These notes refer to the Infrastructure Act 2015 (c.7)
which received Royal Assent on 12 February 2015

INFRASTRUCTURE ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Strategic Highways Companies

22. The strategic road network (SRN) is a network of motorways and trunk roads consisting of around 2% of England's roads and carrying a third of its traffic. The Highways Agency (HA) is the executive agency of the Department for Transport (DfT) responsible for the maintenance, operation and enhancement of the SRN on behalf of the Secretary of State.

23. In June 2013, *Investing in Britain's Future* [Command Paper Cm. 8669] announced the Government's spending plans for roads up to 2020-21. Details of how this would be delivered were firmed up in *Action for Roads* [Command Paper Cm. 8679], published by the DfT in July 2013, alongside proposals on how to reform the existing institutional set-up to ensure delivery of the investment package whilst maximising efficiency. On 29 October 2013, DfT published a consultation document *Transforming the Highways Agency into a Government owned company*.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209279/PU1524_IUK_new_template.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212590/action-for-roads.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254356/roads-reform-consultation-document.pdf

24. The consultation put forward proposals for:

- The creation of an arms-length Government-owned company and the transfer of powers and duties to allow it to discharge functions that were discharged by the Highways Agency.
- New legislation to underpin the long term funding settlement and new Road Investment Strategy (RIS) processes.
- Power for the Secretary of State to make transfer schemes which would allow assets and liabilities (including land and contractual obligations) to be transferred to a strategic highways company.
- Arrangements for two bodies - a road user watchdog and efficiency monitor - providing independent scrutiny of the company's performance, advising government and being a focal point for road users.

25. The Government published its response on 30 April 2014 and confirmed its intention to bring forward its proposals. The strategic highways company will be incorporated under the Companies Act 2006 limited by shares where the sole shareholder is the Secretary of State. The Government confirmed its intention to establish a governance framework for the strategic highways company comprising legislation, a licence

document containing statutory directions and guidance, a Framework Agreement, a Road Investment Strategy and Articles of Association. Those proposals requiring primary legislation are provided for in this Act.

26. The Transport Select Committee published its report *Better Roads: Improving England's Strategic Road Network* (HC 850) on 7 May 2014. The Government's response was published on 24 October 2014 (HC 715). The name for the new organisation, Highways England, was announced on 8 December 2014.

http://www.publications.parliament.uk/pa/cm201415/cmselect/cmtran/715/71502.htm

Section 1: Appointment of strategic highways companies

27. Section 1 provides for the Secretary of State to appoint one or more companies as a highway authority. Appointment is by order.

28. *Subsection (2)* provides that a company appointed may only be one that is limited by shares and wholly owned by the Secretary of State – therefore limiting ownership of the company (or companies). *Subsection (3)* provides further that where the company ceases to be wholly owned by the Secretary of State the appointment automatically terminates.

29. An appointment may also be terminated by the Secretary of State revoking the order under which the appointment is made pursuant to section 14 of the Interpretation Act 1978.

30. A company appointed under this section is to be known as a "strategic highways company" (*subsection (4)*).

Section 2: Area and highways in an appointment

31. *Subsection (1)(a) and (b)* of section 2 provides that a strategic highways company must be appointed to an area (and that area must be within England) and that the highways within the area in respect of which the company is appointed must be specified (although *subsection (2)* provides that this may be by name or by description). *Subsection (3)* provides that the highways specified must be highways for which the Secretary of State (or another strategic highways company) is the highway authority.

32. It is therefore possible, for example, for one company to be appointed for the whole of England, or for two or more companies to be appointed for different areas. The initial policy intention is for the appointment of one strategic highways company for the whole of England.

33. Any order containing the appointment of a single company for the whole of England is not subject to Parliamentary scrutiny. Section 55 provides that an order containing the first appointment of a company in respect of part of England only (ie the first appointment as part of an arrangement for two or more strategic highways companies to be appointed for different areas) is subject to the affirmative resolution procedure. Section 55 provides that an order containing a subsequent appointment of a company in respect of part of England only is subject to the negative resolution procedure.

34. Responsibility for a limited number of highways in Wales is retained by the Secretary of State. *Subsection (4)* allows for those highways to be included within the appointment.

35. *Subsections (5) and (6)* provide that in the event of a strategic highways company ceasing to be the highway authority for one or more highways (whether by virtue of a variation or termination of the strategic highways company's appointment) the Secretary of State will automatically become the highway authority for those highways.

Schedule 1 Strategic highways companies: consequential and supplemental amendments

Schedule 1Part 1 – amendments to the Highways Act 1980

36. Part 1 of Schedule 1 contains amendments to the Highways Act 1980 to allow one or more strategic highways companies to become highway authorities instead of, or alongside, the Secretary of State. (Otherwise, the Secretary of State is in law the highway authority for the strategic roads network even though his functions are in practice exercised by the Highways Agency.)

37. Where a strategic highways company is appointed, the amendments will have the effect that, for the most part, the powers and duties of the Secretary of State, in relation to the roads included in the appointment, will transfer to the strategic highways company. These include the duty to maintain public highways; powers to construct, maintain and improve highways for which it is responsible; powers to acquire land for the purposes connected with carrying out the functions of a highway authority; and powers to enter into agreements with local highway authorities. A company will also be responsible, where it is the highway authority, for determining whether an environmental impact assessment is required for schemes pursued under powers in the Highways Act 1980. The Secretary of State retains order making powers on the classification of a highway including whether a road is trunked.

38. *Paragraph 43* inserts a new section 175B into the Highways Act 1980. It requires consent to be obtained from the strategic highways company for the construction, formation or laying out of any access to or from a trunk road in England. This new power allows the strategic highways company to ensure that access to its network does not interfere with the safety of road users or have a negative impact on the network (for example, by increasing congestion). Where the Secretary of State is the highway authority, these aspects can be managed by the Secretary of State who may give directions restricting the grant of planning permission by local planning authorities for development affecting the strategic road network. These powers of direction will not be available for a strategic highways company to use directly; new section 175B provides a means by which it will be able to safeguard road safety and the integrity of the road network.

Schedule 1Part 2 - Other Enactments

39. *Paragraph 68* makes strategic highways companies subject to the Public Records Act 1958. Among other things, this will ensure that documents produced by the company are properly considered for transfer to the National Archives or destroyed.

40. *Paragraph 69* amends the Parliamentary Commissioner Act 1967 to add strategic highways companies to the list of Government Departments and public bodies which the Parliamentary and Health Service Ombudsman may investigate. Under current arrangements, complaints made against the Highways Agency may be escalated to the Ombudsman, and this provision allows that arrangement to continue in respect of strategic highways companies in future.

41. *Paragraphs 70 to 100* amend the Road Traffic Regulation Act 1984 to make a strategic highways company a traffic authority for all highways for which it is responsible, and to enable the company to exercise all the functions of a traffic authority. So, for example, a strategic highways company will be able to make Traffic Regulation Orders in the same way as local traffic authorities; or to charge for the removal, storage or disposal of vehicles in the same way as other traffic authorities.

42. *Paragraph 101* amends the Transport Act 1985 so as to replace a reference to the Highways Agency with a reference to strategic highways companies in connection with functions of the Passengers' Council under that Act.

43. *Paragraph 102* amends the Dartford-Thurrock Crossing Act 1988 so that powers exercised by the Secretary of State in his role as 'crossing operator', will transfer to a strategic highways company on its appointment. This will allow a strategic highways company to regulate the use of large vehicles and vehicles carrying dangerous goods and to recover stationary vehicles. A strategic highways company will also be able to appoint traffic officers and carry out maintenance works affecting the Thames and will have a duty to provide certain services to cyclists.

44. *Paragraph 103* amends the Road Traffic Act 1988 to allow the Secretary of State to delegate the function authorising the use of special vehicles on the highway. Special vehicles are those vehicles that do not, or cannot, comply with the Road Vehicles (Construction and Use) Regulations 1986 and cannot therefore be lawfully used on the road. Section 44 of the Road Traffic Act 1988 enables the Secretary of State to authorise the use of special vehicles on the road and to make that authorisation subject to certain conditions. Due to the size and nature of abnormal and indivisible loads, they are not capable of being split into component parts and carried on separate vehicles and so special arrangements must apply. The Highways Agency authorises vehicles to carry such loads on behalf of the Secretary of State for motorways and trunk roads in England, Scotland and Wales and the ability of the Secretary of State to delegate this function will enable the new company to continue to carry out this function in the future.

45. *Paragraphs 104 to 109* make a number of consequential amendments to highways-related provisions of the Town and Country Planning Act 1990 to ensure that, where appropriate, they apply to a strategic highways company.

46. *Paragraph 110 to 112* amend the Environmental Protection Act 1990 placing the duty to keep land and highways clear of litter on a strategic highways company for special roads (motorways). Local authorities are responsible for this on trunk roads unless the trunk road has been specified as one where the duty has transferred to the Secretary of State. The policy intention is that the strategic highways company is responsible for such specified trunk roads.

47. *Paragraphs 113 to 124* amend the New Roads and Street Works Act 1991 to ensure that existing provisions work properly where a strategic highways company becomes a street authority by virtue of its status as a highway authority. In particular, paragraphs 114 to 115 enable the company, where it has entered into a concession agreement in its capacity as highway authority under section 1, to apply a toll with the consent of the Secretary of State in the same way as a local highway authority would do.

48. *Paragraphs 125 to 128* amend the Transport Act 2000 to allow the Secretary of State to apply a road use charge on trunk roads where he has appointed a strategic highways company to be the highway authority, in order to preserve the existing arrangements. They also enable a strategic highway company to carry out functions in relation to trunk road charging schemes, such as the installation and maintenance of equipment for the scheme.

49. *Paragraphs 129 to 151* amend the Traffic Management Act 2004. Paragraph 130 enables the Secretary of State to delegate his responsibility for deciding the uniform for traffic officers to the company. Paragraphs 135 to 147 amend the existing network management duty which applies to local highway authorities so that it applies to a strategic highways company as well as local highway authorities.

50. *Paragraph 152* amends the Civil Contingencies Act 2004 with the effect that a strategic highways company is responsible under that Act as a "category 2" responder required to co-operate and share information in emergency planning arrangements.

51. Section 22 of the Planning Act 2008 sets out the circumstances in which highway-related development is a nationally significant infrastructure project (NSIP) and so subject to the development consent regime under that Act. One of the conditions is that the Secretary of State is or will be the highway authority for the highway. *Paragraph*

153 amends section 22 to provide that such development will also be an NSIP if a strategic highways company is or will be the highway authority.

Section 3: Road Investment Strategy

52. Section 3 provides that each strategic highways company must have a Road Investment Strategy comprising a statement of the objectives to be achieved by the strategic highways company and the financial resources which will be provided by the Secretary of State to achieve those objectives. Under *subsection (5)*, the Secretary of State must have regard to the effect of the Strategy on the environment and safety of users of the highway in setting or varying a Strategy. *Subsection (6)* requires the Secretary of State and the strategic highways company to comply with the Road Investment Strategy.

Schedule 2 Road Investment Strategy

53. Schedule 2 describes the procedure for setting and varying a Road Investment Strategy. *Paragraph 1(2)* contains a transitional provision to the effect that the procedure does not apply for the first Road Investment Strategy, so long as the Secretary of State publishes it within a year of section 3 coming into force.

54. Part 1 governs the procedure for setting a Road Investment Strategy. It describes the steps that the Secretary of State takes and those steps the company takes in response. The Secretary of State's initial proposals must specify objectives to be achieved by the company, the financial resources to be provided by the Secretary of State and the time period which is to be covered by the proposed Road Investment Strategy. The Secretary of State may only finalise a Strategy if satisfied that appropriate consultation has taken place. It is anticipated that some or all of that consultation may ordinarily be undertaken by the strategic highways company.

55. Part 2 governs the procedure for varying a Road Investment Strategy which has been settled and published. The procedure is similar to that described in Part 1, except that there is a specific requirement on both the Secretary of State and the strategic highways company to have regard to the desirability of maintaining stability and certainty in respect of Road Investment Strategies.

Section 4: Route strategies

56. Section 4 requires the Secretary of State to direct a strategic highways company to prepare route strategies. The company must comply with such a direction and publish route strategies in such manner as it considers appropriate. Route strategies provide the evidence base for operational or investment decisions for the strategic road network and section 4 ensures that this practice will continue.

Section 5: General duties of a strategic highways company

57. Section 5 contains high level general duties which a strategic highways company must observe when exercising its functions. *Subsection (1)* provides that the company must co-operate so far as reasonably practical with other bodies which exercise functions which relate to highways or planning. *Subsection (2)* provides that the company must have regard to the effects which exercising its functions may have on the environment and road safety.

Section 6: Directions and guidance

58. Section 6 allows the Secretary of State to direct or guide a strategic highways company in the way it carries out its functions. The company must comply with any directions and have regard to any guidance when exercising its functions. The Secretary of State must publish all directions and guidance in such form as he considers appropriate.

