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SCHEDULES

VALID FROM 05/03/2015

SCHEDULE 1

Section 1

STRATEGIC HIGHWAYS COMPANIES: CONSEQUENTIAL AND SUPPLEMENTAL AMENDMENTS
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VALID FROM 05/03/2015

SCHEDULE 2

Section 3

ROAD INVESTMENT STRATEGY: PROCEDURE

PART 1

SETTING A ROAD INVESTMENT STRATEGY

Introductory

- 1 (1) This Part specifies the procedure by which a Road Investment Strategy is set.
- (2) It does not apply to the first Road Investment Strategy under section 3 where it is published and laid before Parliament by the Secretary of State within a year of that section coming into force.

Step 1: the Secretary of State's proposals

- 2 (1) The Secretary of State must provide a strategic highways company with proposals for a Road Investment Strategy.
- (2) The proposals must include details of—
- (a) the objectives to be achieved by the company,
 - (b) the financial resources to be provided by the Secretary of State for the purpose of achieving those objectives, and
 - (c) the period to which the proposals relate.
- (3) The Secretary of State must—
- (a) specify a date before which the company is to respond, and
 - (b) provide the company with—

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- (i) a statement of his or her general strategy in respect of highways for which the company is the highway authority, and
- (ii) such other information in support of the proposals as the Secretary of State considers appropriate.

Step 2: the strategic highways company's response

- 3 (1) Having been provided with proposals under paragraph 2, the strategic highways company must respond to the Secretary of State—
- (a) agreeing to the proposals, or
 - (b) making counter-proposals.
- (2) The company must respond before the date specified by the Secretary of State in accordance with paragraph 2(3)(a).

Step 3: where the strategic highways company has agreed to the proposals

- 4 (1) Where the strategic highways company has agreed to proposals under paragraph 2, the Secretary of State may publish those proposals as the Road Investment Strategy.
- (2) The Secretary of State may only publish proposals under sub-paragraph (1) if satisfied that appropriate consultation has taken place.
- (3) Publication under sub-paragraph (1) may be in such manner as the Secretary of State considers appropriate.

Step 4: where the strategic highways company has made counter-proposals or failed to respond

- 5 (1) Where the strategic highways company has made counter-proposals to the Secretary of State's proposals under paragraph 3, or has failed to respond before the date specified, the Secretary of State may—
- (a) provide the company with revised proposals under paragraph 2, or
 - (b) publish as the Road Investment Strategy—
 - (i) the Secretary of State's proposals, or
 - (ii) the company's counter-proposals.
- (2) The Secretary of State may only publish proposals under sub-paragraph (1)(b) if satisfied that appropriate consultation has taken place.
- (3) Publication under sub-paragraph (1)(b) may be in such manner as the Secretary of State considers appropriate.

PART 2

VARYING A ROAD INVESTMENT STRATEGY

- 6 (1) This paragraph applies where the Secretary of State is considering varying a Road Investment Strategy.
- (2) Paragraphs 2 to 5 apply to proposals for a varied Road Investment Strategy as they apply to proposals for a Road Investment Strategy.

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- (3) In performing their functions under this Part of this Schedule, the Secretary of State and the strategic highways company must have regard to the desirability of maintaining certainty and stability in respect of Road Investment Strategies.

VALID FROM 05/03/2015

SCHEDULE 3

Section 15

TRANSFER SCHEMES

Application and commencement of scheme

- 1 (1) The property, rights and liabilities to be transferred may be specified or described by a scheme.
- (2) A scheme comes into force on the date it appoints.

Property, rights and liabilities that may be transferred

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned;
 - (b) property acquired in the period after the making of the scheme and before it comes into force;
 - (c) rights and liabilities arising in that period;
 - (d) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force;
 - (e) rights and liabilities under an enactment or EU instrument.
- (2) A scheme may provide that transfers are to take effect irrespective of—
- (a) any requirement to obtain a person's consent or concurrence,
 - (b) any liability in respect of a contravention of another requirement, or
 - (c) any interference with an interest or right,
- which would otherwise apply.
- (3) Sub-paragraph (4) applies where a person would otherwise be entitled, in consequence of anything done, or likely to be done, in connection with a scheme—
- (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject, or
 - (b) to treat such an interest or right as modified or terminated.
- (4) That entitlement is enforceable in relation to the interest or right—
- (a) in consequence of what is done or likely to be done, and
 - (b) in corresponding circumstances arising after the transfer,
- to the extent only that the scheme provides for it to be so enforceable.

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Dividing and modifying transferor's property, rights and liabilities

- 3 (1) A scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in, or in relation to, property to be transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in, or in relation to, property to be retained by a transferor;
 - (c) for the creation of new rights and liabilities, including rights of indemnity and duties to indemnify, as between a transferee and a transferor.
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between—
- (a) different transferees, or
 - (b) a transferee and a transferor.
- (3) A scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against—
 - (i) more than one transferee, or
 - (ii) both the transferee and the transferor, and
 - (b) for rights and liabilities enforceable against more than one of those people to be enforceable in different or modified respects by or against each or any of them.
- (4) A scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) Paragraph 2(2) applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights.

Obligation to effect transfers etc under a scheme

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation—
- (a) to enter into such agreements with another person on whom a corresponding obligation is, could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or
 - (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) That other person may enforce an obligation imposed on a transferor or a transferee by virtue of sub-paragraph (1) in civil proceedings.

Effect of scheme

- 5 (1) Where a scheme provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—

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- (a) the property or interests, rights or liabilities vest, without further assurance, in the transferee at that time, and
 - (b) the provisions of that scheme in relation to that property or those interests, rights or liabilities have effect from the time when the scheme comes into force.
- (2) Sub-paragraph (1) is subject to provision under a scheme for—
- (a) the transfer of property, rights or liabilities, or
 - (b) the creation of interests, rights and liabilities,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) A certificate issued by the Secretary of State that any property, rights or liabilities have been transferred under a scheme is conclusive evidence of the transfer.

Powers and duties under statutory provisions

- 6
- (1) A scheme may make provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to a transferee,
 - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees, or
 - (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee.
- (2) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon a transferor by or under an enactment so far as they relate to—
- (a) property to be transferred in accordance with the scheme,
 - (b) carrying out works designed to be used in connection with such property, or
 - (c) acquiring land for the purpose of carrying out such works.
- (3) This paragraph does not require a restrictive construction to be given to what may be transferred by virtue of paragraph 2(1)(e).

Supplementary provisions of schemes

- 7
- (1) A scheme may—
- (a) make such incidental, supplemental, consequential and transitional provision in connection with the scheme as the Secretary of State thinks fit;
 - (b) make different provision for different cases.
- (2) In particular, a scheme may make provision—
- (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee;
 - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme;

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(d) for proceedings commenced by or against the transferor to be continued by or against the transferee.

(3) Sub-paragraph (2)(c) does not apply to references in an enactment.

Modification of a scheme by agreement

8 (1) Where the transferor and transferee under a scheme that has come into force so agree, the scheme is to be treated for all purposes as having come into force with such modifications as may be agreed.

(2) An agreement under this paragraph which relates to rights and liabilities under a contract of employment may be entered into only if the employee is a party to the agreement.

(3) An agreement under this paragraph that adversely affects the property or rights of a person other than the transferor, the transferee or such an employee may be entered into only if that person is a party to the agreement.

(4) An agreement under this paragraph may include—

(a) any provision that could have been contained in the scheme;

(b) incidental, supplemental, consequential and transitional provision in connection with any such provision.

Continuity of employment etc

9 (1) Where in accordance with a scheme a person employed by a transferor becomes an employee of a transferee—

(a) that person is not to be regarded for the purposes of Part 11 (redundancy payments etc) of the Employment Rights Act 1996 as having been dismissed by virtue of the transfer,

(b) that person's period of employment with the transferor counts for the purposes of that Act as a period of employment with the transferee, and

(c) the change of employment does not break the continuity of the period of employment for the purposes of that Act.

