

# LOCALISM ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY

#### **Part 1: Local Government**

#### *Chapter 1: General powers of authorities*

#### *Section 1: Local authority's general power of competence*

10. *Section 1* provides a general power of competence for local authorities in England. It gives these authorities the same power to act that an individual generally has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority - or any other public body - has done before, or may currently do. The section defines the meaning of an 'individual' so as to avoid referring to the reduced powers exercised by for example a child. *Subsections (4), (5) & (6)* further define the extent of the power. Where the authority can do something under the power, the starting point is that there are to be no limits as to how the power can be exercised. For example, the power does not need to be exercised for the benefit of any particular place or group, and can be exercised anywhere and in any way. *Subsection (7)* gives effect to Schedule 1, which makes consequential amendments. The amendments to the Local Government Act 2000 mean that the well-being power provided in section 2 of that Act will no longer apply to English local authorities.

#### *Section 2: Boundaries of the general power*

11. *Section 2* sets out the boundaries of the general power, requiring local authorities to act in accordance with statutory limitations or restrictions. Restrictions that apply to existing powers that are overlapped by the general power are applied to the general power. So for instance if an existing power requires a particular procedure to be followed, the same procedure will apply to the use of the general power to do the same thing. It also applies any express prohibitions, restrictions and limitations within primary or secondary legislation, to the use of the general power. A distinction is drawn between restrictions in pre-commencement legislation, and those in post-commencement legislation. Restrictions in post-commencement legislation will only apply to the general power where they are expressed to do so.
12. *Subsection (3)* provides that the general power does not give local authorities power to delegate or contract out of their functions, nor to alter governance arrangements. These matters remain subject to separate provision.

#### *Section 3: Limits on charging in exercise of the general power*

13. *Section 3* restricts the ability of a local authority to charge for providing a service to a person using the general power, or where they are using an overlapped power, for non-commercial purposes. If no specific charging power exists, local authorities can charge up to full cost recovery for discretionary services - that is those that they are not required to provide to a person, where that person has agreed to their being provided.

This is in line with the charging powers in section 93 of the Local Government Act 2003. Charging for commercial purposes is subject to the provisions of section 4.

***Section 4: Limits on doing things for commercial purpose in exercise of the general power***

14. *Section 4* restricts the ability of a local authority to do things for a commercial purpose using the general power. The power does not authorise authorities to trade in a service with a person to whom they are already statutorily obliged to provide it. They must also only trade commercially through a company. These provisions reflect the trading powers in section 95 of the Local Government Act 2003

***Section 5: Powers to make supplemental provision***

15. *Subsection (1)* provides the Secretary of State with powers to remove or change statutory provisions that prevent or restrict the legal capacity of local authorities to use the general power in section 1 to do things that an ordinary individual can do. *Subsection (2)* allows the Secretary of State to remove overlaps between the general power and existing powers. *Subsections (3) and (4)* allow the Secretary of State to restrict what a local authority may do under the general power or to make its use subject to conditions. *Subsection (7)* provides that the Secretary of State must consult before exercising any of these powers, which would usually include consultation with any person, or their representatives, substantially affected by the proposal. This duty to consult does not apply to orders made under section 5(3) or (4) that only amend an earlier order so as to apply it to further authorities or disapply it in relation to a particular authority or authorities – see section 7(5). *Subsection (8)* requires the Secretary of State to consult the Welsh Ministers if an order made under section 5(1) is to have effect in Wales.

***Section 6: Limits on power under section 5(1)***

16. *Subsection (1)* requires the Secretary of State to consider whether certain conditions set out in *subsection (2)* have been met before exercising the power to remove restrictions in section 5(1).
17. These conditions are: that the effect of the provision made by the order is proportionate to its policy objective, in other words that the minister considers that there is an appropriate relationship between the policy aim and the means chosen to achieve it; that the provision made by the order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons adversely affected by the order, including any new or increased burdens; that the provision does not remove any necessary protection such as protections in the areas of civil liberties, health and safety, the environment or national heritage; the provision will not prevent any person from continuing to exercise any right or freedom which the person might reasonably expect to continue to exercise such as, for example, rights conferred by the European Convention on Human Rights; and that the provision is not constitutionally significant. This last condition would allow orders to amend enactments which are considered to be constitutionally significant, but only if the amendments are not themselves constitutionally significant.
18. *Subsections (3) and (4)* prevent any orders under section 5(1) from being used to delegate or transfer legislative powers. *Subsection (5)* prohibits an order made under section 5(1) from abolishing or varying any tax.
19. The Secretary of State is required to set out in the explanatory document, to be laid before Parliament under section 7(2), the reasons why the conditions are considered to be met.