Section 7: Delegation of functions

59. Section 7 allows a strategic highways company to authorise another person to exercise its functions, so long as the functions are specified in regulations made by the Secretary of State. Functions delegated in this way may be exercised by both the authorised person and employees of that person (section 8(1)) and may continue to be exercised by a strategic highways company notwithstanding the delegation (*subsection (3)(a)*). Powers or rights of entry and powers or duties to make subordinate legislation (e.g. certain orders under the Highways Act 1980) may not be delegated (*subsection (6)*).

Section 8: Exercise of delegated functions

60. This section sets out further details as to the basis on which functions which are delegated under section 7 are exercised. *Subsection (2)* provides that where a delegated function under section 7 is exercised by a company, anything done by it or its employees in connection with the actual or purported exercise of the function is to be treated as having been done by the company subject to the exceptions set out in *subsection (3)*. *Subsection (4)* provides that Schedule 15 to the Deregulation and Contracting Out Act 1994, which imposes restrictions on the disclosure of information in respect of functions which are delegated under that Act, applies in respect of functions which are delegated under section 7.

Section 9: Watchdog

61. Section 9 provides for the Passengers' Council (which is generally known as Passenger Focus) to carry out activities to protect and promote the interests of road users in relation to those roads managed by a strategic highways company.

62. *Subsection (3)* permits the Secretary of State to make regulations (following consultation with the Passengers' Council) which narrow the scope of the functions conferred on the Passengers' Council by this section. This power is subject to the negative resolution procedure.

63. *Subsection (6)* provides for the Passengers' Council to be able to carry out equivalent functions in respect of local highway authorities and their performance, subject to agreement with the relevant local highway authority.

Section 10: Monitor

64. Section 10 provides for the Office of Rail Regulation (ORR) to monitor how a strategic highways company carries out its functions. Those activities may include investigating and publishing reports or giving advice on how the company has achieved its objectives under a Road Investment Strategy and the effect of directions and guidance given to it by the Secretary of State.

65. *Subsection (3)* provides powers for the ORR to direct a strategic highways company to provide information to enable it to carry out its monitoring duties.

66. *Subsection (8)* requires the Secretary of State to lay before Parliament any report published by the ORR under section 10.

67. *Subsection (9)* inserts a new section 15A into the Railways and Transport Safety Act 2003 allowing the Secretary of State to make regulations to change the name of the ORR.

Section 11: Monitor: compliance and fines

68. Section 11 allows the ORR to take enforcement action against a strategic highways company if it fails to meet the requirements set out in a Road Investment Strategy or fails to comply with directions (or have regard to guidance) issued by the Secretary of

State under section 6. The ORR may require the company to take steps to remedy a contravention or require it to pay a fine.

Section 12: Monitor: general duties

69. Section 12 sets out the monitor's high level general duties in relation to its roads functions. It is required to exercise these functions in a way that it considers is most likely to promote the performance and efficiency of strategic highways companies. It must also have regard to the further factors listed in *subsections (2)* and *(3)*.

Section 13: Monitor: guidance

70. Section 13 provides for guidance to be given to the ORR. *Subsection (1)* allows the Secretary of State to guide the ORR as to the way in which it is to carry out its monitoring activities under section 10. The Secretary of State and the Treasury, acting jointly, are required to give the ORR guidance on the circumstances in which fines should be imposed on a strategic highways company (*subsection (2)*). The ORR must have regard to guidance given to it under this section and the Secretary of State must publish the guidance in such form as he or she considers appropriate.

Section 14: Periodic reports by the Secretary of State

71. Section 14 places a duty on the Secretary of State to prepare and publish reports periodically on the exercise by a strategic highways company of its functions.

Section 15: Transfer schemes

72. Section 15 allows the Secretary of State to make schemes transferring property, rights and liabilities when a company is appointed, or ceases to be appointed, as a strategic highways company. *Subsection (1)* allows flexibility for the transfer of assets between the Secretary of State and a company (or in reverse), between companies if needed where there is more than one company or to a proposed strategic highways company having the effect that assets can be transferred at the time of appointment or very shortly before appointment to ensure that the company is operationally capable from the day of appointment.

Schedule 3 Transfer schemes

73. This Schedule contains further provisions governing transfer schemes made under section 15.

74. *Paragraphs 1 and 2* set out how a transfer scheme may specify or identify property, rights and liabilities to be transferred. They also provide when the scheme may come into force and define what may be transferred under a scheme. *Paragraph 3*allows a scheme to create new rights and liabilities as between transferors, transferees and third parties. *Paragraph 4* provides for a scheme to oblige a transferee or transferor to enter into agreements, or execute instruments, in favour of certain others.

75. *Paragraph 5* provides that transfer schemes made under this Act shall have the effect of vesting property, rights and liabilities in the transferee without the need for any further formalities.

76. *Paragraph 6* provides for the transfer of any statutory powers or duties the transferor may have in relation to property, rights and liabilities transferring under a scheme.

77. *Paragraph 8* allows the transferor and transferee to modify a transfer scheme by agreement after it has come into force. Where the agreement relates to a contract of employment or adversely affect the interests of a third party, the agreement will only be valid if the relevant employee or third party is party to it.

78. *Paragraph 9* contains provision for continuity of employment rights for employees of the transferor who become, by virtue of a transfer scheme, employees of the transferee. It also provides safeguards in relation to the pension entitlement of employees transferred under a transfer scheme. *Sub-paragraph (2)* makes it clear that transferred staff retain the terms and conditions under their existing contracts of employment. *Sub-paragraph (3)* sets out what happens if an individual objects to the transfer of their employment contract under a transfer scheme before it takes effect. The contract of employment will be terminated immediately before the point at which the transfer has taken place but the employee is not to be considered to have been dismissed for any purpose. *Sub-paragraph (4)* preserves an individual's right to terminate their contract of employment where there is a substantial detrimental change in the individual's working conditions, other than the change of employer.

79. *Paragraph 10* provides for circumstances in which compensation may be payable to third parties as a result of provisions in a transfer scheme.

80. *Paragraph 11* provides a power for the Secretary of State to require a company to provide him or her with information which he or she needs in order to be able to make a scheme. The company may be subject to a notice and ultimately a court order if it does not comply with a request for information.

Section 16: Tax consequences of transfers

81. Section 16 allows the Treasury to make provision about the tax consequences of a transfer of property, rights and liabilities either under a transfer scheme or occurring by virtue of section 263 of the Highways Act 1980 (which will have the effect that where a company becomes a highway authority the highways in respect of which it is appointed will vest in the company). The intention, broadly speaking, is to ensure that a transfer is "tax neutral" – that is, that no charge to tax arises merely because of a transfer.

Section 17: Financial assistance

82. This section provides the Secretary of State with authority to provide financial resources to any person for the purposes of transport services by land in England. This power will be used in particular to provide funding to a strategic highways company, and also (inter alia) to provide funding to the Office of Rail Regulation and the Passengers' Council in respect of their functions under the Act as monitor and watchdog respectively in connection with the performance of a strategic highways company. Financial assistance may take the form of grants, loans or guarantees (*subsection (3)*). The power conferred by the section supersedes an earlier power in the Ministry of Transport Act 1919, to which a consequential amendment is made in *subsection (7)*.

Section 18: Transfer of additional functions

83. Section 18 provides for the Secretary of State to amend by regulations other legislation so as to transfer additional functions concerning highways or planning from the Secretary of State to a strategic highways company. This power is subject to the affirmative procedure.

Part 2 – Cycling and Walking Investment Strategies

Section 21: Cycling and walking investment strategies

84. Section 21 places a duty on the Secretary of State to set a Cycling and Walking Investment Strategy for England, to review or replace the Strategy regularly – at least once every five years – and to report periodically to Parliament on progress towards meeting its objectives. It is necessary for the Strategy to specify objectives and the financial resources to be made available by the Secretary of State for the purposes of achieving these objectives, and the period to which it relates. The Secretary of State is required to consult when setting or varying a Strategy, and to bear in mind the

desirability of certainty and stability in relation to the Strategy when considering a variation.

Part 3: Powers of British Transport Police Force

Section 22: Powers of British Transport Police Force

85. *Subsection (1)(a)* amends section 100 of the Anti-Terrorism, Crime and Security Act 2001 so as to extend the jurisdiction of the British Transport Police (BTP) to the prevention of damage to property. *Subsection (1)(b)* removes the requirement for BTP officers to either be in uniform or able to produce a warrant card, subject to any limitations placed on them under the Police and Criminal Evidence Act 1984. It leaves however unchanged the requirement for the BTP officer, in those circumstances where their assistance has not been requested by the local force, to decide whether their immediate intervention is necessary.

86. *Subsection (2)* amends section 172 of the Road Traffic Act 1988 to add a reference to the Chief Officer of the BTP Force to subsection (2)(a). Section 172(2)(a) deals with the identification of drivers who commit road traffic offences. It imposes a duty on keepers of vehicles and other persons to comply with police requests for information about the identity of the person who was driving a vehicle at the time when a road traffic offence was committed.

Part 4 – Environmental Control of Animal and Plant Species

87. Invasive non-native species pose serious threats to biodiversity, the water environment, economic prosperity, human health and welfare. The economic impact in the UK has been estimated as a minimum of £1.8 billion per annum which includes £1 billion to the agriculture and horticulture sectors and over £200m to the construction, development and infrastructure sectors. Early eradication is critical to tackling invasive non-native species – for example, it is estimated that the early eradication of the invasive aquatic plant water primrose would cost £73,000 compared to £242 million if the plant became fully established as it has in France and Belgium.

88. At present, Defra's and the Welsh Government's network bodies have to rely on reaching voluntary agreements with landowners to undertake work or to gain access to their land to eradicate invasive non-native species found there. Whilst most landowners are willing to enter into voluntary agreements, experience has shown that a small minority (around 5%) are not. In contrast to powers available under animal and plant health legislation to combat disease and pests, the network bodies have no powers to require landowners to act, or powers of entry for surveillance or to carry out work themselves in respect of invasive non-native species. This places England and Wales in a vulnerable position in terms of biosecurity.

89. Therefore, new powers have been taken to require landowners to take action on invasive non-native species or permit others to enter the land and carry out those operations. The intention is that these powers are used in exceptional circumstances where a voluntary approach cannot be agreed and there is a clear and significant threat from inaction. These provisions include the creation of new criminal offences and new powers of entry.

90. These provisions formed part of the Law Commission's consultation on its Wildlife Law Project in 2012. The Law Commission subsequently produced a report in January 2014 specifically on species control orders, which has formed the basis of the model set out in the Act.

    http://lawcommission.justice.gov.uk/publications/2612.htm

91. These provisions were also recommended by the Environmental Audit Committee in its report published in April 2014 on invasive non-native species.

http://www.publications.parliament.uk/pa/cm201314/cmselect/cmenvaud/913/913.pdf

Section 23: Species control agreements and orders

92. Section 23 inserts a new subsection 14(4A) in the Wildlife and Countryside Act 1981 providing for measures relating to species control agreements and species control orders to be contained in a new Schedule 9A. The provisions of Schedule 9A are described below.

Part 1 – Overview and interpretation

93. Paragraph 1 explains that the purpose of this Schedule is to enable species control agreements and orders to be made between environmental authorities and owners of premises, and for species control orders to be made by environmental authorities, to effect eradication or control of invasive non-native species. These measures also extend in more limited circumstances to animals which are no longer normally present in Great Britain; these are animals such as the wolf, lynx, beaver and brown bear that were once normally present in Great Britain but which became extinct.

94. Paragraph 2 defines "invasive" and "non-native". Although there is no list of "invasive non-native species", non-native species include those specified in Part 1 and Part 2 of Schedule 9 to the Wildlife and Countryside Act 1981, as well as any animal whose natural range does not include any part of Great Britain and which has been introduced or is present as a result of human activity.

95. Paragraph 2 also defines species which are no longer normally present in Great Britain as those specified in the new Part 1B of Schedule 9 to the Wildlife and Countryside Act 1981; or species whose natural range includes any part of Great Britain but where they have ceased to be ordinarily resident or a regular visitor to Great Britain in a wild state.

96. The proposed codes of practice (paragraphs 26 and 27 of the new Schedule) will set out circumstances where it may be appropriate to make an agreement or order. This will limit their use primarily to recently arrived species that are not widely established in England and Wales.

97. Paragraph 3 establishes that the Secretary of State, Natural England, the Environment Agency, the Forestry Commission in England and, in Wales, the Welsh Ministers and the Natural Resources Body for Wales will have powers to make species control agreements and orders.

98. Paragraph 4 defines the term "owner" as a freeholder, leaseholder or a person who exercises powers of management or control of the premises.