(2) Where in accordance with a scheme a person employed by a transferor becomes an employee of a transferee, the scheme must provide for the transfer of all the rights and liabilities relating to the person's contract of employment.

(3) Where a transfer scheme contains provision for the transfer of rights and liabilities relating to a person's contract of employment but, before the transfer takes effect, the person informs the transferor or the transferee that the person objects to the transfer—

(a) those rights and liabilities are not transferred under the transfer scheme,

(b) the person's contract of employment is terminated immediately before the day on which the transfer would occur, and

(c) the person is not, for any purpose, to be regarded as having been dismissed.

(4) Nothing in sub-paragraph (3) affects the person's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the person's detriment in the person's working conditions.

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- (5) No damages are payable by virtue of a constructive dismissal occurring under subparagraph (4) in respect of unpaid wages relating to a notice period which the employee has not worked.
- (6) Where a transfer scheme contains provision for the transfer of rights and liabilities relating to a person's contract of employment, it may include provision with respect to—
 - (a) the person's eligibility to become a member of a pension scheme by virtue of employment with the transferee;
 - (b) the rights of, or rights or liabilities in respect of, the person under a pension scheme of which the person may become a member by virtue of employment with the transferee;
 - (c) the rights of, or rights or liabilities in respect of, the person under a pension scheme of which the person is a member by virtue of employment immediately before the transfer.

Compensation for third parties

- 10 (1) A third party is entitled to compensation in respect of the extinguishment of that party's entitlement where—
 - (a) the entitlement is to an interest or right which would, apart from a provision of a scheme and paragraph 2(3) and (4), have become enforceable in respect of the transfer or creation of any property, rights or liabilities in accordance with the scheme,
 - (b) the provisions of that scheme or of paragraph 2(3) and (4) have the effect of preventing that party's entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and
 - (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides.
- (2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to do so, that the third party does not suffer financial loss from the extinguishment of the entitlement.
- (3) A liability to pay compensation under this paragraph falls on the Secretary of State.
- (4) This paragraph has effect in relation to—
 - (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme, and
 - (b) the provisions of an agreement under paragraph 8 relating to property, rights or liabilities transferred or created in accordance with a scheme,as it has effect in relation to the scheme but as if, in the case of an agreement under paragraph 8, only persons who are not parties to the agreement were third parties.

Provision of information to Secretary of State for the purposes of making a scheme

- 11 (1) The Secretary of State may direct a strategic highways company, or a former strategic highways company, to provide such information as he or she may consider necessary for the purposes of making a scheme.

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- (2) The direction must specify the period within which the information is to be provided.
- (3) The period specified in the direction must be not less than 28 days beginning with the day on which the direction is given.
- (4) If the company fails to comply with the direction, the Secretary of State may serve a notice on the company requiring—
 - (a) production to the Secretary of State of any documents which are specified or described in the notice and are in the custody or under the control of that company, or
 - (b) provision to the Secretary of State of such information as may be specified or described in the notice.
- (5) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice.
- (6) A direction or notice under this paragraph may not require—
 - (a) production of a document which a person could not be compelled to produce in civil proceedings, or
 - (b) provision of information which a person could not be compelled to give in evidence in such proceedings.
- (7) If a strategic highways company fails to comply with a notice under sub-paragraph (4), the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
- (8) Any order under sub-paragraph (7) may include provision requiring all the costs or expenses of, or incidental to, the application to be borne by one or more of the following—
 - (a) the strategic highways company in default;
 - (b) any officers of that company who are responsible for its default.
- (9) In this paragraph, reference to the production of a document includes reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

Interpretation

- 12 (1) In this Schedule—
- “third party”, in relation to a scheme, means a person other than a transferor and a transferee;
- “transferee”—
- (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme, and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person—
 - (i) to whom that property or those rights or liabilities are transferred, or
 - (ii) in whose favour, or in relation to whom, they are created;
- “transferor”—

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- (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme, and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person—
 - (i) from whom that property or those rights or liabilities are transferred,
 - (ii) who, or whose property, is subject to the interest or right created, or
 - (iii) for whose benefit the liability is created;
- “scheme” means a scheme under section 15.
- (2) In this Schedule, reference to employment includes reference to employment in the civil service of the State and, in respect of such employment—
- (a) reference to a contract of employment is to be treated as a reference to the terms of employment in the civil service of the State, and
 - (b) reference to a dismissal is to be treated as a reference to the termination of the employment.
- (3) References in this Schedule—
- (a) to a right or to an entitlement to a right include references to an entitlement to exercise a right, and
 - (b) to a right's arising include references to its becoming exercisable.

SCHEDULE 4

Section 30

MAYORAL DEVELOPMENT ORDERS

PART 1

MAIN AMENDMENTS

- 1 After section 61D of the Town and Country Planning Act 1990 insert—

“Mayoral development orders

61DA Mayoral development orders

- (1) The Mayor of London may by order (a Mayoral development order) grant planning permission for development specified in the order on one or more sites specified in the order.
- (2) The site or sites must fall within—
 - (a) the area of a local planning authority in Greater London, or
 - (b) the areas of two or more local planning authorities in Greater London.
- (3) The Secretary of State may by development order specify an area or class of development in respect of which a Mayoral development order must not be made.

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61DB Permission granted by Mayoral development order

- (1) Planning permission granted by a Mayoral development order may be granted—
 - (a) unconditionally, or
 - (b) subject to such conditions or limitations as are specified in the order.
- (2) A condition imposed by a Mayoral development order may provide for the consent, agreement or approval to a matter specified in the condition to be given by one or more persons specified in the condition.
- (3) A person specified in a condition must be the Mayor of London or a relevant local planning authority.
- (4) The Secretary of State may by development order provide that, if the consent, agreement or approval of a person required by a condition imposed by a Mayoral development order is not given within a specified period, that consent, agreement or approval may be sought from a specified person.
- (5) In subsection (4) “specified” means specified, or of a description specified, in the development order.
- (6) The Secretary of State may by development order make provision for a person to apply for planning permission for the development of land without complying with a condition imposed on the grant of planning permission by a Mayoral development order.
- (7) A development order under subsection (6) may, in particular make provision similar to that made by section 73, subject to such modifications as the Secretary of State thinks appropriate.
- (8) So far as the context requires, in relation to—
 - (a) an application for the consent, agreement or approval of the Mayor of London to a matter specified in a condition imposed by a Mayoral development order, or
 - (b) the determination of such an application,
 any reference in an enactment to a local planning authority (however expressed) includes a reference to the Mayor.
- (9) For the purposes of this Act a local planning authority is a relevant local planning authority in relation to a Mayoral development order or proposed Mayoral development order if a site or part of a site to which the order or proposed order relates is within the authority's area.

61DC Preparation and making of Mayoral development order

- (1) The Secretary of State may by development order make provision about the procedure for the preparation and making of a Mayoral development order.
- (2) A development order under subsection (1) may in particular make provision about—
 - (a) notice, publicity and inspection by the public;
 - (b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;

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- (c) the making and consideration of representations.
- (3) A Mayoral development order may be made only in response to an application to the Mayor of London by each relevant local planning authority.
- (4) A proposed Mayoral development order may be consulted on only with the consent of each relevant local planning authority.
- (5) A Mayoral development order may not be made unless the order has been approved, in the form in which it is made, by each relevant local planning authority.
- (6) If the Mayor of London makes a Mayoral development order, the Mayor must send a copy to the Secretary of State as soon as is reasonably practicable after the order is made.