### ***Section 7: Procedure for orders under section 5***

20. **Section 7** sets out the parliamentary procedure to be followed for orders made under section 5. The procedure for orders under section 5(1) is modelled on that set out in the Legislative and Regulatory Reform Act 2006 for a Legislative Reform Order. This means that the procedure to be followed (negative, affirmative or super-affirmative) is ultimately determined by Parliament.
21. **Subsection (4)** allows provision under sections 5(1) and 5(2) to be combined in the same order, and applies the section 7 procedure in these circumstances. Other orders under this section are subject to an “affirmative” procedure (see section 235), other than orders under section 5(2) which do not amend primary legislation and orders under section 5(3) and (4) that disapply provisions contained in existing orders and orders that impose conditions on doing things for a commercial purpose, which are subject to the “negative” parliamentary procedure.

### ***Section 8: Interpretation of Chapter***

22. **Section 8** defines local authorities for the purposes of the Chapter. These are the bodies that will have the new power. This list does not include local authorities in Wales. By restricting the definition to ‘eligible’ parish councils, the section provides power for the Secretary of State to set conditions by order (subject to the affirmative procedure) as to which to parish councils will have the general power.

### ***Chapter 2: Fire and rescue authorities***

#### ***Section 9: General powers of certain fire and rescue authorities***

23. **Subsection (1)** inserts new sections 5A to 5L into the Fire and Rescue Services Act 2004 providing new broad general powers to do things related to their purposes to metropolitan county fire and rescue authorities, the London Fire and Emergency Planning Authority and combined fire and rescue authorities in England or Wales. County councils that are fire and rescue authorities are not included, as they are provided with the general power of competence by Chapter 1 of this Part of the Localism Act.
24. New section 5A provides a power for the authority to do (a) anything it considers appropriate for the carrying out of any of its functions, (b) anything it considers appropriate for purposes incidental to the carrying out of any of its functions (whether directly or indirectly incidental) or (c) anything it considers to be connected with (a) or (b).
25. New section 5B sets out the limits on the power under new section 5A. Express prohibitions, restrictions and limitations within primary or secondary legislation are applied to the new power, and, as with section 2 of the Localism Act, a distinction is drawn between restrictions in pre and post-commencement legislation. The new section 5A power does not enable authorities to borrow money, to do things they are statutorily obliged to do for a commercial purpose, or to do things for a commercial purpose other than through a company or co-operative society. The power does not enable them to charge for services for non-commercial purposes (but see section 10 of the Localism Act below).
26. New section 5C provides the Secretary of State or Welsh Ministers with powers, equivalent to those provided to the Secretary of State in relation to the general power of competence by section 5 of the Localism Act, to remove limitations and restrictions and overlapped powers, and to prevent fire and rescue authorities from doing something under the new power, or to make its use subject to conditions. New section 5C(6) and (7) set out the consultation requirements. Consultation is not required if the order in question is simply to extend or disapply provisions contained in an existing order.

27. New section 5D sets out the conditions for the use of the power in new section 5C(1). These are the same as those in section 6 of the Localism Act in relation to the power in section 5(1) of that Act. New section 5E sets out the procedure for making such orders in England and new sections 5F to 5L in Wales. These are equivalent to the procedure in section 7 of the Localism Act in relation to the powers in section 5(1) and (2) of that Act. Other orders are, with the same exceptions as set out in relation to orders under section 5 of the Localism Act, subject to an “affirmative” procedure as a result of amendments made to the Fire and Rescue Services Act 2004 by section 9(3) to (6) of the Localism Act.
28. *Subsections (2) and (8)* remove existing incidental powers from combined authorities, as these are replaced by the new power.