99. Paragraph 5 sets out the types of operations that may be agreed or ordered. Paragraph 5(2) clarifies that that a reference to "carrying out" operations in this Schedule also includes arranging for operations to be carried out by someone else. An owner or an environmental authority may wish to arrange for operations to be carried out by a contractor on their behalf.

Part 2 – Species control agreements

100. Paragraphs 6 and 7 describe the making and content of a species control agreement. Paragraph 6(3)(a) establishes the principle that before entering into a species control agreement, an environmental authority must be satisfied that the provisions of the proposed agreement are proportionate. Paragraph 6(3)(b) places an obligation on the environmental authority to be satisfied that where there may be more than one owner of the premises, the owner with whom the agreement is made is the most appropriate one.

101. In the case of species that are no longer normally present, paragraph 6(4) restricts species control agreements to animals which are present on premises without a licence under section 16(4)(c) of the 1981 Act (that is, a licence from Natural England or Natural Resources Wales which is required before such animals can lawfully be released into the wild). It also sets out that such species must be having a significant adverse impact on biodiversity, environmental, social or economic interests and the environmental authority must be satisfied that there is no appropriate alternative way of obviating that impact.

102. If an agreement relates to a dwelling, paragraph 6(5) provides that the only environmental authorities that may enter into such an agreement are the Secretary of State or the Welsh Ministers. The purpose of this restriction is to provide an additional check to ensure that such powers are used sparingly in relation to dwellings, and only as last resort.

103. Paragraph 8 requires an environmental authority to notify an owner when it considers that the owner has completed all the operations required by a species control agreement and the agreement is, therefore, no longer in effect.

104. Paragraph 9 limits the liability of the environmental authority for any operations carried out in accordance with a species control agreement to the owner with whom the agreement is made, rather than anyone who may hold a legal interest in the premises.

Part 3 - Species control orders

105. Paragraph 10 describes the circumstances where a species control order may be made. Paragraph 10(2)(a) allows an environmental authority to make a species control order where it considers that an owner has breached the terms of a species control agreement, but only after giving notice to that effect and allowing an owner a reasonable opportunity to rectify the alleged breach.

106. Paragraph 10(2)(b)(i) is designed to allow the environmental authority to make a species control order if it receives a categorical response from an owner that they will not enter into a species control agreement before waiting for the 42 day period set out in paragraph 10(2)(b)(ii) to expire. Paragraph 10(2)(b)(ii) allows the environmental authority to make a species control order where an owner has not entered into a species control agreement after 42 days, but only if it concludes that the owner is unlikely to enter into an agreement. This places the onus on the environmental authority to satisfy itself that an agreement is unlikely to be reached before making an order.

107. Paragraph 10(2)(c) allows an environmental authority to make a species control order where there is urgent necessity, without having to go through the process of offering a species control agreement. The circumstances where this may be appropriate will be set out in the proposed ministerial code of practice and will indicate that these emergency species control orders should only be made in exceptional circumstances. However, there may be legitimate circumstances where the environmental authority needs to eradicate a species as a matter of urgency, particular if it was concerned that any delay could result in the species becoming more widely established.

108. Paragraph 10(4) restricts species control orders to only those species no longer normally present which are present on premises without a licence from Natural England or Natural Resources Wales, which would be required before such animals can be lawfully released into the wild. It also sets out that such species must be having a significant adverse impact on biodiversity, environmental, social or economic interests and the environmental authority must be satisfied that there is no appropriate alternative way of obviating that impact.

109. Paragraph 10(5) restricts a species control order from being made in relation to any dwelling unless it is made by either the Secretary of State or the Welsh Ministers. The

purpose of this restriction is to provide an additional check to ensure that such powers are used sparingly in relation to dwellings, and only as last resort.

110. Paragraph 11 sets out what detail must be contained within a species control order in different specified circumstances. This includes provision requiring the owner to carry out species control operations, provision stating that the environmental authority proposes to carry out operations, or both.

111. Paragraph 12 sets out the other details that must be included in all species control orders, such as the operations to be carried out and the time by which they must, or are proposed to be, completed.

112. Paragraph 13 sets out other provisions that may be included in a species control order in addition to that required under paragraphs 11 and 12. Paragraph 14 provides that, after a species control order is made, notice must be given to all owners of the premises concerned, and to the Secretary of State and the Welsh Ministers.

113. Paragraph 15 provides for a species control order to be revoked at any time by the environmental authority that made it. An environmental authority may wish to revoke a species control order if it was no longer required. For example, the species may no longer be present on the premises. An environmental authority may also wish to revoke a species control order if it was no longer fit for purpose. In these circumstances, an environmental authority may wish to offer a new species control agreement or make a new species control order, though the process would be required to start afresh.

114. Paragraph 16 provides for an owner of premises, which become subject to a species control order, to appeal to the First-tier Tribunal against either the making of the order or any provision contained within it. Paragraph 16(2) sets out what action the First-tier Tribunal may take in determining an appeal.

115. Paragraph 17 requires an environmental authority to notify an owner when it considers that the owner has completed all the operations required by a species control order and the order is, therefore, no longer in effect.

116. Paragraph 18 allows an environmental authority to carry out the operations itself should an owner fail to comply with the terms of the order where the owner has not rectified the breach within a week of being given notice by the authority of the existence of that breach. Paragraph 18(5) also allows the environmental authority to recover any costs of those operations, reasonably incurred, from the owner.

117. Paragraph 19 sets out the offences relating to the new regime. It will be an offence to fail to comply, without reasonable excuse, with a requirement of a species control order. It will also be an offence to intentionally obstruct a person from carrying out an operation required or proposed under a species control order.

118. Paragraph 20(1) removes any liability of an owner to any person when that owner is doing anything in accordance with a species control order. Paragraph 20(2) removes the liability of an environmental authority to any person with an interest in the premises for any action it, or an owner, carries out in accordance with a species control order.

Part 4 – Powers of entry

119. Paragraph 21 provides for new powers of entry to support these proposals. Paragraph 22(1) sets out the circumstances in which powers of entry will require a warrant from a justice of the peace before they can be exercised. This includes, for example, where the premises are unoccupied or admission is refused by the owner. Paragraph 22(1)(e) says that a warrant is required where giving notice would defeat the purpose of the proposed entry. This is to deal with the situation where an environmental authority was concerned that giving notice to the owner may result in them inappropriately disposing of the species, perhaps by transporting the animals elsewhere. Where the Secretary of State or the Welsh Ministers have made an order that relates to premises consisting

of a dwelling, paragraph 22(1)(a) ensures that a warrant must be obtained in order to exercise a power of entry in relation to those premises.

120. Paragraph 23 establishes that at least 48 hours' notice should be given to an owner before exercising the powers of entry.

121. Paragraph 24 sets out how and when the powers of entry may be exercised. Paragraph 24(1) establishes that a right of entry is exercisable at any reasonable time. Whilst the environmental authorities would ordinarily seek to exercise rights of access during normal office hours, there may be other times when the operations may be best carried out. For example, the best time for shooting operations, including minimising disruption, may be at dawn or dusk. Surveillance operations for some species may be necessary in the evening.

Part 5 - Supplementary

122. Paragraph 25(1) provides that the Secretary of State and the Welsh Ministers may make arrangements separately or jointly to compensate an owner in respect of financial loss resulting from a species control agreement or order, or the exercising of the powers of entry.

123. Paragraph 26 requires the Secretary of State to issue a code of practice for species control agreements and orders in relation to England and sets out what must be contained in it, including the appropriate standards of animal welfare that should be met in respect of species control operations. Paragraph 26(4) ensures the Secretary of State carries out a public consultation before issuing, revising or replacing the code of practice. Paragraph 26(5)(a) requires of the Secretary of State to ensure that the code of practice is publicised appropriately so that those people with a likely interest are made aware of it. Paragraph 26(5)(b) requires the Secretary of State to lay a copy of the code before Parliament.

124. Paragraph 27 imposes similar requirements on the Welsh Ministers as those on the Secretary of State in relation to a code of practice.

125. Paragraph 28(1) provides that a person is not liable to civil or criminal proceedings merely for a breach of the code. Paragraph 28(2) enables the code to be admissible in evidence in any civil proceedings. Where it appears to the court to be relevant, it must be taken into account in any such proceedings.

126. Subsections (4) to (6) of the section are consequential amendments disapplying certain sections in the Wildlife and Countryside Act 1981 to these provisions.

Sections 24 and 25: Schedule 9 to the Wildlife and Countryside Act 1981

127. Section 24 amends Schedule 9 to the Wildlife and Countryside Act 1981 so that it is divided into three distinct Parts – non-native species (Part 1); native species (Part 1A); and animals no longer normally present (Part 1B). This allows native species on Part 1A to be removed entirely from the scope of the species control provisions and permits those animals listed on Part 1B (Eurasian beaver and wild boar) to remain within scope of the species control provisions only where they are present on premises, unlawfully, without a licence.

128. The inclusion of the Eurasian beaver in Part 1B of Schedule 9 to the Wildlife and Countryside Act 1981 in respect of England also secures legal certainty that a licence from Natural England is required before the beaver can be lawfully released into the wild.

129. Section 25 makes consequential changes to the Wildlife and Countryside Act 1981 by amending section 14 (which regulates the release of species into the wild, and section 22 (which allows for Schedule 9 to be amended) so that both sections additionally now refer to the new Parts 1A and 1B of Schedule 9. It also addresses a current anomaly in

the titles to section 14ZA and 14ZB of the 1981 Act to clarify that the species for which these sections may be relevant may in fact be species other than non-native species.

Part 5 – Planning and Land

Nationally significant infrastructure projects

130. The Planning Act 2008 ("the 2008 Act") established the regime governing applications in respect of nationally significant infrastructure projects. In 2013, the Government launched a review of the regime, which concluded that it is operating well and that major change is both unnecessary and undesirable. The review did, however, identify a number of minor improvements which would strengthen the regime further. Some of these can only be implemented by amendment of the 2008 Act.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306404/Government_response_to_the_consultation_on_the_review_of_the_Nationally_Significant_Infrastructure_

131. Sections 26 and 27 make changes to the procedures under which a major infrastructure project under the 2008 Act is examined. The 2008 Act provides for an "Examining authority" to carry out examination of a project. The Examining authority may be a single person, or a panel of three, four or five people. Section 26 provides for the Examining authority to be appointed earlier in the process than at present. Section 27 provides that examinations of projects may, additionally, be conducted by panels of two people.

132. The Secretary of State has powers to make changes to, or to revoke, a development consent order which grants permission in respect of a major infrastructure project. Section 28 makes amendments to the powers under which the Secretary of State may make regulations governing the way in which applications to make such a change are considered.

Section 26: Timing of appointment of examining authority

133. Section 26 amends section 61 of the 2008 Act to enable the earlier appointment of examining authorities on applications for development consent for nationally significant infrastructure projects. The amendment enables the Secretary of State to appoint an examining authority immediately after an application for consent has been accepted under section 55 of the 2008 Act.

Section 27: Two-person Panels

134. Section 27 amends the 2008 Act to enable the Secretary of State to appoint a two-person panel as the examining authority for an application for development consent for a nationally significant infrastructure project. The 2008 Act provides for the appointment of a single person, or a panel of three, four or five people. *Subsection (1)* amends section 65 of the 2008 Act and *subsections (2) to (4)* make three consequential amendments to that Act: section 68 is amended so that the appointment of additional panel members is only required if a panel is reduced to a single member (rather than reduced to two members); section 73 is amended to remove a current reference to a panel consisting of two members; and section 75 is amended to clarify the procedure for decision-making for two-person panels.

Section 28: Changes to, and revocation of, development consent orders

135. Section 28 amends the provisions set out in Schedule 6 to the 2008 Act relating to changes to, and revocation of, orders granting consent in respect of nationally significant infrastructure projects ("development consent orders") by the Secretary of State.

136. The existing paragraph 2 of Schedule 6 provides for an application to be made seeking a "non-material" change to a development consent order. Paragraph 2(8) of Schedule 6 provides, in respect of an application for such a change, that the Secretary of State must comply with prescribed consultation and publicity requirements.

137. *Subsection (2)(a)* amends paragraph 2(8) to provide that the duty to comply with consultation and publicity requirements may be placed upon the person who has made the application for a non-material change to a development consent order.

138. *Subsection (2)(b)* clarifies that the power to make regulations under paragraph 2(8) of Schedule 6 includes power to allow the Secretary of State, or the person making the application, to exercise a discretion. The intention is to clarify that the power allows regulations to include, for instance, provision allowing the Secretary of State to disapply prescribed consultation requirements where this is considered appropriate.

139. Paragraph 3 of Schedule 6 makes provision in respect of "material" changes to development consent orders, including in circumstances where an application for such a change is made. *Subsection (3)* confirms that the Secretary of State may refuse to exercise the power to make a material change in response to an application if it is considered that the development that would be authorised as a result of the change should properly be subject to an application under section 37 (applications for orders granting development consent) of the 2008 Act. This provision is to ensure that the Secretary of State can refuse to change an existing order where it is considered that an application for a change should be treated as a new application for development consent.