61DD Revision or revocation of Mayoral development order

- (1) The Mayor of London may at any time revise or revoke a Mayoral development order with the approval of each relevant local planning authority.
- (2) The Mayor of London must revise a Mayoral development order if the Secretary of State directs the Mayor to do so (and the requirement for the approval of each relevant local planning authority does not apply in those circumstances).
- (3) The Secretary of State may at any time revoke a Mayoral development order if the Secretary of State thinks it is expedient to do so.
- (4) The power under subsection (3) is to be exercised by order made by the Secretary of State.
- (5) If the Secretary of State revokes a Mayoral development order the Secretary of State must state the reasons for doing so.
- (6) The Secretary of State may by development order make provision about—
 - (a) the steps to be taken by the Secretary of State before giving a direction or making an order under this section;
 - (b) the procedure for the revision or revocation of a Mayoral development order.
- (7) A development order under subsection (6) may in particular make provision about—
 - (a) notice, publicity and inspection by the public;
 - (b) consultation with and consideration of views of such persons and for such purposes as are specified in the order;
 - (c) the making and consideration of representations.

61DE Effect of revision or revocation on incomplete development

- (1) This section applies if planning permission for development granted by a Mayoral development order is withdrawn at a time when the development has been started but not completed.

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- (2) For this purpose planning permission for development granted by a Mayoral development order is withdrawn—
 - (a) if the order is revoked under section 61DD, or
 - (b) if the order is revised under that section so that it ceases to grant planning permission for the development or materially changes any condition or limitation to which the grant of permission is subject.
- (3) The development may, despite the withdrawal of the permission, be completed, subject as follows.
- (4) If the permission is withdrawn because the Mayoral development order is revoked by the Mayor of London, the Mayor may make a determination that subsection (3) is not to apply in relation to development specified in the determination.
- (5) A determination under subsection (4) must be published in such manner as the Mayor of London thinks appropriate.
- (6) If the permission is withdrawn because the Mayoral development order is revoked by an order made by the Secretary of State under section 61DD, the order under that section may provide that subsection (3) is not to apply in relation to development specified in that order.
- (7) If the permission is withdrawn because the order is revised as mentioned in subsection (2)(b), the revised order may provide that subsection (3) is not to apply in relation to development specified in the order.
- (8) The power under this section to include provision in an order under section 61DD or a Mayoral development order may be exercised differently for different purposes.”

Commencement Information

II Sch. 4 para. 1 partly in force; Sch. 4 para. 1 in force for specified purposes at Royal Assent, see s. 57(5)(d)

PART 2

CONSEQUENTIAL AMENDMENTS

PROSPECTIVE

2 The Town and Country Planning Act 1990 is amended as follows.

PROSPECTIVE

3 In section 56(5)(a) (time when development begun where planning permission granted by general or local development order) for “or a local development order” substitute “, a local development order or a Mayoral development order”.

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PROSPECTIVE

- 4 In section 57(3) (planning permission not required for normal use of land where planning permission for development of land granted by development order etc) after “a local development order” insert “, a Mayoral development order”.

PROSPECTIVE

- 5 In section 58(1) (planning permission may be granted by development order etc) after “a local development order” insert “, a Mayoral development order”.

PROSPECTIVE

- 6 In section 62(2A) (applications for planning permission: references in subsections (1) and (2) to applications for planning permission to include applications under section 61L(2)) after “references to” in the second place insert “—
(a) applications for consent, agreement or approval as mentioned in section 61DB(2), and
(b)”.

PROSPECTIVE

- 7 In section 65(3A) (notice etc of applications for planning permission: references in subsections (1) and (3) to applications for planning permission etc to include applications under section 61L(2) etc) after “references to” in the second place insert “—
(a) any application for consent, agreement or approval as mentioned in section 61DB(2) or any applicant for such consent, agreement or approval, and
(b)”.

PROSPECTIVE

- 8 (1) Section 69 (register of applications etc) is amended as follows.
(2) In subsection (1) (duty of local planning authority to keep register containing information about planning applications etc) after paragraph (c) insert—
“(cza) Mayoral development orders;”.
(3) In subsection (2)(b) (requirement for register to contain information about local development orders etc) after “local development order,” insert “ Mayoral development order,”.

PROSPECTIVE

- 9 (1) Section 71 (consultations in connection with determinations under section 70) is amended as follows.

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- (2) In subsection (2ZA) (references in subsections (1) and (2) to applications for planning permission to include applications under section 61L(2)) after “references to” in the second place insert “—
- (a) an application for consent, agreement or approval as mentioned in section 61DB(2), and
 - (b)”.
- (3) In subsection (3A) (disapplication of consultation requirement relating to caravan sites in case of neighbourhood development order) after “granted by” insert “ a Mayoral development order or ”.

PROSPECTIVE

- 10 In section 74(1ZA) (directions etc as to method of dealing with applications: references in subsections (1)(c) and (f) to planning permission etc to include approvals under section 61L(2) etc)—
- (a) in paragraph (a) after “reference to” in the second place insert “—
 - (i) a consent, agreement or approval as mentioned in section 61DB(2), and
 - (ii)”
 and
 - (b) in paragraph (b) after “references to” in the second place insert “—
 - (i) applications for consent, agreement or approval as mentioned in section 61DB(2), and
 - (ii)”.

PROSPECTIVE

- 11 In section 77(1) (reference of applications to the Secretary of State)—
- (a) for “approval” substitute “ consent, agreement or approval ”, and
 - (b) after “a local development order” insert “ , a Mayoral development order ”.

PROSPECTIVE

- 12 In section 78(1)(c) (right of appeal against refusal of application for approval under development order etc.) after “a local development order” insert “ , a Mayoral development order ”.

PROSPECTIVE

- 13 In section 88(9) (provision for permission for development in enterprise zones does not prevent planning permission from being granted by other means) after “a local development order” insert “ , a Mayoral development order ”.

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PROSPECTIVE

- 14 In section 91(4)(a) (provisions about general condition limiting duration of planning permission do not apply to permission granted by development order etc) after “a local development order” insert “, a Mayoral development order”.

PROSPECTIVE

- 15 (1) Section 108 (compensation for refusal etc of planning permission formerly granted by development order etc) is amended as follows.
- (2) In the heading after “local development order” insert “, Mayoral development order”.
- (3) In subsection (1)—
- (a) in paragraph (a) after “a local development order” insert “, a Mayoral development order”, and
- (b) after “the local development order” insert “, the Mayoral development order”.
- (4) After subsection (1) insert—
- “(1A) Where section 107 applies in relation to planning permission granted by a Mayoral development order—
- (a) subsection (1) of that section has effect as if it provided for a claim to be made to, and compensation to be paid by, the Mayor of London rather than the local planning authority, and
- (b) subject to subsection (1B), sections 109 to 112 have effect where compensation is payable by the Mayor of London under section 107(1) as if references to the local planning authority (however expressed) were references to the Mayor of London.
- (1B) Subsection (1A)(b) does not apply to section 110(2) or (4).”
- (5) In subsection (2)—
- (a) after “a local development order” insert “, a Mayoral development order”, and
- (b) after “revocation” in both places insert “, revision”.
- (6) In subsection (3B) after paragraph (b) insert—
- “(ba) in the case of planning permission granted by a Mayoral development order, the condition in subsection (3DA) is met, or”.
- (7) After subsection (3D) insert—
- “(3DA) The condition referred to in subsection (3B)(ba) is that—
- (a) the planning permission is withdrawn by the revocation or revision of the Mayoral development order,
- (b) notice of the revocation or revision was published in the prescribed manner not less than 12 months or more than the prescribed period before the revocation or revision took effect, and
- (c) either—

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- (i) the development authorised by the Mayoral development order had not begun before the notice was published, or
(ii) section 61DE(3) applies in relation to the development.”