### ***Section 10: Fire and rescue authorities: charging***

29. **Section 10** inserts new section 18A to 18C into the Fire and Rescue Services Act 2004. New section 18A gives fire and rescue authorities, in England and Wales, power to charge for action, on a cost recovery basis and subject to local consultation.
30. New sections 18B and 18C set limits on charging, preventing charging for “core” fire and rescue services. These limits are applied to the commercial activities of fire and rescue authorities by new section 5B(7).

### ***Chapter 3: Other Authorities***

31. This chapter provides Integrated Transport Authorities, Passenger Transport Executives, economic prosperity boards and combined authorities with broad general powers to do things related to their functions, similar to the powers provided to Fire and Rescue Authorities by Chapter 2 of this Part. The general powers replace their existing incidental powers (except in the case of Passenger Transport Authorities) and allow them to do things beyond their geographic boundaries.

### ***Section 11: Integrated Transport Authorities***

32. **Section 11** inserts a new Chapter 4 into Part 5 of the Local Transport Act 2008 comprising new sections 102B, 102C and 102D.
33. New section 102B contains the new broader general power for Integrated Transport Authorities, specifically it gives powers to an authority to do (a) anything it considers appropriate to its functions, (b) anything incidental to those functions, (c) anything indirectly incidental (however indirectly incidental that might be) and (d) anything it considers to be connected with its functions or anything it may do under (a), (b) or (c). It also confirms in paragraph (e) that anything that it now has the power to do for a non-commercial purpose, it may also do for a commercial purpose. It also provides that the new powers are not limited by geography or by the other powers of Integrated Transport Authorities. New section 102B(4) and (5) provide that the Integrated Transport Authority may delegate the taking of action under new section 102B(1) to a Passenger Transport Executive, but not the function of determining what action to take.
34. New section 102C sets the boundaries to the new power. As with the new powers of local authorities and fire and rescue authorities provided by this Part of the Localism Act, the new power is subject to pre-existing limitations and express post commencement limitations. Similarly restrictions that apply to existing powers that are overlapped by the new power are applied to the new power. New section 102C (3) and (4) provide that the new power does not authorise Integrated Transport Authorities to borrow money or to charge (other than for a commercial purpose). This does not affect the Integrated Transport Authorities’ powers to charge under section 93 of the Local Government Act 2003. New section 102C(5) states that the new power does not allow an Integrated Transport Authority to do things for a commercial purpose that

it is obliged by statute to do, and new section 102C(6) requires that the Integrated Transport Authority must conduct commercial activities through a company or co-operative society.

35. New section 102D gives the Secretary of State power to by order to prevent Integrated Transport Authorities from doing something under the new power, or to make its use subject to conditions. Subsection (4) of the new section sets out the consultation requirements that the Secretary of State must comply with prior to making an order under section 102D. New section 102D(5) states that the Secretary of State need not consult if the order in question is simply to extend or disapply provisions contained in an existing order. Subsections (7), (8) and (9) of the new section provide that orders under section 102D are subject to an “affirmative” parliamentary procedure, except orders that disapply provisions contained in existing orders or orders that impose conditions on doing things for a commercial purpose, which are subject to the “negative” parliamentary procedure.

### ***Section 12: Passenger Transport Executives***

36. *Subsection (1)* inserts in Part 2 of the Transport Act 1968 new sections 10A, 10B and 10C.
37. New section 10A contains the new broader general power for Passenger Transport Executives. It follows the drafting of new section 102B(1) to (3) of the Local Transport Act 2008, inserted by section 11 of the Localism Act.
38. New section 10B sets boundaries limiting the further powers given to Passenger Transport Executives. It follows the drafting of new section 102C of the Local Transport Act 2008, inserted by section 11 of the Localism Act. New section 10B(4) provides that the restriction on charging (other than for a commercial purpose) does not apply to the Passenger Transport Executives’ other powers to charge.
39. New section 10C gives the Secretary of State power by order to prevent Passenger Transport Executive(s) from doing something under the new power or to place conditions on its use. This section follows the drafting of new section 102D inserted by section 11 of the Localism Act, with appropriate modification. The new section also provides for the parliamentary procedure to be followed for the making of such orders – again this is in line with section 102D. Existing procedural rules are disapplied by section 12(3).
40. *Subsection (2)* amends section 10(1) of the Transport Act 1968 (powers of a Passenger Transport Executive) allowing Passenger Transport Executives to invest “their money” rather than the existing wording that limits Passenger Transport Executives’ power to invest only sums not immediately needed.
41. *Subsection (4)* amends section 93(9) of the Local Government Act 2003 to provide Passenger Transport Executives power to charge for discretionary services. Section 12(5) amends the definition of “relevant authority” in section 95(7) of the Local Government Act 2003, to include Passenger Transport Executives in the list of bodies that can be given (where they do not already have it) power to do for commercial purposes things that they can do for non-commercial purposes.