140. Paragraph 4(4) of Schedule 6 provides power for the Secretary of State to make regulations about the procedure to be followed where an application for a material change to a development consent order is made. *Subsection (4)* clarifies that this power includes power to allow a person to exercise a discretion. The rationale for this change is the same as that in respect of the amendment to paragraph 2(8) of Schedule 6.

Deemed discharge of planning conditions

141. A 'deemed discharge' provision is introduced for certain types of planning conditions which require the approval, agreement or consent of the local planning authority where a decision has not been made within a specified period. The effect of a deemed discharge is that the applicant is treated as having received that approval. Exclusions that may be required may be set out in secondary legislation.

Section 29: Deemed discharge of planning conditions

142. Section 29 inserts a new section 74A into the Town and Country Planning Act 1990 (the 1990 Act). Section 74A will allow the Secretary of State to provide by order for the deemed discharge of certain conditions attached to planning permission. The conditions in question are those which require the consent, agreement or approval of the local planning authority and which are imposed on planning permission for development in England.

143. *Subsection (1)* introduces the power of the Secretary of State to make provision by development order for the deemed discharge of a condition covered by section 74A. A "development order" is an order, subject to the negative resolution procedure, which can set out the procedure for applying for planning permission (see section 59 of the 1990 Act).

144. *Subsection (2)* limits the provision to conditions placed on planning permission in relation to development in England only. It further limits the provision to the types of conditions which require the consent, agreement or approval of a local planning authority. For example a condition might require the applicant to submit a scheme for the management of construction works on site for the approval of the local authority before development can take place.

145. *Subsection (3)* sets out that where a condition is deemed to be discharged this means that the approval, consent or agreement of the local planning authority to any matter required by the condition is deemed to have been given. So a deemed discharge would have the effect of 'discharging' the applicant from the requirement of gaining the consent, approval or agreement from the local planning authority. This means the authority cannot take enforcement action against the development on the basis that there has been a failure to obtain such consent, approval or agreement. So in the example above, the local planning authority would not be able to take enforcement action and stop development on site on the basis that the scheme did not have its actual written approval.

146. *Subsection (4)* sets out what a development order must specify in relation to the process for deemed discharge. It must provide that the deemed discharge can only apply where an applicant has applied for the approval, agreement or consent of the local planning authority as required under the condition in question, and that the determination period has lapsed without a decision from the local planning authority having been made and notified to the applicant. Further the applicant must have taken any procedural steps laid down by the Secretary of State in the development order before a condition can be deemed to be discharged.

147. *Subsection (5)* provides that the Secretary of State can provide for the procedure to be followed in the development order. For example, the order might provide under the powers in paragraphs (a), (b) and (e) of *subsection* (5) that the applicant must serve a notice in a prescribed form on the Secretary of State, stating his intention to rely on the deemed discharge provisions, after a certain number of weeks have elapsed from the date of the original application for the authority's approval to a condition. Under *subsection* (5)(d), the Secretary of State may provide for the prescribed time periods within the deemed discharge procedure to be varied by agreement. This power could be exercised, for example, to allow the applicant and the local planning authority to extend such periods by agreement, which might be useful in a complex development.

148. *Subsection (6)* sets out that the Secretary of State may provide in a development order that the deemed discharge provisions will not apply in particular circumstances. For instance, the order may prescribe that certain types of conditions are exempted from the section.

149. *Subsection (6)(b)* gives the Secretary of State the power to exempt certain types of conditions by reference to the type of planning permission to which they relate. This is needed because planning permission may be granted in different ways for example following a planning application submitted to the local planning authority, by the Secretary of State on cases following an appeal or call-in or by development order, and it may not be appropriate for conditions attached to planning permission granted by particular routes to be subject to the deemed discharge provisions.

150. *Subsection (6)(c)* gives the Secretary of State the power to exempt certain types of conditions by reference to description of the development, for example based on thresholds, character or any other category.

151. *Subsection (6)(d)* gives the Secretary of State the power to provide that the deemed discharge provisions will not apply in any other circumstances. For example, the power could be used to provide that the deemed discharge provisions will not be available where the underlying application for planning permission is subject to appeal. In addition the applicant and the local planning authority may agree the deemed discharge provisions should not apply to a condition (*subsection (7)*).

152. *Subsection (8)* gives the Secretary of State the power, by development order, to disapply section 78(2) of the 1990 Act or to apply it with modifications in relation to the deemed discharge provisions. The Secretary of State will be able to provide in the development order that where an applicant intends to rely on the deemed discharge provisions, he or she will not also be able to appeal the authority's non-determination of his or her application for approval under section 78(2).

153. *Subsection (9)* explains that the deemed discharge provisions may only apply to conditions attached to planning permissions where the application for the planning permission was submitted after the order comes into force. This is to ensure that the provision will not apply retrospectively.

Mayoral Development Orders

Section 30 and Schedule 4: Mayoral development orders

154. Section 30 gives effect to Schedule 4 and enables the Secretary of State by regulations to make consequential provision in connection with any provision made by that Schedule. Part 1 of Schedule 4 inserts new sections 61DA to 61DE into the Town and Country Planning Act 1990 (the 1990 Act) to make provision for Mayoral development orders. Part 2 of Schedule 4 makes consequential amendments to the 1990 Act.

155. New section 61DA of the 1990 Act enables the Mayor of London to make Mayoral development orders granting planning permission for specified development on a site or sites in Greater London. This is subject to any development order made by the Secretary of State under *subsection (3)* which specifies an area or class of development in respect of which a Mayoral development order may not be made.

156. New section 61DB makes provision for conditions that may be attached to planning permission granted by a Mayoral development order. A condition may require the consent, agreement or approval to a specified matter to be given by the Mayor or a relevant local planning authority (i.e. local planning authority that has within its area a site or part of a site that a Mayoral development order relates to, see *subsection (9)*). *Subsection (4)* enables the Secretary of State to make provision by development order for such consent etc. to be sought from a specified person where it is not given within a specified period (i.e. a person and period specified in the development order). Under *subsection (6)*, the Secretary of State may by development order provide for a person to apply for permission to develop land without complying with a condition of a Mayoral development order (provision may be similar to that made by section 73 of the 1990 Act, see *subsection (7)*).

157. New section 61DC sets out the procedures for preparing and making a Mayoral development order. *Subsection (1)* enables the Secretary of State to set out much of the procedure in a development order, including provision about notice, publicity and inspection by the public, consultation, the making and consideration of representations. *Subsections (3)* to *(5)* provide that the Mayor may only make a Mayoral development order in response to an application by each relevant local planning authority, and may only consult on a proposed order and make the final order with the consent and approval of those authorities.

158. New section 61DD makes provision for the revision or revocation of a Mayoral development order by the Mayor or by the Secretary of State. This includes a power for the Secretary of State to make further provision by development order for the procedure for revising or revoking a Mayoral development order and about the steps the Secretary of State must take before revoking, or directing the Mayor to revise, an order. New section 61DE describes the effect of revision or revocation of an order on development that has been started but not completed. The general position is that the development may be completed (see *subsection (3)*), but this is subject to specific provision made by the Mayor or by the Secretary of State when revising or revoking the order.

The Homes and Communities Agency and other bodies

159. From April 2015, the Homes and Communities Agency (HCA) is taking on a new role as the land disposal agency for Government in England (outside of London). In London this role will be carried out by the Greater London Authority (GLA).

160. Until this Act, land held by an arm's length body of a government department could not transfer directly to the HCA. Instead it first transferred to the sponsor Department, before being transferred to the HCA. This method required two independent legal processes. Section 31 amends the Housing and Regeneration Act 2008 (HRA 2008) and the Greater London Authority Act 1999 (GLAA 1999) in order to allow the direct transfer of land held by arm's length bodies to the HCA or the GLA. Only land identified as no longer required will transfer to the HCA or the GLA. The transferring body must give consent to the transfer before this can take place.

161. The HCA, the GLA and Mayoral development corporations (MDCs) have powers to override third-party rights and restrictions (such as easements and restrictive covenants) affecting their land. However, once any freehold interest in that land is sold, these powers cease to be available and so cannot be used by any purchaser and these interests can no longer be overridden.

162. Section 32 amends the HRA 2008, GLAA 1999 and Localism Act 2011 to ensure future purchasers of land owned by the HCA, the GLA (or a company or body carrying out housing or regeneration functions on the GLA's behalf) or an MDC will be able to develop and use that land without being affected by easements and other rights and restrictions. This is regardless of whether they have purchased a freehold or leasehold interest in that land. Section 32 will allow purchasers of land from these bodies to achieve parity with buyers of land belonging to local authorities and other public bodies involved in regeneration and development (such as housing action trusts and urban development corporations). It will not apply in relation to any freehold interest in land which is sold before the commencement of section 32.

Section 31: Property etc transfers to the HCA

163. This section inserts new sections into the HRA 2008 and the GLAA 1999.

164. HRA 2008: The section inserts new sections 53A (other property etc transfers to the HCA) and 53B (tax consequences of transfers under section 53A) after section 53 of the HRA 2008. Section 51 of the HRA 2008 allows the Secretary of State to make schemes for the transfer to the HCA of the property, rights and liabilities of the Urban Regeneration Agency, the Commission for New Towns or a Minister of the Crown. New section 53A of the 2008 Act empowers the Secretary of State to make schemes for the transfer to the HCA of the property, rights and liabilities of a public body or a description of public bodies which is specified by the Secretary of State in regulations. Transfer to the HCA will only take place with the transferring body's consent. For these purposes, 'a public body' is defined as a person or body with functions of a public nature. The bodies which will be specified are intended to be arm's length bodies of government departments such as non-departmental public bodies. *Subsection (6)* explicitly prevents any part of the Public Forest Estate from being transferred to the HCA by a scheme made under the new section.

165. GLAA 1999: This section inserts new sections 333DA (transfer of property to the GLA or a company or body through which the GLA exercises functions in relation to housing or regeneration), 333DB (provision that may be made by a transfer scheme) and 333DC (tax consequences of transfers under section 333DA). New section 333DA empowers the Secretary of State to make schemes for the transfer to the GLA of property, rights and liabilities of a public body or a description of public bodies which is specified by the Secretary of State in regulations. Transfer to the GLA will only take place if the transferring body has given consent. The transfer of any public forest is excluded from any scheme made under new section 333DA.

166. New section 53B of the HRA 2008 enables the Treasury to make regulations which provide for the tax consequences of transfers under new section 53A. New section 333DC of the GLAA 1999 enables the Treasury to make regulations which provide for the tax consequences of transfers under new section 333DA.

Section 32: Easements etc affecting land

167. This section amends section 11 of, and paragraph 1 of Schedule 3 to, the HRA 2008 which provide powers in relation to land of the HCA. The amendments ensure that a purchaser of land which has been vested in or acquired by the HCA who undertakes works on or makes subsequent use of that land is empowered to override any relevant rights and interests and restrictions as to user. Similar amendments are also made to section 333ZB of the GLAA 1999 and section 208 of the Localism Act 2011 so that a purchaser of land of the GLA or an MDC will be similarly empowered.

Section 33: Expenditure of Greater London Authority on housing or regeneration

168. Section 33 amends the GLAA 1999. Section 30 of the GLAA 1999 (the general power of the authority) empowers the Greater London Authority to do anything which supports its three principal purposes of promoting economic development and wealth creation, promoting social development and improving the environment in Greater London. In the exercise of this general power, the Greater London Authority may carry on activities in the field of economic development and regeneration, which the London Development Agency and Homes and Communities Agency might previously have undertaken.

169. The Greater London Authority's general power is limited by section 31(1) of the GLAA 1999 (limits of the general power), which prohibits the Authority from incurring expenditure in doing anything that can be done by Transport for London, the Mayor's Office for Policing and Crime and the London Fire and Emergency Planning Authority.

170. This section amends section 31 of the GLAA 1999 to remove a prohibition against the Authority incurring expenditure on anything that can be done by Transport for London. This enables the Greater London Authority to incur expenditure on transport for the purposes of housing or regeneration and applies in relation to expenditure incurred before as well as after the coming into force of the section.

Her Majesty's Land Registry

171. The Land Registry's principal function is to keep a register of title to freehold and leasehold land and charges throughout England and Wales and to record dealings in land once it is registered. On behalf of the Crown, it guarantees title to registered estates and interests in land.

172. It is a non-Ministerial Government department consisting of a Chief Land Registrar (CLR), appointed by the Secretary of State, and staff appointed by the CLR.

173. Section 34 and Schedule 5 make provision about the transfer of responsibility for local land charges from individual local authorities in England and Wales to the CLR.

174. The Land Registry has developed a Business Strategy for 2013 to 2018. The strategy was based on meeting the needs of its customers and stakeholders, facilitating digitisation of land registration services and improving the management and re-use of land and property data.