PROSPECTIVE

- 16 In section 109(6) (apportionment of compensation for depreciation: interpretation) in the definition of “relevant planning decision” after “the local development order” insert “ , the Mayoral development order ”.

PROSPECTIVE

- 17 In section 171H(1)(a) (compensation for temporary stop notice: application where activity authorised by development order etc) after “a local development order” insert “ , a Mayoral development order ”.

PROSPECTIVE

- 18 In section 264(5)(ca) (land which is treated as operational land of a statutory undertaker by virtue of planning permission for its development granted by a local development order etc) after “a local development order” insert “ , a Mayoral development order ”.

- 19 (1) Section 303 (fees for planning applications etc) is amended as follows.
- (2) After subsection (1) insert—
- “(1ZA) The Secretary of State may by regulations make provision for the payment of a fee to—
- (a) the Mayor of London in respect of an application for consent, agreement or approval as mentioned in section 61DB(2) or the giving of advice about such an application;
- (b) a specified person in respect of an application for consent, agreement or approval for which provision is made under section 61DB(4) or the giving of advice about such an application.”
- (3) After subsection (10) insert—
- “(10A) If the Mayor of London or a specified person calculates the amount of fees in pursuance of provision made by regulations under subsection (1ZA) the Mayor of London or the specified person must secure that, taking one financial year with another, the income from the fees does not exceed the cost of performing the function.”
- (4) After subsection (11) insert—
- “(12) In this section “specified person” means a person specified by development order under section 61DB(4).”

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Commencement Information

- I2** Sch. 4 para. 19 partly in force; Sch. 4 para. 19 in force for specified purposes at Royal Assent, see s. 57(5)(d)

PROSPECTIVE

- 20 In section 305(1)(a) (contributions by Ministers towards compensation paid by local authorities) after “local authority” insert “, the Mayor of London”.

PROSPECTIVE

- 21 In section 324 (rights of entry) after subsection (1A) insert—
- “(1B) Any person duly authorised in writing by the Secretary of State, a local planning authority or the Mayor of London may at any reasonable time enter any land for the purpose of surveying it in connection with—
- (a) a proposal by a local planning authority to apply to the Mayor of London for the Mayor to make a Mayoral development order, or
 - (b) a proposal by the Mayor of London to make a Mayoral development order.”

PROSPECTIVE

- 22 (1) Section 333 (regulations and orders) is amended as follows.
- (2) In subsection (4) after “61A(5)” insert “, 61DD(4),”.
- (3) In subsection (5) after “Wales,” insert “ 61DD(4),”.

PROSPECTIVE

- 23 In section 336(1) (interpretation) at the appropriate place insert—
- ““relevant local planning authority” is to be construed in accordance with section 61DB(9);”.

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VALID FROM 12/04/2015

SCHEDULE 5

Section 34

TRANSFER OF RESPONSIBILITY FOR LOCAL LAND CHARGES TO LAND REGISTRY

PART 1

AMENDMENTS TO THE LOCAL LAND CHARGES ACT 1975

- 1 The Local Land Charges Act 1975 is amended as follows.
- 2 In the italic heading before section 3 for “registers” substitute “ register ”.
- 3 For section 3 (registering authorities, local land charges registers, and indexes) substitute—

“3 The local land charges register

- (1) The Chief Land Registrar must keep the local land charges register.
- (2) The local land charges register is a register of—
 - (a) each local land charge registered in a local land charges register for a local authority's area immediately before this section first had effect in relation to that area, and
 - (b) each local land charge subsequently registered under section 5 or 6 or another relevant enactment in respect of land which is wholly or partly within that area.
- (3) Subsection (2) is subject to any later variation or cancellation of the registration of the local land charge.
- (4) The local land charges register may be kept in electronic form.
- (5) In this section—

“local authority” means—

 - (a) a district council,
 - (b) a county council in England for an area for which there is no district council,
 - (c) a county council in Wales,
 - (d) a county borough council,
 - (e) a London borough council,
 - (f) the Common Council of the City of London, or
 - (g) the Council of the Isles of Scilly;

“relevant enactment” means a provision which is made by or under an Act and which provides for the registration of a charge or other matter as a local land charge.
- (6) For the purposes of this section the area of the Common Council of the City of London includes the Inner Temple and the Middle Temple.”

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- 4 Omit section 4 (the appropriate local land charges register).
- 5 (1) Section 5 (registration) is amended as follows.
- (2) Omit subsection (1).
- (3) For subsections (2) and (3) substitute—
- “(2) Subject to subsection (6) below, the originating authority as respects a local land charge must apply to the Chief Land Registrar for its registration in the local land charges register; and on the application being made the Chief Land Registrar must register the charge accordingly.
- (3) The registration in the local land charges register of a local land charge, or of any matter which when registered becomes a local land charge, must be carried out by reference to the land affected.”
- (4) In subsection (6) for “a local land charges register” substitute “ the local land charges register ”.
- 6 (1) Section 6 (local authority's right to register a general charge against land in certain circumstances) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) At any time before the specific charge comes into existence, the Chief Land Registrar must register a general charge against the land, without any amount being specified, in the local land charges register if the originating authority make an application for that purpose.”
- (3) In subsection (3) for “5(1) and (2)” substitute “ 5(2) ”.
- (4) In subsection (4)—
- (a) for “pursuant to an application by the originating authority, they” substitute “ the originating authority ”, and
- (b) for “registering authority” substitute “ Chief Land Registrar ”.
- 7 (1) Section 8 (personal searches) is amended as follows.
- (2) In subsection (1)—
- (a) for “any local land charges register” substitute “ the local land charges register ”, and
- (b) after “fee” insert “ (if any) ”.
- (3) In subsection (1A)—
- (a) for “a local land charges register is kept otherwise than in documentary” substitute “ the local land charges register is kept in electronic ”, and
- (b) for “registering authority” substitute “ Chief Land Registrar ”.
- (4) In subsection (2)—
- (a) for “a registering authority” substitute “ the Chief Land Registrar ”, and
- (b) omit “authority's”.
- 8 (1) Section 9 (official searches) is amended as follows.
- (2) In subsection (1)—
- (a) omit “appropriate”, and

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- (b) for “registering authority” substitute “ Chief Land Registrar ”.
- (3) Omit subsection (2).
- (4) For subsections (3) and (3A) substitute—
- “(3) The prescribed fee (if any) shall be payable in the prescribed manner in respect of any requisition made under this section.”
- (5) In subsection (4)—
- (a) for “a registering authority” substitute “ the Chief Land Registrar ”,
- (b) omit “or (3A)”, and
- (c) for “the registering authority” substitute “ the Chief Land Registrar ”.
- (6) In consequence of the amendment made by sub-paragraph (5)(b), in Schedule 4 to the Constitutional Reform Act 2005 omit paragraph 84(3)(b).
- 9 (1) Section 10 (compensation for non-registration or defective official search certificate) is amended as follows.
- (2) In subsection (1)—
- (a) omit “appropriate” in each place,
- (b) in paragraph (aa) for “in a case where” substitute “ if ”, and
- (c) in that paragraph for “otherwise than in documentary” substitute “ in electronic ”.
- (3) Omit subsection (2).
- (4) In subsection (4) for “registering authority in whose area the land affected is situated” substitute “ Chief Land Registrar ”.
- (5) In subsection (5)—
- (a) for the words from “a registering authority” to “not the originating authority” substitute “ the Chief Land Registrar ”, and
- (b) for “the registering authority” in each place substitute “ the Chief Land Registrar ”.
- (6) After that subsection insert—
- “(5A) An amount equal to any compensation paid under this section by the Chief Land Registrar in respect of a local land charge is also recoverable from the originating authority in a case where the matter within subsection (1) giving rise to the Chief Land Registrar's liability is a consequence of—
- (a) an error made by the originating authority in applying to register the local land charge, or
- (b) an error made by the originating authority in applying for the registration of the local land charge to be varied or cancelled.”
- (7) In subsection (6)—
- (a) for “a registering authority” substitute “ the Chief Land Registrar ”,
- (b) for “that authority” substitute “ the Chief Land Registrar ”,
- (c) after “(5)” in each place insert “ or (5A) ”, and
- (d) for “the registering authority” substitute “ the Chief Land Registrar ”.
- (8) After subsection (6) insert—

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“(6A) The Chief Land Registrar may insure against the risk of liability to pay compensation under this section.”

