 9 inserts three provisions into Part 2 of the Public Order Act 1986 with application in the area around Parliament.

719. New section 14ZA of the 1986 Act permits the police to impose such directions in relation to public processions and public assemblies that are reasonably believed to be necessary to maintain access to and from the Palace of Westminster in accordance with requirements

specified by the Secretary of State by order. Directions relating to public assemblies may only include conditions as to the place of the demonstration, its maximum duration and the maximum number of persons who may constitute it. The range of directions that can be imposed relating to public processions are not limited in that way. All directions are limited to those that, in the officer's reasonable opinion, are necessary to meet the specified requirements of maintaining access to and from the Palace of Westminster. Section 14ZA(4) sets out requirements that may be included in the Secretary of State's order, but this is not an exhaustive list.

720. Both Articles 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR are potentially engaged by this clause. However the requirements under SOCPA to obtain prior authorisation (section 134) for any demonstration in the vicinity of Parliament, and the corresponding criminal offences (section 132) were not found to be incompatible with the ECHR in *Blum, Shaer, Evans, Rai v DPP, CPS and the Secretary of State for the Home Department* [2006] EWHC 3209 (Admin). The directions that can be made under section 14ZA are much more limited than those permissible under the SOCPA regime. This clause allows directions to be given for only one reason – the maintenance of access to and from the Palace of Westminster. The Government considers that this is a legitimate aim, namely the proper and secure functioning of Parliament. Since directions are limited in scope and in geographical effect (section 14ZB), the Government's view is that they are a proportionate interference with individual rights. These conditions may only be imposed by the police who are themselves bound to act compatibly with the ECHR as a public authority under the Human Rights Act.

721. New section 14ZB provides that the area around Parliament is to be specified by the Secretary of State by order. Subsection (3) states that no point in the area may be more than 300 metres the nearest relevant entrance. Subsection (4) lists the relevant entrances. New section 14ZB reflects similar provisions in section 138 of SOCPA, however it provides for a much smaller area (section 138 specified a one kilometre line) which is based on the distance from specified entrances. New section 14ZB has the effect of strictly limiting the geographical area in which conditions may be imposed under section 14ZA and therefore is one of the tools helping to ensure that any restriction of rights under Articles 10 and 11 is proportionate.

722. New section 14ZC provides that the Secretary of State can make a similar order to that under section 14ZB in relation to another building, outside the Palace of Westminster, should one or both Houses be relocated for the purposes of conducting its meetings or those of its committees. This may happen should the Palace of Westminster undergo large-scale refurbishment works. This provision mirrors the geographical limitations of 300 metres in a straight line from the point nearest to it on the specified building. It is considered that this section raises the same ECHR issues as sections 14ZA and 14ZB and for the same reasons, the Government believes that it is proportionate.

723. The Government therefore considers that these provisions are compatible with the ECHR.

724. The repeal of section 137 of SOCPA removes those restrictions on the operation of loudspeakers within the designated area around Parliament. The use of loudspeakers will continue to be governed by section 62 of the Control of Pollution Act 1974 ("the 1974 Act") and section 8 of the Noise and Statutory Nuisance Act 1993 ("the 1993 Act"). The clause also makes consequential amendment to the 1993 Act.

725. By removing the provisions of SOCPA which regulate demonstrations and the use of loudspeakers in the vicinity of Parliament these matters will be regulated in a less restrictive way. Both Articles 10 and 11 of the ECHR are engaged by this clause, notwithstanding that the intention of the clause is to bring about more proportionate regimes. However, any interference with these qualified rights would be justified and proportionate under Articles 10(2) and 11(2) in order to prevent these rights being abused and the rights of others suffering in consequence.

726. Regarding the loudspeaker regime, section 62 of the 1974 Act imposes a restriction on the use of loudspeakers in streets at night and in the early hours of the morning. Such restriction is limited in its duration and targeted at the prevention of disorder and the protection of the rights of others. As such it pursues a legitimate aim and is a proportionate means of achieving it. Furthermore, under section 8 of the 1993 Act the local authority, another public authority bound to act compatibly with the ECHR, is able to consent to the use of loudspeakers (with conditions where appropriate) in its area in a way which would otherwise contravene the 1974 Act.