175. Section 35 provides for an extension of the Chief Land Registrar's powers to enable the Land Registry to provide services relating to land and other property. Section 36 provides for the transfer of responsibility for nominating the consumer affairs member of the Rule Committee appointed under the Land Registration Act 2002 from the Lord Chancellor to the Secretary of State.

Section 34 and Schedule 5: Transfer of responsibility for local land charges to Land Registry

176. Local land charges are generally in the nature of restrictions or prohibitions on a particular parcel or parcels of land, binding on successive owners and occupiers of the land, which either secure the payment of money or limit the use to which the land may

be put. Local land charges would not normally be disclosed by inspection of the land or an investigation of the register of title to the land (or the title deeds where the land is unregistered). For the protection of purchasers, there is a duty to register them. The registers involved are open to public access.

177. Under the current legislation – the Local Land Charges Act 1975 (LLCA 1975) – local land charges are entered in local land charges registers, open to public inspection and administered by each local authority in England and Wales in relation to the local land charges that affect the land within their respective administrative areas. The way in which the local registers are administered, in particular as to whether and to what extent the registers have been computerised, varies widely across England and Wales, as do the fees charged for searches of the register in England (where individual local authorities have power to set the fees for their own areas, subject to general guidance from the Lord Chancellor). Following investigation of the position by the Land Registry, and a consultation exercise which ended on 9 March 2014, the Government has decided that responsibility for its administration should be transferred from the local authorities in England and Wales to the Land Registry. The Land Registry should then provide a composite fully computerised local land charges system accessible to users by electronic communications.

178. *Schedule 5Parts 1 - 4* sets out the amendments required to the relevant legislation and provides for the necessary transitional arrangements to enable Land Registry to assume responsibility for the registration of local land charges from the existing local authorities in England and Wales. Part 1 sets out amendments to the LLCA 1975; Part 2 sets out amendments to the Land Registration Act 2002 (LRA 2002); Part 3 sets out amendments to other legislation; and Part 4 sets out the necessary transitional provisions.

Schedule 5Part 1: Amendments to the Local Land Charges Act 1975

179. Section 3 of the LLCA 1975 provides for the existing local authorities in England and Wales to be the registering authorities for local land charges that affect land in their respective administrative areas and for them to maintain individual local land charges registers. *Paragraph 3* replaces this with a new section 3 that provides for the Chief Land Registrar (CLR) to keep a single local land charges register and the intention is that the new register will be fully electronic. Such register is to comprise the local land charges registered in a local authority's local land charges register immediately before the CLR becomes the registering authority for that authority's administrative area and each local land charge that is subsequently registered in respect of land wholly or partly in that area.

180. Section 4 of the LLCA 1975 defines "appropriate local land charges register." *Paragraph 4* omits this section as it is unnecessary when the separate local authority local land charges registers administered by individual local authorities in England and Wales are replaced by a composite local land charges register for which the CLR will be responsible.

181. Section 5 of the LLCA 1975 deals with the registration of local land charges and defines "originating authorities" as those authorities by whom a local land charge is brought into existence or by whom, on its coming into existence, the charge is enforceable. Originating authorities include the local authorities that are also the registering authorities for local land charges affecting land in their respective administrative areas. Such authorities therefore effectively have a dual role where they are responsible for the origination of a local land charge. Section 5 of the LLCA 1975 requires a local authority that is both the originating authority and the registering authority to register the local land charge in the local land charges register for which it is responsible. In other cases, section 5 requires the originating authority for a local land charge to apply for its registration to the local authority that is the registering authority for the land affected by the charge. *Paragraph 5* amends section 5 to require all originating authorities to

apply to the CLR for registration of the local land charge where he or she has become the registering authority for the area in which the land affected by the charge is situated.

182. *Paragraph 6* amends section 6 of the LLCA 1975 in relation to its application to general charges. General charges are charges that arise under certain conditions in favour of local authorities in advance of their being able to register a specific local land charge. Section 6 provides for the registration of general charges by the local authority that is the registering authority for the area in which the land affected by the general charge is situated. The provision is amended to require the CLR to register such charges on the application of the originating authority for the charge, where he or she has become the registering authority for the area in which the land affected by the general charge is situated.

183. Sections 8 and 9 of the LLCA 1975 provide for persons to be able to make personal searches of the existing local land charge registers for which local authorities in England and Wales are responsible as registering authorities and to requisition official searches of the register from the registering authorities. *Paragraphs 7 and 8* amend sections 8 and 9 respectively so as to place the responsibility for providing personal search facilities and official searches results on the CLR where he or she has assumed responsibility for the registration of local land charges from any local authority.

184. Section 10 of the LLCA 1975 provides for a compensation scheme under which registering authorities are made responsible for compensating a purchaser of land that is subject to a local land charge for loss suffered by that person where that person has relied upon a personal or official search but the search has failed to disclose the existence of a local land charge that it should have disclosed. *Paragraph 9* amends section 10 to place the responsibility for paying compensation to such a purchaser on the CLR in place of the relevant local authority where he or she has taken over responsibility from the local authority. Section 10 is also amended to include provision that entitles the CLR to recover from an originating authority any compensation he or she is required to pay to a purchaser as a consequence of an error by the originating authority. The CLR is also given power to insure against the risk of liability to pay compensation under section 10 by insertion of a new *subsection (6A)*.

185. Section 14 of the LLCA 1975 provides for the Lord Chancellor, with the concurrence of the Treasury as to fees, to make rules for carrying the LLCA 1975 into effect. Revised rules will be required to give effect to the amended Act as it applies to the CLR when he or she assumes responsibility as the registering authority. *Paragraph 13* provides for the inclusion of such additional enabling powers in section 14 as are required to allow rules to be made for this purpose. In particular, the additional powers include the making of rules—

- as to the variation of the registration of a local land charge without an order of the court on the application or with the consent of the person by whom it is enforceable, or of the Chief Land Registrar's own motion,
- as to cancellation without an order of the court of the registration of a local land charge on its cesser or on the application or with the consent of the person by whom it is or was enforceable or of the Chief Land Registrar's own motion.

186. It is the intention that the local land charges registration system administered by the CLR should be electronic and operate on the basis that applications to the CLR are received by electronic communications, in order to maximise the efficiency and speed with which the system operates. Paragraph 13 therefore substitutes new paragraphs (b), (ba) and (bb) in *subsection (2)* of section 14 in place of the existing paragraph (b).
The purpose of the changes is to make it clear that the power to make rules under section 14(1) includes power to make rules as to the use of particular means of communication (such as electronic communication) that may or must be used for the purposes of the LLCA 1975 (such as making applications for the registration of local land charges and the making of personal or official searches of the register),

the circumstances in which the particular means of communication is to be used and the form and contents of anything sent by that particular means of communication. It will also include power to make rules requiring or enabling anything provided to or by the CLR for the purposes of the LLCA 1975, or any other statutory provisions under which any matter is registrable in the local land charges register, to be provided in electronic form. The changes further provide that the details concerning the use of particular means of communication and anything which is provided to or by the CLR may be specified in the rules or determined by the CLR, or by a person who is providing services to the CLR, such as a third party provider of the computerised registration and communications systems that are envisaged (who will in practice operate in accordance with specifications determined by the CLR).

187. The effect of sub-paragraphs (4) to (6) of paragraph 13 of the Act is that the Lord Chancellor (with the concurrence of the Treasury) has power to set local land charges fees for England. The Welsh Ministers retain their current power to set local land charges fees in Wales.

Schedule 5Part 2: Amendments to the Land Registration Act 2002

Paragraphs 17 to 20

188. The amendment to section 100 of the LRA 2002 (Conduct of business) makes it clear that the functions of the CLR, which any member of Land Registry may carry out when authorised by him or her, include all functions of the CLR under any legislation.

189. The amendment to section 106 (incidental powers of the registrar in relation to companies) means the CLR's power to form, or participate in the formation of, a company or to purchase or invest in a company is extended to include the CLR's functions under the LLCA 1975.

190. The LRA 2002 contains an indemnity for the CLR and staff appointed by him or her, so that they will not be liable in the performance of their duties in the absence of bad faith, and any claims for indemnity under the LRA 2002 are dealt with under the statutory indemnity scheme. The amendments also provide that this exclusion of liability is extended to functions performed under the LLCA 1975. Claims for compensation will be dealt with in the LLCA 1975, as amended.

Schedule 5Part 3: Amendments to Other Acts

Paragraphs 21 to 39

191. This Part of the Schedule contains amendments to a number of Acts of Parliament which refer to the LLCA 1975 in areas such as land compensation, where local land charges issues are applicable. The amendments alter the wording of the legislation to reflect the fact that there will be a composite register in all cases where in the future the CLR has become the registering authority, rather than separate registers held by each local authority. As this Part of the Schedule only applies once the CLR has formally taken responsibility for the register in a particular area, the amendments to the Acts of Parliament do not take effect in respect of areas where the local authority is still the registering authority.

Schedule 5Part 4: Transitional Provision

Paragraphs 40 to 44

192. The CLR will take over responsibility for the LLCA 1975 functions in stages from the existing local authorities in England and Wales. The CLR will take over responsibility for each area only after the necessary preparation for the transfer of data at each local authority has been carried out.

193. *Paragraph 40* therefore provides for the CLR to give and publish a notice, once the preparatory work has been completed at the relevant local authority. On expiry the notice has the effect of bringing the new regime into force for the relevant area. This will allow the CLR to determine the point at which he or she takes over as the registering authority. Any rules made under the LLCA 1975 as amended will apply only to those areas for which the CLR has taken over responsibility as registering authority.

194. *Paragraph 41* requires local authorities to provide information and assistance to the Chief Land Registrar to enable him to take on the role of registering authority.

195. The provisions of *paragraph 42* ensure continuity in the administration of the local land charges system. Anything the local authority was doing at the time of the change will automatically become the responsibility of the CLR. If for example there was a pending application which had not been completed, this would automatically become the responsibility of the CLR when the functions were taken over, and the same applies to any legal proceedings in which the local authority may have been involved. Any liability which the CLR may acquire in this way, which arises by reason of a mistake made by the local authority, is dealt with under the following paragraph.

Paragraph 43

196. This clarifies the position with regard to payment of compensation under the statutory scheme contained in the LLCA 1975. In particular the CLR can recover compensation paid by him or her where his or her liability to pay was in consequence of a local authority's failure to-

(a) register a local land charge before the CLR replaced it as registering authority,

(b) provide appropriate electronic facilities for personal searches or

(c) provide a correct official search.

197. Compensation cannot however be recovered from a local authority which has failed to register, or register correctly, a local land charge in the register it formerly maintained, or to provide information about such a charge to the CLR, where that local authority is not the originating authority and the error was due to the equivalent failure of the actual originating authority. In that case the CLR can seek recovery of compensation paid from the originating authority instead.

Section 35: Conferral of additional powers on Land Registry

198. At present, under the LRA 2002, the CLR's powers are limited to functions and services relating to land registration. These powers are to be extended to enable Land Registry, in addition, to provide services relating to land and other property.

199. Section 105 of the LRA 2002 enables the CLR to provide, or arrange for the provision of, consultancy or advisory services about the registration of land in England and Wales or elsewhere and to set the terms on which they are provided. Section 35 amends section 105 to broaden the CLR's powers to enable Land Registry also to provide (a) consultancy and advisory services about land and other property in England and Wales or elsewhere and (b) information services and services relating to documents or registers, relating to land or other property in England and Wales (*subsection (1)* as amended by the section). As at present, it will be for the CLR to set the terms on which services are provided, including the charges for them. The CLR's power under section 106 of the LRA 2002 to form, or participate in the formation of, a company or to purchase or invest in a company could be used in connection with these services.

Section 36: Transfer of power to nominate member of Rule Committee

200. Under section 127(1) of the LRA 2002, the power of the Secretary of State to make land registration rules is exercisable with the advice and assistance of a Rule Committee,

whose membership is governed by section 127(2) of that Act. One of the members is required to be a person with experience in, and knowledge of, consumer affairs. That member is nominated by the Lord Chancellor (section 127(2)(h)). The purpose of section 36 is to transfer the power to nominate this member to the Secretary of State as and when there is a future vacancy.

Off-site carbon abatement measures

Section 37: Provision in building regulations for off-site carbon abatement measures

201. The Building Act 1984 empowers the Secretary of State to make building regulations establishing the standards to be met by building work for a number of purposes, including furthering the conservation of fuel and power and furthering the protection or enhancement of the environment. Under these powers, building regulations provide that a building that is erected shall meet a target rate for maximum emissions of carbon dioxide. The Government is committed to introducing a zero carbon emissions standard for new dwellings in England from 2016. However, the Government recognises that it may not be technically feasible or cost effective to require house builders to meet the zero carbon standard just through on-site measures, like further increased insulation, solar panels etc. The intention is therefore to set a maximum on-site carbon dioxide emission standard for new homes and for the remainder of the zero carbon target to be met by house builders supporting off-site carbon abatement measures, doing more on-site or a combination of both – these are termed 'allowable solutions'.