(9) In subsection (7) for “Limitation Act 1939” substitute “ Limitation Act 1980 ”.

(10) In subsection (9) for “registering authority's” substitute “Chief Land Registrar's”.

10 In section 12 (office copies as evidence) for “any local land charges register” substitute “ the local land charges register ”.

11 In section 13 (protection of solicitors, trustees etc) for “a local land charges register” substitute “ the local land charges register ”.

12 (1) Omit section 13A (specification of fees by registering authorities in England).

(2) In consequence of the amendment made by sub-paragraph (1), in Schedule 4 to the Constitutional Reform Act 2005 omit paragraph 83.

13 (1) Section 14 (rules) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a) for “registering authorities” substitute “ the Chief Land Registrar ”,

(b) after paragraph (f) insert—

“(fa) as to the variation without an order of the court of the registration of a local land charge—

(i) on the application or with the consent of the person by whom it is enforceable, or

(ii) of the Chief Land Registrar's own motion;”,

(c) for paragraph (g) substitute—

“(g) as to the cancellation without an order of the court of the registration of a local land charge—

(i) on its cesser,

(ii) on the application or with the consent of the person by whom it is or was enforceable, or

(iii) of the Chief Land Registrar's own motion;”, and”

(d) for paragraph (h) substitute—

“(h) for prescribing the fees to be paid to the Chief Land Registrar for services relating to local land charges provided by the Chief Land Registrar.”

(3) In subsection (2)—

(a) in paragraph (a) for “any local land charges register” substitute “ the local land charges register ”,

(b) after paragraph (a) insert—

“(aa) power to make rules—

(i) prescribing different fees for different services or descriptions of service;

(ii) prescribing services or descriptions of service for which no fees are payable;”, and

(c) for paragraph (b) and the “and” at the end of that paragraph substitute—

“(b) power to make rules about communications for the purposes of this Act, or any statutory provision by virtue

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	<p>of which any matter is registrable in the local land charges register, including rules as to—</p> <ul style="list-style-type: none"> (i) the particular means of communication which may or must be used for such purposes (which may include an electronic means of communication), (ii) the circumstances in which a particular means of communication may or must be used (which may be all circumstances, subject to exceptions); (iii) the form or contents of anything sent using a particular means of communication; <p>(ba) power to make rules requiring or enabling anything which is provided to or by the Chief Land Registrar for the purposes of this Act, or any statutory provision by virtue of which any matter is registrable in the local land charges register, to be provided in electronic form;</p> <p>(bb) power to make rules enabling the Chief Land Registrar, or a person providing services to the Chief Land Registrar, to determine—</p> <ul style="list-style-type: none"> (i) any matter within paragraph (b), or (ii) whether anything of the kind referred to in paragraph (ba) may or must be provided in electronic form; and”. <p>(4) Sub-paragraphs (5) and (6) apply to the function of the Lord Chancellor under section 14(1) of the Local Land Charges Act 1975 as amended by this paragraph so far as it relates to the power to make rules for prescribing fees and the manner of payment of fees (“the new function”).</p> <p>(5) The new function is to be treated as having been transferred to the Welsh Ministers by—</p> <ul style="list-style-type: none"> (a) the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044), and (b) Schedule 11 to the Government of Wales Act 2006, <p>in the same way as the equivalent function of the Lord Chancellor under that section as it had effect apart from this paragraph (“the old function”).</p> <p>(6) A provision made by that Order or that Act in respect of the old function continues to apply to the new function.</p>
14	In section 15(b) (expenses) for “a registering authority” substitute “ the Chief Land Registrar ”.
15	<p>(1) Section 16 (interpretation) is amended as follows.</p> <p>(2) In subsection (1) omit the definitions of “the appropriate local land charges register” and “the registering authority”.</p> <p>(3) In subsection (1A) for “otherwise than in documentary” substitute “ in electronic ”.</p>
16	In section 19(4) (transitional provision) omit the words from “In so far as” to “so made, but”.

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PART 2

AMENDMENTS TO THE LAND REGISTRATION ACT 2002

- 17 The Land Registration Act 2002 is amended as follows.
- 18 In section 100 (conduct of business) after subsection (2) insert—
- “(2A) Subsections (1) and (2) apply to all functions of the registrar, whether or not conferred by this Act.”
- 19 In section 106(1) (incidental powers of registrar in relation to companies) after “Schedule 5,” insert “ or under the Local Land Charges Act 1975, ”.
- 20 In paragraph 4 of Schedule 7 (indemnity for members of the land registry in relation to functions relating to land registration) after “land registration” insert “ or local land charges ”.

PART 3

AMENDMENTS TO OTHER ACTS

Law of Property Act 1925 (c. 20)

- 21 In section 198(1) of the Law of Property Act 1925 (registration in local land charges register to be notice) for “any local land charges register” substitute “ the local land charges register ”.

Requisitioned Land and War Works Act 1948 (c. 17)

- 22 In section 14 of the Requisitioned Land and War Works Act 1948 (registration of rights as to government oil pipelines)—
- (a) in subsections (1) and (4)(b) omit “appropriate”,
 - (b) in subsection (1) for “authority keeping that register that authority” substitute “ Chief Land Registrar, the Chief Land Registrar ”, and
 - (c) in subsection (4) for “a local land charges register” substitute “ the local land charges register ”.

Cheshire County Council Act 1953 (c. xl)

- 23 In section 25(3) of the Cheshire County Council Act 1953 (notice preventing building next to proposed street to be void unless registered as a local land charge) omit the words from “Provided that” to “local land charge”.

Land Powers (Defence) Act 1958 (c. 30)

- 24 The Land Powers (Defence) Act 1958 is amended as follows.
- 25 In section 12 (extension of provisions of Requisitioned Land and War Works Acts) in each of subsections (2) and (5) for “appropriate register of local land charges” substitute “ local land charges register ”.
- 26 In section 17 (registration of wayleave orders and restrictions under section 16)
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- (a) in subsections (2)(a), (2A) and (3)(b) omit “appropriate”,
- (b) in subsection (2A) for “authority keeping that register” substitute “ Chief Land Registrar ”, and
- (c) in subsection (3) for “a local land charges register” substitute “ the local land charges register ”.

Rights of Light Act 1959 (c. 56)

27 The Rights of Light Act 1959 is amended as follows.

28 (1) Section 2 (registration of notice in lieu of obstruction of access of light) is amended as follows.

(2) In subsection (1) for “local authority in whose area the dominant building is situated” substitute “ Chief Land Registrar ”.

(3) In subsection (2) omit “be in the prescribed form and shall”.

(4) In subsection (3) after “accompanied by” insert “ a copy of ”.

(5) In subsection (4)—

- (a) for “a local authority” substitute “ the Chief Land Registrar ”,
- (b) for “that authority” substitute “ the Chief Land Registrar ”,
- (c) omit “appropriate”, and
- (d) in paragraph (b) for “5(1) and (2)” substitute “ 5(2) ”.

29 In section 3(2)(c) (period for which notice has effect)—

- (a) after “expires without” insert “ a copy of ”, and
- (b) for “local authority” substitute “ Chief Land Registrar ”.