727. The Government considers that the effects of the repeals and the new clauses result in an ECHR compatible legal framework for managing protests in the vicinity of Parliament.

Part 8 – Human rights claims against devolved administrations

728. Article 6 and Article 1 of Protocol 1 of the Convention may be engaged by these clauses, which insert a one year time limit into the Scotland Act 1998 (*clause 62*), Northern Ireland Act 1998 (*clause 63*) and the Government of Wales Act 2006 (*clause 64*). The new time limit will apply to proceedings brought under those Acts in relation to executive acts of the Scottish Ministers, Northern Ireland Ministers and Departments and the Welsh Ministers where a claim is brought on the ground that they have acted incompatibly with the Convention rights. The time limit mirrors that under section 7(5) of the Human Rights Act 1998, which applies to proceedings brought under that Act where it is alleged that a public authority has acted incompatibly with the Convention rights under section 6(1) of that Act. The intention is therefore to ensure that the same time limit will apply in relation to executive acts of the relevant devolved Ministers and Departments (though it will not apply to claims under the devolution Acts relating to the making, confirmation or approval of subordinate legislation), whether the proceedings are brought under the relevant devolution Act or the Human Rights Act 1998.

729. The time limits in *clauses 62* to *64* provide that proceedings must be brought within one year of the date on which the act complained of took place, which is subject to such longer period as a court or tribunal considers equitable having regard to all the circumstances. This is further subject to any stricter time limit which governs the proceedings in question. In very many cases, proceedings are brought by way of judicial review and therefore as at present will continue in England, Wales and Northern Ireland (but not Scotland, where there is no stricter time limit for judicial review) to be subject to the rule that judicial review proceedings must generally be brought within 3 months. The time limit will apply to any proceedings brought after the clauses are commenced, whenever the act complained of took place. It will therefore operate on a partially retrospective basis, in that it will affect accrued rights and affect the legal consequences of events which occurred before commencement. In relation to Scotland, *clause 62* also preserves the effect of the Act of the Scottish Parliament which applied the time limit to proceedings brought on or after 2nd November 2009.

730. In so far as the time limits engage the ECHR, the questions are whether the time limit pursues a legitimate aim, and complies with the principles of proportionality and legal certainty. There must also be a reasonable relationship between the means employed and the aim sought to be achieved. The legitimate aims in inserting this time limit into the devolution settlements are to prevent stale claims, promote legal certainty and to provide for a consistent time limit for proceedings in relation to executive acts whether brought under the Human Rights Act or the devolution settlements. In accordance with cases such as *Stubbings v UK* ((1997) 23 EHRR 213), the Government considers that the introduction of a one year time limit for Convention-based claims, consistent with that which already exists in the Human Rights Act 1998, is a proportionate measure. In so far as the time limit will apply to post-commencement proceedings but may affect pre-commencement actions, the Government considers that the power of courts and tribunals to extend the one year period for such longer period as is equitable in all the circumstances will operate to cure any residual unfairness to a litigant whose claim might otherwise be barred. The Government therefore considers that these clauses are proportionate measures and compatible with the Convention rights.

Part 9 – Courts and tribunals

731. *Paragraph 5* of Schedule 10 may raise issues under Article 8 of the ECHR. The paragraph amends section 96 of the Constitutional Reform Act 2005 ("CRA"). Section 96 of the CRA at present makes it a matter for the Judicial Appointments Commission ("the JAC") to perform health checks on successful candidates for appointment, if the Lord Chancellor requires, and to report the results to the Lord Chancellor. The amendments enable the Lord Chancellor to request a person who has been selected for appointment to provide information about his or her physical or mental condition. The Lord Chancellor may also request a candidate to undergo a medical assessment and for a report of that assessment to be made available to the Lord Chancellor.

732. The Lord Chancellor may decide not to proceed with an appointment if that person fails to supply information concerning their physical or mental condition or fails to undergo a medical

assessment when requested to do so. The Lord Chancellor may also reject a candidate on the basis of a report supplied following a medical assessment. Before the Lord Chancellor decides not to proceed with an appointment on these grounds he must consult the Lord Chief Justice (or Scottish or Northern Ireland equivalent as appropriate – as a result of the consequential amendment to section 97(1)(e)).