202. Allowable solutions will include measures taken in relation to the new building. There will be options however to offset residual emissions by reduction of emissions elsewhere, for example by measures taken in relation to existing buildings, or by investment in energy-efficient infrastructure projects. Such measures may be undertaken by the developer or by a third party for the developer. There will also be an option to pay at a capped rate into a fund which invests in carbon-saving measures. Existing powers in the Building Act 1984 do not extend to providing for measures relating to buildings that are not in or on the building, or connected to it. The purpose of the section is to allow for such measures for the purposes of abating carbon emissions. The Welsh Government shares the desire to reduce carbon dioxide emissions from buildings and also recognises the technical and economic limits to reducing carbon dioxide emissions through measures on the buildings themselves. The Welsh Government intends to consult in 2016 on a review of the current energy performance requirements of the Building Regulations in Wales, including the off-site abatement of carbon dioxide, and so is working to a different timeframe to England.

203. The section establishes the necessary powers for the Secretary of State or Welsh Ministers to make building regulations provisions in relation to off-site measures for abating carbon dioxide emissions, taken by the developer or by a person on the developer's behalf, or consisting of payment into a fund that invests in carbon abatement projects. It provides also for administrative provisions to be made to facilitate offsetting of those emissions against emissions from a building. These include provisions relating to the administration, by or on behalf of the Secretary of State or Welsh Ministers, of funds for carbon abatement measures into which allowable solutions payments can be made, and to establishing a maximum level of payment into a fund. There is also provision for a register of certificates showing compliance with the carbon emissions standard by use of allowable solutions to be set up and maintained by or on behalf of the Secretary of State or Welsh Ministers, and for charges to be made in connection with use of the register.

Part 6 – Energy

Community electricity right

204. In January 2014, the Government published its Community Energy Strategy, which identified community shared ownership in renewable energy as a means to ensure that individuals living close to renewable energy installations are able to have a greater share in the financial benefits. A Shared Ownership Taskforce has been set up to 'facilitate a substantial increase in the shared ownership of new, commercial onshore renewables developments' such that 'by 2015 it should be the norm for communities to be offered the opportunity of some level of ownership by commercial developers'. The community electricity right is an alternative to the voluntary approach to increasing shared ownership, if this approach fails to deliver.

205. The community electricity right confers a power on the Secretary of State to make regulations giving individuals and/or community groups the right to purchase a stake in a renewable electricity generation facility in their local area (including onshore and offshore facilities). In connection with this power the Secretary of State can make regulations about the ownership of qualifying facilities, the supply of information and the enforcement regime.

206. The power allows the Secretary of State to provide for various matters in the regulations, including the kinds of facilities to which the right will apply, the members of the community who will be eligible to exercise the right to buy and the kinds of stake that may be bought through the right to buy.

Section 38: The community electricity right

207. *Subsection (1)* gives the Secretary of State a power to make regulations for a community electricity right. This gives a right to individuals resident in a community or groups connected with a community (or both) to buy a stake in a local renewable electricity generation facility that is located onshore or offshore. A renewable electricity generation facility is one which uses a renewable source of energy, being a source of energy other than fossil fuel or nuclear, but including waste of which not more than a specified proportion is waste, or is derived from, fossil fuel.

208. *Subsection (2)* gives the Secretary of State a power to make further regulations about the kinds of body which may operate a renewable electricity facility, and the ownership of facility operators, in connection with the community electricity right.

209. *Subsection (3)* gives the Secretary of State a power to make further provision about the supply of information in connection with the community electricity right regulations. The activities to which this may apply are listed in this *subsection*. Further detail is provided in Part 3 of Schedule 6.

210. *Subsection (4)* gives the Secretary of State a power to make further provision about the enforcement regime associated with the community electricity right regulations. This may include (but is not limited to) enforcement through the existing electricity licensing regime and financial penalties for non-compliance.

211. *Subsection (5)* enables the Secretary of State to modify electricity licence conditions and electricity licence exemptions in connection with the community electricity right regulations.

212. *Subsection (6)* gives effect to Schedule 6. This sets out the matters to be specified in further detail under the community electricity right regulations. The duties contained within this Schedule only come into effect when the community electricity right regulations are made.

213. *Subsection (7)* contains definitions of the terms used in sections 38, 39 and Schedule 6.

Section 39: Supplementary provision

214. *Subsection (1)* enables community electricity right regulations to confer functions in relation to the community electricity right. This can include functions of the Secretary of State and any other person apart from Scottish and Welsh Ministers.

215. *Subsection (2)* provides further detail on the functions that may be conferred. For example this may include a duty (this may be in relation to enforcing the community electricity right), a requirement to consult (this may apply to renewable electricity generators in relation to a requirement to consult with the local community on the type of stake to be offered). It may also include exercising discretion (this may include renewable electricity generators choosing the kind of stake offered to communities) and a requirement to take into account any guidance (this may include guidance produced by the Secretary of State in relation to the implementation of the community electricity right).

216. *Subsection (3)* provides that the scope of the powers within this Part of the Act is not limited to the examples provided.

217. *Subsection (4)* provides that the requirements included within Schedule 6 only come into effect when the community electricity regulations are made.

218. *Subsection (5)* provides that the commencement of the regulations (as defined in the regulations) can ensure that the regulations do not apply retroactively and would only apply to existing facilities that have not, at that date, reached a specified point of development.

219. *Subsection (6)* makes provision that the stake in the renewable electricity generating facility can be in the form of a loan or debt instrument.

220. *Subsection (7)* requires the Secretary of State to carry out a review of the provisions in connection with the community electricity right once the provisions have been in force for 5 years.

Schedule 6: Community electricity right regulations

Part 1: The Right to Buy

221. *Paragraph 1* defines 'right to buy regulations' as those regulations made under *subsection (1)* of section 38.

222. *Paragraph 2* sets out the parameters for the kinds of renewable electricity facilities that will come under the community electricity right regulations. Paragraph 2(2) provides that these regulations will not apply to any renewable electricity generation facility under 5MW of total installed capacity.

223. *Paragraph 2(3)* allows the Secretary of State to specify that the community electricity right regulations may apply to a particular type of renewable electricity facility; such facilities may be defined in terms of the renewable source of energy used, the technology used, the electricity generation capacity, and whether the facility is land-based or offshore.

224. *Paragraph 3* requires the Secretary of State to set out the criteria for identifying qualifying renewable electricity facilities under the community electricity right regulations. Paragraphs 3(2) and (3) make further provision about sites that have been expanded or where there is more than one renewable electricity facility. In relation to existing sites that have been expanded these regulations may apply to any facility where the total installed capacity of that site is expected to be 5MW or more.

225. *Paragraphs 3(4) to (6)* allow the Secretary of State to make further provision about the kinds of renewable electricity facilities that may be excluded from the community electricity right regulations; this is defined as an excepted facility. Excepted facilities

may include community owned facilities, facilities where the community owns a stake, and those facilities that are not participating in statutory energy schemes (for example those not participating in the Feed-In Tariff, Contracts for Difference or Renewables Obligation schemes).

226. *Paragraph 4* defines the promoter of a qualifying facility as the person responsible for developing the qualifying facility, and makes provision to identify the promoter in cases where that person is not also the facility operator.

227. *Paragraph 5* requires the Secretary of State to make further provision in secondary legislation about the community who could exercise the right to buy. This may be in reference to the community's geographical location relative to the facility, its distance from the facility, the number of residents or any administrative boundaries.

228. *Paragraph 6* requires the Secretary of State to make further provision about which individuals and groups may exercise the right to buy. Further detail on how this may be defined in relation to individuals and groups is set out in this paragraph. *Paragraph 6(3), (4) and (7)* allow the Secretary of State to make further provision about the individuals and groups who may not exercise the right to buy. Sub-paragraphs (8) and (9) provide further provision about people who may be connected for the purpose of the regulations.

229. *Paragraph 7* makes further provision about the kinds of stake that may be offered through the community electricity right regulations. This may include shares, any other interest in a body other than a company, an equitable interest, a royalty instrument or a loan.

230. *Paragraph 8* provides that the regulations must give the designated promoter or facility operator a choice of at least two different kinds of stake that may be offered. It is then for the promoter or facility operator to make a decision on the kind(s) of stake offered to the community. The promoter or facility operator must consult (e.g. with the community) and take the results of this consultation into account before choosing the kind(s) of stake that they will offer.

231. *Paragraph 9* requires the Secretary of State to make further provision about setting the price of the stakes in a qualifying facility. It includes reference to 'a measure of fair value' when setting the price of the stake offered to communities; this means that the price of the stake should not be offered at a discounted price to the community.

232. *Paragraph 10* makes further provision about the total value of the offer to communities. *Paragraphs 10(2) and (3)* specify that the minimum size of stake that must be offered by developers is to be set in secondary legislation, but that this must not be greater than 5% of total capital costs of the development of the facility. Paragraph 10(5) allows the Secretary of State to make further provision about the calculation of the total capital costs. The minimum size of stake prescribed in secondary legislation may vary depending on the technology or size of the development up to this 5% cap. It is intended that very large developments will not be required to offer a stake which it would be unrealistic to offer the community.

233. *Paragraph 11* makes further provision about the procedure for buying a stake, which is defined as the purchase procedure in paragraph 11(1). It establishes an initial application procedure in paragraph 11(4) where the stakes in the renewable electricity facility are offered. The offering of stakes cannot begin until after the renewable electricity generation facility has secured planning consent. The meaning of planning consent is defined further in paragraph 11(6).

234. *Paragraph 12* makes further provision for when there is either excessive or insufficient take up of the stakes offered for a renewable electricity facility. For example, paragraph 12 (2) establishes a secondary period following the application period. In this secondary period it may be possible to offer stakes to a wider community.

235. *Paragraph 13* allows further provision in regulations on the subsequent disposal of a stake after it has been bought. This may include imposing restrictions or prohibitions on the disposal of a stake on individuals or communities, with exceptions.

Part 2: Operators, Ownership & Related Matters

236. *Paragraphs 14 to 19* make further provision about operators and the ownership of renewable electricity facilities under the community electricity regulations. For example, this may include the kinds of body that may be a facility operator, the constitution of facility operators, the conduct of owners of facility operators and the treatment of revenues earned by a qualifying facility.

Part 3: Information

237. *Paragraphs 20 to 25* provide further provision about the supply of information under the community electricity regulations. This may apply to the possible buyers of stakes who would like to exercise the right to buy, prospective buyers of stakes who are entitled to exercise the right to buy, those applying to buy a stake, and the owners of stakes.

Part 4: Supplementary

238. *Paragraph 26* provides further definition of the terms used within the Schedule.

The Extractive Industries Transparency Initiative

Section 40: The Extractive Industries Transparency Initiative

239. The Act helps to maximise the transparency of data in the extractive industries by granting HMRC a function to participate in the Extractive Industries Transparency Initiative (EITI). Section 40 inserts a new section 8A in the Commissioners for Revenue and Customs Act 2005, which gives the Commissioners for Revenue and Customs the new function of participating in the EITI. *Subsection (1)* allows the Commissioners to do anything they think is necessary or expedient in connection with the EITI, in so far as it relates to taxes for which the Commissioners have collection and management responsibility. *Subsection (2)* provides a definition of the EITI.

Recovery of UK petroleum

240. On 10 June 2013 the Secretary of State of Energy and Climate Change announced a review of UK offshore oil and gas recovery and its regulation, led by Sir Ian Wood. The final report of Sir Ian's *UK Continental Shelf Maximising Recovery Review* was published on 24 February 2014.

http://www.woodreview.co.uk/documents/UKCS%20Maximising%20Recovery%20Review%20FINAL%2072pp%20locked.pdf

241. The report identified a number of key issues including the following:

- The need for operators to focus on maximising economic recovery for the UK as well as pursuing their individual commercial objectives.
- The need for a greater resourced and more proactive regulator.
- The need for significantly improved asset stewardship.
- The need for far greater constructive collaboration between operators.
- The need for better implementation of industry strategies.

242. To address these issues, Sir Ian made a number of principal recommendations, including that a maximising economic recovery of UK petroleum strategy be developed with the

regulator exercising its functions with a view to maximising the economic recovery of petroleum from UK waters.

243. The Government has accepted the findings of the report and published its response on 16 July 2014

https://www.gov.uk/government/publications/government-response-to-sir-ian-woods-review-of-the-uk-continental-shelf-ukcs

Section 41: Maximising economic recovery of UK petroleum

244. Section 41 implements the first recommendation, covering maximising the economic recovery of UK offshore petroleum and the strategy. It does this by inserting a number of new sections into the Petroleum Act 1998.