30 In section 7(1) (interpretation)—

(a) for the definition of “prescribed” substitute—

““prescribed” means prescribed by rules under section 14 of the Local Land Charges Act 1975;”, and

(b) omit the definition of “local authority”.

31 In consequence of the amendment made by paragraph 30(b), in Schedule 1 to the Local Land Charges Act 1975 omit paragraph (c) of the amendments to the Rights of Light Act 1959.

Leasehold Reform Act 1967 (c. 88)

32 In section 19(10) of the Leasehold Reform Act 1967 (registration of scheme or certificate under section 19 in appropriate local land charges register) in the opening words omit “appropriate”.

Land Compensation Act 1973 (c. 26)

33 In section 52(9) of the Land Compensation Act 1973 (registration of advance payment of compensation in appropriate local land charges register) omit “appropriate”.

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Interpretation Act 1978 (c. 30)

- 34 In Schedule 1 to the Interpretation Act 1978 (words and expressions defined) in the entry containing definitions of “local land charges register” and “the appropriate local land charges register”—
- (a) for “a register” substitute “ the register ”, and
 - (b) omit the words from “and “the appropriate local land charges register”” to the end of that entry.

Highways Act 1980 (c. 66)

- 35 In paragraph 9(a) of Schedule 9 to the Highways Act 1980 (notification of revocation of improvement line or building line) for the words from “the council” to “is situated” substitute “ the Chief Land Registrar ”.

Disused Burial Grounds (Amendment) Act 1981 (c. 18)

- 36 In section 2(4) of the Disused Burial Grounds (Amendment) Act 1981 (requirement to deposit copy of order of Secretary of State dispensing with requirements as to human remains with registering authority) for the words from “deposited with” to “1975” substitute “ sent to the Chief Land Registrar, ”.

Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66)

- 37 In section 3(4) of the Compulsory Purchase (Vesting Declarations) Act 1981 (registration of preliminary notice) for the words from “registered” to the end of the subsection substitute “ sent to the Chief Land Registrar, and the notice shall be a local land charge ”.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

- 38 In section 70(12) of the Leasehold Reform, Housing and Urban Development Act 1993 (consequence of registration of scheme in appropriate local land charges register) in the opening words omit “appropriate”.

Local Government (Wales) Act 1994 (c. 19)

- 39 In Schedule 17 to the Local Government (Wales) Act 1994 (savings and transitional provision) omit paragraph 11 (local land charges registers).

PART 4

TRANSITIONAL PROVISION

Power for Parts 1 and 3 to be applied gradually to local authority areas

- 40 (1) Parts 1 and 3 of this Schedule have effect in relation to the area of a local authority if (and only if)—
- (a) the Chief Land Registrar gives notice in writing to the local authority that, on and after the date specified in the notice, those Parts will have effect in relation to that area, and

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(b) before that date, the notice is publicised in such manner as the Chief Land Registrar thinks is likely to bring the arrangements under the Local Land Charges Act 1975 as amended by Part 1 of this Schedule to the attention of persons who are likely to want to apply to register local land charges in, or to search, the register of local land charges after that Part has effect in relation to that area.

(2) The Chief Land Registrar may withdraw a notice under sub-paragraph (1) (“the original notice”) by a notice in writing which—

(a) is given before the date specified in the original notice to the authorities to whom the original notice was given, and

(b) is publicised before that date in such manner as the Chief Land Registrar thinks is likely to bring the withdrawal to the attention of the persons to whom the original notice was publicised.

(3) If, in accordance with this paragraph, the Chief Land Registrar gives a notice under sub-paragraph (1) which is not withdrawn, Parts 1 and 3 have effect in relation to the area specified in the notice on and after the date specified in it.

(4) This paragraph does not prevent the making of rules under section 14 of the Local Land Charges Act 1975 as amended by Part 1 of this Schedule—

(a) in relation to the operation of that Act as amended by that Part, or

(b) in relation to the operation of any other statutory provision by virtue of which any matter is registrable in the local land charges register,

but such rules have effect in relation to the area of a local authority if (and only if) that Part has effect in relation to that area in accordance with this paragraph.

Duty of local authorities to assist Chief Land Registrar

41 A local authority must provide the Chief Land Registrar with such information or other assistance as the Chief Land Registrar reasonably requires for the purposes of enabling Part 1 of this Schedule to have effect in relation to the area of that authority.

Continuity of functions

42 (1) This paragraph and paragraph 43 apply where Parts 1 and 3 of this Schedule have effect in relation to the area of a local authority by virtue of paragraph 40.

(2) Anything done or omitted to be done by or in relation to the local authority and in relation to the old register which is in force or effective immediately before the relevant date is to be treated as done or omitted to be done by or in relation to the Chief Land Registrar and in relation to the new register.

(3) There may be continued by or in relation to the Chief Land Registrar anything (including legal proceedings) that relates to the old register and is in the process of being done by or in relation to the local authority immediately before the relevant date.

Compensation

43 (1) The amendments in Part 1 of this Schedule to section 10(1) and (2) of the Local Land Charges Act 1975 (compensation for non-registration or defective official

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search certificate) and to section 16(1) of that Act so far as it applies to that section do not have effect in relation to a search of the old register made before the relevant date.

- (2) Subject to sub-paragraphs (4) and (5), the Chief Land Registrar may recover from the local authority an amount equal to any compensation which the Chief Land Registrar is liable to pay under section 10 of the Local Land Charges Act 1975 in consequence of—
 - (a) the authority's failure before the relevant date to register, or register correctly, a local land charge in the old register,
 - (b) the authority's failure before the relevant date to satisfy an entitlement to search in the old register conferred by section 8 of that Act as mentioned in subsection (1A) of that section, or
 - (c) the omission of a local land charge from an official search certificate issued by the authority before the relevant date.
- (3) Subject to sub-paragraphs (4) and (5), the Chief Land Registrar may recover from the local authority an amount equal to any compensation which the Chief Land Registrar is liable to pay under section 10 of the Local Land Charges Act 1975 where—
 - (a) an act or omission of the Chief Land Registrar gives rise to that liability, but
 - (b) that act or omission is in consequence of a failure by the authority to provide any information about a charge registered in the old register.
- (4) Sub-paragraph (5) applies where—
 - (a) the Chief Land Registrar's liability arises as a result of the local authority's failure before the relevant date—
 - (i) to register, or register correctly, a local land charge in the old register, or
 - (ii) to provide any information about a local land charge registered in the old register to the Chief Land Registrar,
 - (b) the local authority is not the originating authority in relation to the charge, and
 - (c) the originating authority—
 - (i) did not apply for registration of the charge in time for it to be practicable for the local authority to register it before the relevant date, or
 - (ii) made an error in applying to register the charge, or in applying for the registration of the charge to be varied or cancelled.
- (5) Where this sub-paragraph applies, the Chief Land Registrar may recover an amount equal to the compensation from the originating authority (and may not recover such an amount from the local authority).
- (6) Sub-paragraph (7) applies where compensation for loss under section 10 of the Local Land Charges Act 1975 is paid by the Chief Land Registrar in the circumstances described in any of sub-paragraphs (2) to (4).
- (7) No part of the amount paid, or of any corresponding amount paid to the Chief Land Registrar by the local authority or originating authority under any of those sub-paragraphs, is to be recovered by the Chief Land Registrar, the local authority or originating authority from any other person except as provided by any of sub-paragraphs (2) to (4) or under a policy of insurance or on grounds of fraud.

Status: Point in time view as at 12/02/2015.

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- (8) Subsections (5) and (6) of section 10 of the Local Land Charges Act 1975 do not apply where compensation for loss under that section is paid by the Chief Land Registrar in the circumstances described in any of sub-paragraphs (2) to (4).