733. These changes are designed to permit a simplification of the current procedures for medical checks, and to reflect the split in roles between the JAC (responsible for the selection of a candidate) and the Lord Chancellor (responsible for appointment or recommendation of appointment).

734. The exercise of these powers by the Lord Chancellor will engage Article 8(1). The power to request information regarding the physical and medical condition of a candidate or that a candidate undergo a medical assessment may interfere with Article 8 rights. However, the Government considers that any interference can be justified under Article 8(2). It is considered that the measures are in accordance with the law. The provisions are clear in that medical checks will only take place after selection and specify what options the Lord Chancellor may take once he is in receipt of the information regarding the physical and mental condition of a candidate. In addition, the measures regarding medical checks are proportionate and in pursuit of a legitimate aim. The legitimate aim is to ensure that the candidate is physically and mentally able to perform the functions of the office for which he is selected. A candidate's ability to do so has a bearing on the protection of rights and freedoms of others, public safety, prevention of disorder and crime and the economic well being of the country. The requests for information from a candidate regarding their physical and mental condition will be less of a burden for candidates than the requirement for a health check with a medical professional which usually takes place at present. The intention behind the amendments is that detailed medical assessments with a health professional will only take place if information supplied by the candidate reveals a cause for concern warranting further enquiry.

735. The Government considers that *paragraph 5* of Schedule 10 is compatible with Article 8.

736. Disclosure of confidential information under *paragraph 8* of Schedule 10 is likely to engage Article 8. *Paragraph 8* amends section 139 of the CRA. That section concerns confidential information relating to judicial appointments and discipline and sets out a limited number of circumstances in which such information can be disclosed. The amendment to section 139 would make clear that confidential information may be disclosed to the police for the purpose of preventing crime. Article 8 is likely to be engaged by such a provision because the information to be disclosed is likely to be personal information, provided in circumstances where the person who obtains the information has a duty of confidentiality. However, any interference with Article 8 is likely to be in pursuit of a legitimate aim, namely the prevention of crime and disorder. The exercise of the power to disclose will be subject to the safeguards of the operation of the Human Rights Act 1998 and the Data Protection Act 1998. The power to disclose is also limited to circumstances where a crime might be prevented, or for a

criminal investigation or criminal proceedings or a decision whether to start such an investigation or proceedings. The Government therefore considers that any interference arising from the disclosure of such information will be proportionate.

Part 10 – National audit

737. *Clause 68(7)* states that the person appointed as the Comptroller and Auditor General ("C&AG") holds the office for a fixed term of ten years. Under the current arrangements, the C&AG is appointed for an unlimited term. At the time of commencement of this Bill, a new C&AG will have been appointed under the current provisions. The practical impact of this clause will be to change the C&AG's term of office from an unlimited term to a fixed ten-year term. *Paragraph 5(2)* of Schedule 13 provides as a transitional arrangement that the officeholder in post will serve a total of ten years from the date of appointment under the current provisions.

738. The change in the term of appointment of a serving C&AG may engage Article 1 of Protocol 1. If so, it is considered that any interference can be justified as being in the public interest of ensuring that the role of the office holder charged with the independent scrutiny of public accounts does not become too closely associated with the personality of a single person. Moreover, the balance between the interests of the state and the individual will be fairly struck because the affected C&AG will have known before appointment that the term of office was being changed to a fixed ten year term. The new C&AG has already given his agreement to the ten-year term of his appointment.

739. *Clause 72* relates to the resignation or removal of the C&AG. *Clause 72(2)* provides that Her Majesty may remove the C&AG from office on an Address of each House of Parliament. In the event of this provision being used, it would be up to Parliament to devise a procedure that ensures that the removal of the C&AG from office is carried out fairly, and complies with Article 6 standards. This type of dismissal procedure can be found in other primary legislation, both old and new, including, for example, paragraph 2 of Schedule 12 to the Government of Wales Act 2006, in respect of the removal from office of the Auditor General for Wales. The power would need to be exercised in a manner which is human rights compliant, for which Parliament would need to design a procedure which offers appropriate safeguards. This has parallels with other areas in which Parliament could be said to determine civil rights, such as private bill and hybrid bill procedures. Establishing the details of a fair procedure is properly a matter for Parliament.