245. New section 9A provides for a principal objective of maximising the economic recovery of UK offshore petroleum. The section requires the Secretary of State to produce a strategy which is the means for enabling the principal objective to be met. The strategy will set out what is meant by maximising the economic recovery of UK petroleum. This will provide the flexibility to take account of how the principle should apply in different circumstances along with the changing needs of the UK Continental Shelf.

246. New section 9B places a duty on the Secretary of State to carry out relevant functions in accordance with the strategy.

247. New section 9C places duties on licence holders, operators appointed under those licences and owners of upstream petroleum infrastructure to carry out certain identified activities in accordance with the strategy. *Subsection (4)* places a duty on a person planning and carrying out the commissioning of upstream petroleum infrastructure. This is necessary because that person may not be the owner of such infrastructure and would not fall within *subsection (3)*.

248. New section 9D places a duty on the Secretary of State to lay before Parliament a report at the end of each reporting period on the extent to which relevant persons have acted in accordance with the strategy. This is the sanction for breach of the obligations in the new provision of the Petroleum Act 1998 inserted by this section.

249. New section 9F makes provision in respect of the production and revision of the strategy by the Secretary of State. In particular, the first strategy must be produced within one year of this provision coming into force. New section 9G sets out the procedure that must be followed by the Secretary of State in producing and revising the strategy.

Section 42: Levy on holders of certain energy industry licences and Schedule 7: The Licensing Levy

250. Section 42 provides the Secretary of State with a power to raise a levy from the holders of certain energy industry licences.

251. *Subsection (1)* provides for the Secretary of State to impose a levy on persons holding licences for the exploitation of petroleum, the unloading and storing of gas and the storage of carbon dioxide.

252. *Subsection (3)* provides that the amount of levy must not exceed the costs incurred by the Secretary of State in carrying out relevant functions (these are set out in *subsection (5)*). The levy cannot be used to recover costs in respect of areas in which a charge is payable under the Gas and Petroleum (Consents) Charges Regulations 2013 as those provisions stand when this provision comes into force.

253. Schedule 7 contains illustrations of the way in which the levy power can be used.

Petroleum and geothermal energy in deep-level land

254. In May 2014, the Government published a consultation on the proposal to change the process by which companies obtain underground access to petroleum and deep geothermal energy resources. Following the responses to the consultation, which closed in August 2014, the Government published its own response in September 2014 setting out the proposals to introduce a right to use deep-level land for certain purposes.

255. At present, a company drilling for petroleum or deep geothermal energy must reach agreements with landowners to obtain rights of access, even where works will only take place far below the surface. If a company cannot obtain a right of access from the landowners or, in the case of petroleum, be granted ancillary rights by the court, then the company cannot carry out works in that land. It is therefore proposed that, where a company seeks to carry out works at such depths that it would not affect a landowner's use of the land, there should be a statutory right to use the land.

256. Both the petroleum and deep geothermal industries have made voluntary commitments to notify local communities and make payments in connection with the right to use deep-level land. If the Secretary of State is not satisfied in practice with the commitments made by either of the industries, then he may introduce regulations to set up one or both of a statutory payment or notification mechanism.

Section 43: Petroleum and geothermal energy: right to use deep-level land

257. *Subsection (1)* provides for a right to use deep-level land for the purpose of exploiting petroleum or deep geothermal energy.

258. The right of use is only applicable to land that is deep-level land within a landward area (*subsection (2)*). *Subsection (3)* clarifies that deep-level land within a landward area may still be used to exploit petroleum or deep geothermal outside a landward area. It is therefore possible, for example, for a person to benefit from the right of use when drilling from a point onshore into a resource offshore, although the right will not extend to works that are not within a landward area and are not in deep-level land.

259. *Subsection (4)* defines deep-level as any land at a depth of at least 300 metres below the surface.

Section 44: Further provision about the right of use

260. Section 44 further identifies the scope of the right of use of deep-level land.

261. *Subsection (1)* lists some of the ways in which the right of use may be exercised, some of which include drilling, boring and fracturing; the installation, keeping, use and removal of infrastructure; and putting any substance into deep-level land and subsequently removing it. This allows, for example, for a company to drill and use a well in deep-level land for the purposes of exploiting petroleum or deep geothermal energy, pass substances through that well and remove any substances that are put into it.

262. *Subsection (2)* lists some of the purposes for which the right of use may be exercised, including searching for petroleum or deep geothermal energy, assessing the feasibility of exploitation, and preparing for exploitation and decommissioning.

263. *Subsection (3)* clarifies that the right of use allows land to be left in a different state than it was before.

264. *Subsection (4)* limits the effect of the right of use so that it is no different to a right granted by a person, such as a landowner, who is legally entitled to grant such a right. As a result, companies benefitting from the right must still comply with all other regimes governing petroleum and deep geothermal activities, such as the need to obtain all necessary planning permissions and environmental permits, and the need to comply with statute law relating to control of pollution.

265. *Subsection (5)* excludes a person who owns land from being liable in tort for any loss or damage that happens as a result of the exercise of the right of use of deep-level land. In accordance with Schedule 1 of the Interpretation Act 1978, "land" includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land. Provided that an owner of land would not ultimately have to bear any of the costs associated with the acts identified in the section, an owner of land may nevertheless be liable if the loss or damage is attributable to a deliberate omission on their part as owner of the land.

266. Sections 43 and 44 bind the Crown under *subsection (6)*. This means, for example, that the right of use can be exercised in relation to land that belongs to the Crown.

Section 45: Payment scheme

267. *Subsection (1)* confers a power on the Secretary of State to make regulations requiring companies to make payments in return for the right of use.

268. *Subsection (2)* sets out to whom the Secretary of State can require payments to be made, and *subsection (3)* allows the Secretary of State to specify the amount of the payments or provide a mechanism for determining the payment amounts. *Subsection (4)* states that the regulations may require energy companies to provide specific information on the right of use and payments to the Secretary of State or to any other specified person.

269. The Secretary of State must consult with appropriate persons before making any regulations under Section 45 *(subsection (5)*).

Section 46: Notice scheme

270. Section 46 confers a power on the Secretary of State to make regulations requiring energy companies to notify others of the right of use, before or after it is exercised.

271. *Subsection (2)* allows for the regulations to specify the people to whom notice should be given to require the display and publication of the notice. *Subsection (3)* provides that the regulations may make provisions on the content of the notice, including information on payment schemes available, their application and method for obtaining a payment. *Subsection (4)* provides that the regulations may specify how the notice is given which could, for example, be by display and publication at specified places or in specified publications. *Subsection (5)* specifies that the regulations may require energy companies to provide the Secretary of State or another specified person with information about the company's exercise of the right of use and notifications made by the company.

272. The Secretary of State must consult with appropriate persons before making any regulations under Section 46 *(subsection (6)*).

273. *Subsection (7)* defines "payment scheme regulations".

Section 47: Payment and notice schemes: supplementary provision

274. Section 47 provides for supplementary provisions relating to the payment and notice schemes regulations under sections 45 and 46 including, in accordance with *subsection (1)*, the imposition of financial penalties.

275. *Subsection (2)* allows for the regulations to confer a function on the Secretary of State or to any other person, apart from Welsh Ministers. *Subsection (3)* lists examples of the kinds of functions that may be imposed.

276. Some of the provisions in sections 45, 46, and 47 state that particular kinds of provisions may be made in regulations made under sections 46 and 47. *Subsection (4)* states that where this is the case, those provisions in sections 45, 46, and 47, do not limit the powers to make the necessary regulations.

277. In accordance with the principles of better regulation, *subsection (5)* requires a review of sections 45 and 46 five years after the provisions have come into force. *Subsection (6)* stipulates that the Secretary of State must repeal sections 45 and 46 and make any appropriate consequential amendments if the relevant conditions as defined by *subsection (7)* are met. *Subsection (7)* defines the relevant conditions as a delegated power not being exercised within seven years and the Secretary of State being satisfied there is no convincing case for retaining it. This ensures that the powers and related provisions will not remain on the statute book if they become unnecessary or redundant.

Section 48: Interpretation

278. Section 48 provides for the relevant definitions and interpretation of the sections about the right of use.

279. *Subsection (1)* specifies that the 300m depth limit applies from the surface, which is measured vertically above the point where works take place. Buildings, other structures, and water are not taken into account when determining the location of the surface.

Subsection (2) provides definitions of "deep geothermal energy", "deep-level land", "landward area", "relevant energy undertaking", "right of use", "specified" and "substance". For the purpose of these sections "landward area" is defined as parts of landward area in England and Wales or beneath water (other than waters adjacent to Scotland).

280. *Subsection (3)* provides that the Secretary of State may make regulations under section 4 of the Petroleum Act 1998 to amend the definition of "landward area" for the purposes of these sections.

Section 49: Advice on likely impact of onshore petroleum on the carbon budget

281. *Subsection (1)* requires the Secretary of State to seek advice from the Committee on Climate Change (CCC) from time to time on the likely impact of the combustion of, and fugitive emissions from, onshore petroleum activities and the UK's ability to (a) meet the net UK carbon target for 2050 and (b) not exceed the carbon budget.

282. *Subsection (2)* sets out that the Secretary of State must lay before Parliament (a) a copy of the CCC advice and (b) a draft of regulations or a report as specified under *subsections (3)* and *(5)* as soon as practicable after each reporting period (i.e. the period ending 1 April 2016 and each subsequent period of 5 years).

283. *Subsection (3)* allows the Secretary of State to provide for the right to use deep-level land in *section 43* to cease to have effect as specified by regulations. *Subsection (4)* clarifies that no such regulations can apply retrospectively to anything done in exercise of the right of use conferred by *section 38* before the regulations comes into force. As an alternative to *subsection (3)*, *subsection (5)* provides for the Secretary of State to submit to Parliament a report explaining why a draft of such regulations has not been laid. *Subsection (6)* sets out that regulations under section 49 may also make consequential amendments or repeals of sections 43 to 48 and section 49 as appropriate.

284. *Subsection (7)* contains the definitions of "CCA 2008", "petroleum got through onshore activity, petroleum" and "reporting period".

Section 50: Onshore hydraulic fracturing: safeguards

285. *Section 50* inserts two new sections into the Petroleum Act 1998 after Clause 4. As this relates to the petroleum licensing regime, geothermal activities are excluded from this *section 50*. *Section 4A "Onshore hydraulic fracturing: safeguards"* sets out conditions for a well consent that is required by an onshore licence for England and Wales in relation to hydraulic fracturing.

286. *Subsection (1)* requires that the Secretary of State must not issue a consent to drill a well unless that well consent contains conditions (a) prohibiting associated hydraulic fracturing at a depth of less than 1000 metres and (b) requiring a hydraulic fracturing consent for associated hydraulic fracturing at a depth of 1000 metres and below. *Subsection (2)* clarifies that the licensee, or a person on behalf of the licensee, must apply for such a hydraulic fracturing consent.

287. *Subsection (3)* provides that a hydraulic fracturing consent will not be issued unless the Secretary of State is satisfied that the conditions (a) in column 1 of the table in *subsection (5)* and (b) in *subsection (6)* are met. The Secretary of State must also be satisfied that it is appropriate to issue the consent. *Subsection (4)* refers to the documents listed in the same table on which the Secretary of State may rely on to be satisfied that the conditions have been met. However, *subsection (5)* clarifies that the absence of these documents does not prevent the Secretary of State from being satisfied that the conditions have been met; provided that, in accordance with *subsection (3)*, the Secretary of State is satisfied that the conditions are indeed met he may grant a hydraulic fracturing consent.

288. The table lists eleven conditions (column 1) and corresponding documents that may be considered to be sufficient for the Secretary of State to be satisfied that the conditions have been met (column 2). The conditions relate to: the environmental impact of a development, independent well inspections, monitoring of methane in groundwater, monitoring of methane emissions, banning hydraulic fracturing within protected groundwater source areas and other protected areas, consideration of cumulative effects, regulatory approval of substances used, restoration conditions, consultation of relevant (i.e. water and sewage) undertakers, and public notification. The Secretary of State is not limited to relying on the documents listed in column 2 and may instead rely on alternative documents in determining whether the conditions have been met.

289. *Subsection (6)* sets out further conditions to the issuing of a hydraulic fracturing consent, requiring arrangements to be in place for publication of the results of methane emissions reporting and the existence of a scheme to provide financial or other benefit for the local area.

290. *Subsection (7)* allows for the hydraulic fracturing consent to be issued subject to any conditions considered appropriate by the Secretary of State, while subsection (8) clarifies that a breach of a condition is considered a breach of the well consent.

291. *Section 4B "Section 4A: supplementary provision"* contains further definitions and clarifications. "Associated hydraulic fracturing" is defined in *subsection (1)* and *subsection (2)* sets out the mechanism for determining the depth at which associated hydraulic fracturing takes place. *Subsection (3)* provides that *subsections (1)* and *(2)* apply to both section 4A and 4B.