Interpretation

- 44 (1) In this Part of this Schedule—
“local authority” means—
(a) a district council,
(b) a county council in England for an area for which there is no district council,
(c) a county council in Wales,
(d) a county borough council,
(e) a London borough council,
(f) the Common Council of the City of London, or
(g) the Council of the Isles of Scilly;
“the old register”, in relation to a local authority, means the local land charges register kept by the authority under the Local Land Charges Act 1975 before the relevant date;
“the new register” means the local land charges register kept by the Chief Land Registrar under the Local Land Charges Act 1975;
“the relevant date”, in relation to a local authority, means the date on which Parts 1 and 3 of this Schedule first had effect in relation to the authority's area.
- (2) For the purposes of this Part of this Schedule the area of the Common Council of the City of London includes the Inner Temple and the Middle Temple.
- (3) Expressions used in this Part of this Schedule and in the Local Land Charges Act 1975 have the same meaning as in that Act.

VALID FROM 01/06/2016

SCHEDULE 6

Section 38

COMMUNITY ELECTRICITY RIGHT REGULATIONS

PART 1

THE RIGHT TO BUY

“Right to buy regulations”

- 1 In this Schedule “right to buy regulations” means regulations under subsection (1) of section 38.

Status: Point in time view as at 12/02/2015.

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Kinds of facilities in relation to which right to buy exercisable

- 2
- (1) Right to buy regulations must specify the kind, or kinds, of renewable electricity generation facilities in relation to which the right to buy is to be exercisable.
 - (2) The regulations must secure that the right to buy is not to be exercisable in relation to a renewable electricity generation facility if the total installed capacity of the facility is expected to be less than 5 megawatts.
 - (3) The regulations may specify a kind of renewable electricity generation facility by reference to one or more of the following factors—
 - (a) the renewable source of energy used at the facility;
 - (b) the technology used to generate electricity at the facility;
 - (c) the electricity generation capacity of the facility;
 - (d) whether the facility is a land-based facility or an offshore facility.

Identification of qualifying facilities

- 3
- (1) Right to buy regulations must make provision enabling those renewable electricity generation facilities which are qualifying facilities to be identified.
 - (2) The regulations may make provision enabling the following to be identified—
 - (a) different renewable electricity generation facilities located at the same site;
 - (b) any facility at that site which is a qualifying facility.
 - (3) The regulations may make provision enabling the following to be identified in cases where there is expansion at a site where a renewable electricity generation facility is located—
 - (a) any new renewable electricity generation facility created by the expansion;
 - (b) any facility at that site which is a qualifying facility (including any existing facility which becomes a qualifying facility because its total installed capacity is expected to be 5 megawatts or more as a result of the expansion).
 - (4) Right to buy regulations may make provision about cases in which the right to buy is not to be exercisable in relation to a renewable electricity generation facility which would otherwise be a qualifying facility (an “excepted facility”).
 - (5) The functions that may be conferred by regulations under sub-paragraph (4) (in accordance with section 39(1)) include—
 - (a) the function of determining whether or not a renewable electricity generation facility is an excepted facility;
 - (b) the function of specifying that a particular renewable electricity generation facility is an excepted facility.
 - (6) The regulations may provide for an excepted facility to be identified by reference to one or more of the following factors—
 - (a) community ownership of the facility;
 - (b) community ownership of a stake in the facility;
 - (c) non-participation in a statutory energy scheme (whether or not there could be participation in the scheme in respect of the facility).

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The promoter

- 4 (1) Right to buy regulations must make provision enabling the promoter of a qualifying facility to be identified in a case where the promoter is not, or is not expected to become, the facility operator.
- (2) In this paragraph “promoter” means a person developing a qualifying facility.

The community

- 5 (1) Right to buy regulations must make provision enabling the following to be identified—
- (a) the community in which a land-based facility is located;
 - (b) the community adjacent to which an offshore facility is located.
- (2) A community must be a geographical area which is—
- (a) wholly in England, wholly in Wales or wholly in Scotland;
 - (b) partly in England and partly in Wales; or
 - (c) partly in England and partly in Scotland.
- (3) A community may be identified by reference to one or more of the following factors—
- (a) distance measured from the facility or some other point (such as a point on a coastline adjacent to an offshore facility);
 - (b) the number of residents;
 - (c) administrative boundaries of any kind.

The members of the community

- 6 (1) Right to buy regulations must make provision enabling the following to be identified—
- (a) individuals who may exercise the right to buy;
 - (b) groups who may exercise the right to buy.
- (2) The individuals who may exercise the right to buy may be identified by reference to one or more of the following factors—
- (a) how old an individual is;
 - (b) how long an individual has been resident in the community;
 - (c) whether the community is an individual's only (or main) place of residence.
- (3) Right to buy regulations may specify the kind, or kinds, of individuals who may not exercise the right to buy.
- (4) Those kinds of individuals may be identified by reference to one or more of the following factors—
- (a) whether an individual is, or has been, bankrupt or subject to any other kind of arrangement relating to indebtedness;
 - (b) whether an individual has been convicted of a criminal offence involving fraud;
 - (c) whether an individual is connected with—
 - (i) the designated promoter or facility operator, or

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(ii) bodies or individuals connected with the designated promoter or facility operator.

- (5) The groups who may exercise the right to buy may be identified by reference to one or more of the following factors—
- (a) the legal form of the group;
 - (b) the constitution, structure and management of the group;
 - (c) the criteria for membership of the group (including criteria relating to residence);
 - (d) the members of the group;
 - (e) the aims of the group;
 - (f) the activities of the group (including economic activities);
 - (g) the geographical area or areas in which, or in relation to which, the group operates;
 - (h) the treatment of income and profits of the group;
 - (i) the treatment of assets of the group (including on its dissolution);
 - (j) whether the group is connected with—
 - (i) the designated promoter or facility operator, or
 - (ii) bodies or individuals connected with the designated promoter or facility operator.
- (6) The provision that may be made about membership, or members, of the group under sub-paragraph (5)(c) or (d) includes provision of any kind that may be made under sub-paragraph (2) or (4) about individuals.
- (7) Right to buy regulations may specify the kind, or kinds, of groups who may not exercise the right to buy.
- (8) Regulations under this paragraph may make provision about which persons are connected with which other persons for the purposes of any such regulations.
- (9) The regulations may provide that one person (“A”) is connected with another person (“B”) by virtue of—
- (a) a direct or indirect connection;
 - (b) connections arising from employment or office-holding, from family relationships, or from financial arrangements;
 - (c) A being the parent of B or another person connected with B;
 - (d) A being a subsidiary of B or another person connected with B.

Kinds of stake which may be bought through the right to buy

- 7 (1) Right to buy regulations must specify the kinds of stakes in qualifying facilities which may be bought through the right to buy.
- (2) A stake may take any of the following forms—
- (a) one or more shares in a company;
 - (b) any other interest in a body other than a company;
 - (c) an equitable interest;
 - (d) a right to a royalty related to revenues;
 - (e) a loan.