740. *Clause 73* sets out provisions that control or restrict the future employment of a former C&AG. Consideration has been given to whether this provision engages Article 1 of Protocol 1. The Government does not consider that an employment restriction would engage Article 1 of Protocol 1. Article 1 of Protocol 1 has been applied restrictively, and the future employment prospects of a former C&AG are not considered likely to fall within the category of protected property rights (*R (Countryside Alliance) v Her Majesty's Attorney General* [2007] UKHL 52). In respect of whether Article 8 is engaged, the European Court of Human

Rights has held that there is no right to work in a particular profession (see the *Countryside Alliance* case cited above) and therefore the prospects of a claim under this head are not considered to be strong. It is arguable that the restrictions might have a sufficient impact on a former C&AG's ability to establish, develop and maintain relationships, particularly with public sector workers, such that it would fall within the ambit of Article 8 (see *R (Wright) v Secretary of State for Health* [2009] UKHL 3). The limited extent and duration of the ban, however, and its automatic application (which is therefore without stigma) would significantly moderate any impact.

741. With regard to Article 14, even if a claimant were able to persuade a court that the ban did fall within the ambit of either of Article 1 of Protocol 1 or Article 8 then it would still be necessary to establish that there was a difference of treatment contrary to a prohibited ground. Although it may be argued that the ban is likely to impact on younger applicants because their employment opportunities would be restricted for a longer period than would those of older applicants, it would still be necessary to establish that age is a prohibited ground within Article 14. In any event, the Government considers that a restriction lasting two years could be objectively justified, due to the importance of preserving the visible independence of the C&AG by limiting the scope for conflicts of interest between a former C&AG's work as C&AG and any future employment.

742. While the requirement of *clause 73(2)* has no fixed duration, it is similarly considered to be objectively justifiable and proportionate. The obligation is merely to consult the specified person. That person will be able to provide advice on the propriety of taking up the contemplated office, but will not be able to insist that it is acted on.

743. *Paragraph 10(1)* of Part 2 to Schedule 11 states that Her Majesty may terminate the appointment of the chair of the National Audit Office on an Address of each House of Parliament. As with the power to terminate the C&AG's appointment (see *clause 72(2)*), in the event of this provision being used, it would be for Parliament to devise a procedure that ensures that the removal of the chair from office is carried out fairly, and complies with Article 6 standards. The procedure would need to offer appropriate safeguards. Establishing the details of that fair procedure is properly a matter for Parliament.

744. *Clause 82* which confers legislative competence on the National Assembly for Wales does not engage any Convention rights. This is because the clause only confers competence on the National Assembly and that body cannot legislate incompatibly with Convention rights by virtue of section 94(6)(c) of the Government of Wales Act 2006. Were a specific proposal brought forward in the National Assembly, compatibility with Convention rights would have to be considered at that stage.

Part 12 – Public Records and Freedom of Information

745. *Clause 85* reduces the time after which public records must be transferred to the Public Record Office from 30 years to 20 years.

746. *Clause 86 and Schedule 15* amend the Freedom of Information Act 2000 to reduce the period of time during which certain exemptions may be relied upon and enhance the protection for information which engages section 37 of that Act (communications with Her Majesty, etc and honours).

747. Public records may contain personal information the disclosure of which may engage Article 8 ECHR (right to respect for private and family life). However, the exemption contained in the Freedom of Information Act concerning the disclosure of personal information (section 40) is retained in relation to such records. There is no limit to the period of time during which this exemption may be used. This means that the existing exemption in the Freedom of Information Act protects any Article 8 interest which may arise in relation to the changes effected by clauses 85 and 86 and Schedule 15. In addition, Article 10 ECHR (freedom of expression) is not relevant here because that Article does not establish a right of access to public information.

CONSTITUTIONAL REFORM AND GOVERNANCE BILL

EXPLANATORY NOTES

These notes refer to the Constitutional Reform and Governance Bill as brought from the House of Commons on 3rd March 2010 [HL Bill 40]

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