292. *Subsection (4)* requires the Secretary of State to specify by regulations the meaning of "protected groundwater source areas" and "other protected areas". *Subsection (5)* makes these regulations subject to the affirmative resolution procedure and *subsection (6)* stipulates that a draft of these regulations must be laid before Parliament on or before 31 July 2015. *Subsection (7)* requires the Secretary of State to consult the Environment Agency for England and the Natural Resources Body for Wales before making any regulations on the definition of "protected groundwater source areas" in England and Wales respectively.

293. *Subsection (8)* contains various definitions, including the meanings of "hydraulic fracturing consent", "onshore licence for England and Wales" and "well consent". *Subsection (9)* provides the Secretary of State with the power to amend the definition of "onshore licence for England and Wales" as appropriate under regulations made under section 4 of the Petroleum Act 1998. *Subsection (10)* allows the Secretary of State to amend column 2 of the table in 4A and make any consequential amendments

to *section 4A*. In accordance with *subsection (11)* any such regulations must be subject to the affirmative procedure.

Renewable Heat Incentives

Section 51: Renewable Heat Incentives

294. *Subsections (1)-(4)* amend section 100 of the Energy Act 2008, which contains a power to make regulations establishing schemes to facilitate and encourage renewable generation of heat.

295. *Subsection (2)* inserts new *subsections* (1A) and (1B) into section 100, allowing for regulations made under the section to confer functions on any person (and for that function to be exercisable on behalf of another person). Along with the amendments made by *subsection (3)*, this means that regulations can now appoint and give functions in the regulations to any person or persons to administer the schemes, whereas previously these roles were limited to the Secretary of State or the Gas and Electricity Markets Authority ("the Authority").

296. *Subsection (3)(a) and (c)* amend *subsection (2)* of section 100 to allow for regulations to cater for the assignment of payments under schemes. *Subsection (3)(a)* amends section 100(2)(a) so that that paragraph now sets out the power to provide in regulations for an entitlement to receive payments, and not additionally an obligation to make those payments. The amendment does not change who is entitled to receive payments. This remains as the owner of a renewable heat installation; the producer of biogas or biomethane; or the producer of biofuel for the generation of heat.

297. *Subsection (3)(c)* inserts new paragraphs (ba) and (bb) into *subsection (2)* of section 100. The new (ba) specifies that regulations can make provision about the circumstances in which, and descriptions of persons to whom, the whole or a part of an entitlement to payments under the schemes may be assigned. The new (bb) replaces the wording that was in (a), and allows for the regulations to provide for payments to be made (by the Secretary of State, the Authority, any other person administering a scheme or a designated fossil fuel supplier) to persons entitled to receive payments, or to whom those entitlements have been assigned. This could allow, for example, the owner of a heat generating installation to assign his payments to a person providing finance for the installation and for payments to be made directly to that person. Paragraphs (b) and (d) of *subsection (3)* make consequential amendment because of the new defined term "RHI payment" introduced in paragraph (a).

298. *Subsection (3)(e)* substitutes paragraph (d) of section 100(2) so that regulations can authorise or require a person to provide specified information. This could be used in the context of changes to the arrangements for the administration of the scheme, such as providing for information flows between these administrators.

299. *Subsections (3)(f) to (h)* make amendments to section 100 as a consequence of the new *subsection (1A)*.

300. *Subsection (3)(i)* inserts two new paragraphs into *subsection (2)* of section 100. The new paragraph (j) means that regulations can authorise the Secretary of State to make payments to any person with respect to administration of the RHI schemes. The new paragraph (k) makes clear that the regulations can include provision about the resolution of disputes including by arbitration or appeal. This could allow for the regulations to include a right of appeal to a court or tribunal. The paragraph makes clear that an appeal or arbitration could result in an order for the payment of costs or compensation.

301. *Subsection (4)* amends *subsection (3)* of section 100 to include a definition of "other administrative function" within the new paragraph (bb).

302. *Subsection (5)* to *(8)* introduce changes to the Parliamentary control of RHI subordinate legislation contained in section 105 of the Energy Act 2008.

303. *Subsection (6)(a)* omits section 105(2)(a)(vi) and thereby removes the existing requirement that all regulations under section 100 are subject to the affirmative resolution procedure.

304. *Subsection (6)(b)* inserts a new paragraph (ab) in *subsection (2)* of section 105 setting out that renewable heat incentive regulations made under section 100 will be subject to the affirmative resolution process if they contain 'affirmative resolution provision', which is defined in the new *subsections* (3A) to (3I) in section 105 inserted by *subsection (8)*.

305. The new *subsection (3A)* defines affirmative resolution provision as provision made under a power which always attracts the affirmative resolution procedure (described in new *subsection (3B)*), or which is not made under one of those powers and meets any of the conditions A to D described in new *subsections* (3C) to (3F).

306. The new *subsection (3B)* ensures that use of the following powers will always be subject to the affirmative procedure:

- Section 100(2)(c), (e), (f), (g), (h) or (k) which cover enforcement, sanctions and appeals, and levies on fossil fuel suppliers;
- Section 100(5) which allows for regulations to amend the definitions of biomass or biogas in *subsection (3)* and the list of sources of energy and technologies in *subsection (4)* of section 100; and
- Section 100(6) which allows for provision in regulations to be made, for the purposes of *subsection (2)(a)(iii)* and the definition of "fossil fuel supplier", specifying that particular activities do or do not constitute generating heat.

307. The new *subsection (3C)* contains condition A. This ensures that where provision is made under section 100(2)(bb) for RHI payments to be made by fossil fuel suppliers, the affirmative procedure is used.

308. The new *subsection (3D)* contains condition B. This ensures that the first provision in each RHI scheme which confers an administration function on someone other than the Secretary of State or the Authority will be subject to the affirmative resolution procedure.

309. The new *subsection (3E)* contains condition C, which only applies to the two RHI schemes which are in existence when the *subsection* comes into force. This ensures that the first provision in each of those RHI schemes, which is made under section 100(2)(ba) or (bb)(ii) – and which concern the assignment of the entitlement to RHI payments, and the payment of such assigned payments – will be subject to the affirmative resolution procedure.

310. The new *subsection (3F)* contains condition D, which only applies to new RHI schemes made after the *subsection* comes into force. This ensures that the first use of each of paragraphs (a) (entitlement to RHI payments), (b) (calculation of payments), (ba) (assignment of entitlement), (bb) (requirements to pay), (d) (provision of information) or (j) (making payments to administrators) of section 100(2) in each such RHI scheme is subject to the affirmative resolution procedure.

311. The new *subsection (3G)* ensures that payment functions conferred on a fossil fuel supplier will not count as administrative functions conferred on someone other than the Secretary of State or the Authority for the purposes of condition B.

312. The new *subsection (3H)* provides that a provision made under any of the powers listed in (3A) to (3F) is still counted for the purposes of those subsections as being made under the power, even if it is also made under section 100(1), (1A) or (1B).

313. The new *subsection (3I)* defines the terms: administration function; designated fossil fuel supplier; payment function; and RHI scheme for use within new *subsections (3B) to (3H).*

314. *Subsection (9)* amends section 105 of the Utilities Act 2000. That section contains restrictions on the disclosure of information, including information gained through an RHI scheme. The new provision inserted as paragraph (aa) in *subsection (3)* of section 105 exempts from the restriction on disclosure any disclosure made for the purpose of facilitating the functions of any person under section 100 of the Energy Act 2008.

Reimbursement of persons who have met expenses of making connections

315. The Electricity Act 1989 ("the 1989 Act") provides a power in section 19 (Power to recover expenditure) for the Secretary of State to make regulations which allow for the sharing of costs among persons requiring electricity connections to a distribution network. The Secretary of State may enable or require electricity distributors to obtain so-called "second comer" payments from persons who benefit from an electricity connection paid for by a previous person (the "first comer") and for any payments received to be re-distributed to earlier contributors (such as the first comer).

316. The power in section 19(2) and (3) of the 1989 Act only applies to connections made by licensed distribution network operators. It therefore excludes independent connection providers (ICPs) which now compete with distribution network operators (DNOs) and independent distribution network operators (IDNOs) in the connections market. This can put ICPs at a disadvantage since a customer may be deterred from contracting with them to provide a connection, on the basis that they would not be able to recover a proportion of the cost from later connectees (i.e. the "second comer").

317. The provision on reimbursement of persons who have met expenses of making electrical connections in section 47 replaces the power at section 19(2) and (3) of the 1989 Act with a broader power to allow or require the recovery of second comer payments regardless of whether a DNO, IDNO or ICP made the first or second connection. It also amends the power at section 23 (Determination of disputes) of the Gas and Electricity Markets Authority ("GEMA") to determine disputes relating to connections and makes consequential amendments to sections 16 (Duty to connect on request) and 16A (Procedure for requiring a connection) of the 1989 Act.

318. The power allows the Secretary of State to provide for various matters in the regulations, which include placing a requirement on electricity distributors to seek and allocate payments from second comer. It also allows for distributors to estimate the cost of connections which they did not themselves make by reference to what it would have cost them and changes in prices since the connection was made.

Section 52: Reimbursement of persons who have met expenses of making electrical connections

319. *Subsections (1), (2) and (3)* amend section 19 of the 1989 Act by removing subsections (2) and (3) and replacing them with new Schedule 5B.

320. *Subsections (4) and (5)* make consequential amendments to sections 16 and 16A of the 1989 Act.

321. *Subsection (6)* amends section 23 of the 1989 Act by inserting a new subsection to enable GEMA to determine disputes relating to the exercise of the reimbursement powers set out in Schedule 5B. It also makes consequential amendments to the remainder of section 23.

Schedule 5B
Power to make regulations

322. *Paragraph 1* confers a power on the Secretary of State to make regulations enabling electricity distributors to exercise the reimbursement powers where conditions A to D as set out are met. Condition A is met where an electricity connection (the "first connection") is made between premises and a distribution system or between two distribution systems. Condition B is met if a payment has been made towards the cost of the first connection by the person who required the connection or caused it to be made. Conditions C and D are met where a second connection is made using electric line or plant provided for the first connection within a period prescribed in the regulations.

323. *Paragraph 1(6)* defines "first connection expenses" as those reasonably incurred by a person in providing electric line or plant to make the connection (including the capitalised value of maintaining it).

324. *Paragraph 1(7)* makes clear that it does not matter whether the first connection or second connection is made by an electricity distributor or a person of another description, thereby bringing ICPs within the scope of the power.

The reimbursement powers

325. *Paragraph 2(1)* defines the reimbursement powers as the power to require a reimbursement payment from a person who requires or otherwise causes a second connection to be made and the power to apply such a payment to reimburse anyone who was required to contribute to the cost of the first connection.

326. *Paragraph 2(2)* sets out that a reimbursement payment is a payment towards the cost of a first connection of an amount which is reasonable in all the circumstances.

Other provisions about the regulations under this Schedule

327. *Paragraph 3(1)* imposes a duty on the Secretary of State to consult GEMA before making regulations under this Schedule.

328. *Paragraph 3(2)* allows regulations requiring relevant electricity distributors to exercise a reimbursement power and thus collect and allocate reimbursement payments.

329. *Paragraph 3(3)* allows a relevant electricity distributor to estimate the cost of a first connection in situations where the electricity distributor did not make that connection. This situation arises where an ICP makes the first connection to a distribution network on behalf of its customer.

330. *Paragraph 3(4)* ensures that an ICP (or other person who has made a connection in respect of which a reimbursement payment is due) may not be required to share its cost information with a relevant electricity distributor.

331. *Paragraph 3(5)* allows a relevant electricity distributor to estimate the costs of the ICP (or other person who has made a connection in respect of which a reimbursement payment is due) by reference to its own costing methodology and changes in prices.

Interpretation

332. *Paragraph 4(1) and (2)* defines the terms "first connection", "first connection expenses", "payment in respect of first connection expenses", "reimbursement payment" and "reimbursement powers" by reference to the paragraphs of the Schedule where they appear. It also defines "relevant electricity distributor" as the distributor who operates the distribution system into which a new connection is made.

Section 53: Consequential provision

333. Section 53 gives a power to make consequential provision in connection with any provision under Part 5 of the Act, other than section 40 (Extractive Industries Transparency Initiative).

Part 7 Public Works Loan Commissioners

Section 54: Power to abolish Public Works Loan Commissioners

334. The Public Works Loan Board is a statutory body which dates back to the Public Works Loan Act 1875 and issues central governments loans to mainly local authorities in England, Scotland and Wales. It comprises twelve loan commissioners, with day to day operations carried out by the Debt Management Office which is an executive agency of HM Treasury.

335. Section 54 will include the Public Works Loan Board in Schedule 1 to the Public Bodies Act 2011 (PBA) and will allow the Government to make an order under the PBA, following a statutory consultation in the future as required under the PBA, which would abolish the PWLB and transfer its functions to another body. This will be subject to the affirmative resolution procedure set out in the PBA.