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- (3) Right to buy regulations may make provision about the rights, obligations, powers and other terms attaching to a stake.
- Particular kind of stake which may be bought in particular facility*
- 8 (1) Right to buy regulations must require the designated promoter or facility operator to choose the kind, or kinds, of stake in a qualifying facility that are to be available through the right to buy.
- (2) The regulations must give the designated promoter or facility operator a choice of at least two different kinds of stake in relation to a qualifying facility.
- (3) The regulations must require the designated promoter or facility operator—
- (a) to carry out a consultation before choosing which kind, or kinds, of stake are to be available, and
 - (b) to take the results of that consultation into account in making the choice.
- The price of the stakes*
- 9 (1) Right to buy regulations must make provision about setting the price of the available stakes in a qualifying facility.
- (2) In making the regulations, the Secretary of State must have regard to the desirability of the prices of available stakes reflecting a measure of fair value.
- (3) In this paragraph “available stakes”, in relation to a qualifying facility, means the stakes in the qualifying facility that are to be offered through the right to buy.
- Total value of the offer*
- 10 (1) Right to buy regulations must require the offer to consist of stakes whose combined price is—
- (a) equal to, or
 - (b) greater than,
- the minimum amount described in the regulations.
- (2) That minimum amount must be expressed as a percentage of the total capital costs of development of a qualifying facility.
- (3) That percentage must not exceed 5%.
- (4) The regulations may make provision about—
- (a) the kinds of costs that are capital costs of development of a qualifying facility;
 - (b) calculation of the total capital costs of development of a qualifying facility.
- (5) The provision about calculation of the total capital costs may provide for the total—
- (a) to be calculated by reference to a period ending after the time of the calculation (including a period ending with commissioning of the facility);
 - (b) to include costs which have not been incurred at the time of the calculation;
 - (c) to include estimated costs.
- (6) In this paragraph—

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“combined price”, in relation to the stakes offered through the right to buy, means the total which the amounts to be paid for all of those stakes will add up to (assuming those stakes are all bought);

“offer” means the offer of stakes in a qualifying facility through the right to buy.

Buying a stake

- 11 (1) Right to buy regulations must make provision about the procedure for exercising the right to buy in relation to a qualifying facility (the “purchase procedure”).
- (2) The purchase procedure must identify what stake or stakes—
- (a) the individuals resident in the community, and
 - (b) the groups connected with the community,
- may buy through the right to buy.
- (3) The regulations may require the designated promoter or facility operator to conduct the purchase procedure.
- (4) The purchase procedure must identify the period of time during which stakes in a qualifying facility may be applied for (the “application period”).
- (5) The purchase procedure must secure that the application period does not begin until after planning consent has been given for the development of the qualifying facility.
- (6) Here “planning consent” means whichever of the following is, or are, needed for that facility to be developed—
- (a) development consent under the Planning Act 2008;
 - (b) planning permission under Part 3 of the Town and Country Planning Act 1990;
 - (c) a marine licence under the Marine and Coastal Access Act 2009;
 - (d) consent of the Scottish Ministers under section 36 of the Electricity Act 1989;
 - (e) planning permission under the Town and Country Planning (Scotland) Act 1997;
 - (f) a marine licence under Part 4 of the Marine (Scotland) Act 2010.

Excessive or insufficient take-up

- 12 (1) Right to buy regulations may make provision (including provision relating to the allocation of stakes)—
- (a) about cases where applications made in the application period exceed the available stakes, and
 - (b) about cases where applications made in the application period do not exceed the available stakes.
- (2) Provision about cases where applications made in the application period do not exceed the available stakes may—
- (a) provide for the right to buy to be modified or to cease to apply;
 - (b) identify a subsequent period of time (a “secondary period”) during which the right to buy is to be exercisable.

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- (3) If right to buy regulations identify a secondary period, the regulations may make, in relation to the secondary period, any provision of the kinds mentioned in subparagraphs (1) and (2)(a) that may be made in relation to the application period.
- (4) The power under section 55 to make different provision in community electricity right regulations for different purposes includes power to make provision relating to secondary periods that is different from provision relating to application periods.
- (5) The provision that may differ includes provision about—
 - (a) the community in which a land-based facility is located or adjacent to which an offshore facility is located;
 - (b) the individuals resident in a community or the groups connected with a community who may exercise the right to buy.
- (6) In this paragraph—
 - “application period” has the meaning given in paragraph 11;
 - “applications” means applications for stakes in a qualifying facility;
 - “available stakes” means the stakes in a qualifying facility that are available to be bought through the right to buy.

Subsequent disposal of a stake

- 13 (1) Right to buy regulations may make provision about the disposal of a stake in a qualifying facility after it has been bought through the right to buy (whether the disposal is by a person who bought the stake through the right to buy or by a person who has subsequently acquired it).
- (2) The regulations may impose restrictions or prohibitions on the disposal of a stake.
- (3) The regulations may impose duties to dispose of a stake in a case where the holder ceases to be—
 - (a) an individual resident in a community, or
 - (b) a body connected with a community.
- (4) A restriction or prohibition may limit or prevent the disposal of a stake except to an individual or body who—
 - (a) would have been able to buy the stake at the time when the right to buy was originally exercisable, or
 - (b) would be able to buy the stake at the time of the disposal, were the right to buy exercisable at that time.

PART 2

OPERATORS, OWNERSHIP & RELATED MATTERS

“Operator and ownership regulations”

- 14 In this Schedule “operator and ownership regulations” means regulations under subsection (2) of section 38.

Status: Point in time view as at 12/02/2015.

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Bodies that may be facility operators

- 15 If operator and ownership regulations specify two or more kinds of bodies which may be a facility operator, the regulations may make provision about which kind of body may own which kind of facility in which circumstances.

Constitutions of facility operators

- 16 (1) Operator and ownership regulations may require the constitution of a facility operator to be in accordance with provision specified in the regulations.
- (2) In the case of a facility operator that is a company, the regulations may require the constitution of the company to be in accordance with provision about—
- (a) the voting rights attached to, or other characteristics of, shares in the company;
 - (b) the issuing of new shares in the company.

Ownership of facility operators

- 17 (1) Operator and ownership regulations may make provision about the ownership of facility operators.
- (2) The regulations may—
- (a) impose limitations on who may own a facility operator;
 - (b) require the owners of a facility operator to consist of, or include, one or more persons of a kind specified in the regulations.

Conduct of owners of facility operators

- 18 (1) Operator and ownership regulations may make provision about the conduct of the owners of facility operators.
- (2) The regulations may impose duties, restrictions or prohibitions in relation to the exercise of rights or powers of owners (including a right or power to exercise a vote attached to a share).

Revenues

- 19 (1) Operator and ownership regulations may make provision about the treatment of the revenues earned by a qualifying facility.
- (2) The regulations may restrict or prohibit the making of arrangements affecting the destination of the revenues.

PART 3

INFORMATION

“Information regulations”

- 20 In this Schedule “information regulations” means regulations under subsection (3) of section 38.

Status: Point in time view as at 12/02/2015.

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Particular kinds of information

- 21 Information regulations may make provision about the supply of—
- (a) financial information relating to a renewable electricity generation facility;
 - (b) information relating to electricity generation at a renewable electricity generation facility.

Possible buyers of stakes

- 22 Information regulations may make provision about the supply of information by, or to, individuals and groups who are, or may be, interested in exercising the right to buy (were it available to them).

Prospective buyers of stakes

- 23 Information regulations may make provision about the supply of information by, or to, individuals and groups who are entitled to exercise the right to buy.

Applicants for stakes

- 24 Information regulations may make provision about the supply of information by, or to, individuals and groups who are exercising the right to buy.

Owners of stakes

- 25 Information regulations may make provision about the supply of information by, or to, individuals and groups who hold—
- (a) stakes which they have bought through the right to buy, or
 - (b) stakes which they have acquired after their sale through the right to buy.

PART 4

SUPPLEMENTARY

Interpretation

- 26 In this Schedule—
- “body” means an incorporated or unincorporated body of persons;
 - “company” includes any other kind of incorporated body;
 - “designated promoter”, in relation to a renewable electricity generation facility, means the promoter identified in accordance with regulations under paragraph 4;
 - “shares” includes any other instrument by which a person holds an interest in the equity of an incorporated body;
 - “total installed capacity”, in relation to a renewable electricity generation facility, means the maximum capacity at which the facility could be operated for a sustained period without causing damage to it.

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VALID FROM 12/04/2015

SCHEDULE 7

Section 42

THE LICENSING LEVY

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Status:

Point in time view as at 12/02/2015.

Changes to legislation:

Infrastructure Act 2015 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.