### ***Section 13: Economic prosperity boards and combined authorities***

42. Economic prosperity boards and combined authorities are statutory bodies that may be established by order under Part 6 of the Local Democracy, Economic Development and Construction Act 2009. *Subsection (1)* inserts new sections 113A, 113B, 113C into the 2009 Act.
43. New section 113A provides new broader powers for economic prosperity boards and combined authorities, in line with those provided for Integrated Transport Authorities by section 11 of the Localism Act (see above).



44. New section 113B sets out the boundaries to the new powers. These are the same as those set out in section 11 of the Localism Act in relation to Integrated Transport Authorities.
45. New section 113C gives the Secretary of State power by order to prevent economic prosperity boards or combined authorities from doing something under the new section 113A powers, or to impose conditions on the exercise of those powers. Again these provisions mirror the provisions of section 11 of the Localism Act in relation to Integrated Transport Authorities, with appropriate modifications.
46. *Subsection (2)* amends section 117 of the 2009 Act, to provide orders that under new section 113C are to be subject to an affirmative procedure in Parliament, except orders made in order to disapply provisions contained in existing orders and orders made only in order to impose conditions on doing things for a commercial purpose.

#### ***Section 14: Further Amendments***

47. *Subsection (1)* amends the Local Government Act 1972 to disapply section 111 (subsidiary powers of local authorities) of that Act to Integrated Transport Authorities, economic prosperity boards and combined authorities, as the incidental powers provided by that section are replaced by the new general powers.
48. *Subsection (2)* amends section 93 of the Local Government Act 2003 to provide that the restrictions on charging under the new powers (and under section 100(2) of the Local Transport Act 2008) do not amount to prohibitions on charging for the purposes of section 93. This ensures that the power to charge for discretionary services extends to discretionary services provided under the new powers.

#### ***Chapter 4: Transfer and delegation of functions to certain authorities***

##### ***Section 15: Power to transfer local public functions to permitted authorities***

49. **Section 15** allows the Secretary of State by order to transfer a local public function to a “permitted authority”. *Subsections (2), (3) and (4)* allow for such an order to modify enactments for the purpose of making the transfer. Under *subsection (5)* the Secretary of State can only make an order if he or she considers that it is likely to promote economic development or wealth creation or increase local accountability in relation to each local public function transferred. Also, the Secretary of State can only make an order if he or she considers that the relevant local public function can be appropriately exercised by the permitted authority and the permitted authority has consented to the transfer. The Secretary of State must consult such persons as he or she considers appropriate before making an order.

##### ***Section 16: Delegation of functions by Ministers to permitted authorities***

50. This section allows a Minister of the Crown to delegate to a permitted authority any of his or her eligible functions, subject to such conditions as the Minister thinks fit. A function is eligible for these purposes as long as it does not consist of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges and the Minister considers that it can be appropriately exercised by the permitted authority. No delegation to a permitted authority, or variation of a delegation, can be made without the agreement of the permitted authority. Before delegating a function the Minister must consult such persons as he or she considers appropriate. A delegation could be revoked at any time by a Minister of the Crown.

##### ***Section 17: Transfer schemes***

51. *Subsection (1)* allows the Secretary of State to make a scheme for the transfer of property, rights or liabilities to a permitted authority from a body or person from whom a relevant local public function has been transferred through an order under section 15.

*Subsections (2)* allows a Minister to make a scheme for the transfer from the Crown to a permitted authority of property, rights or liabilities as a consequence of a delegation, or variation of a delegation, to a permitted authority under section 16. A Minister of the Crown may also make a scheme for the transfer of property, rights or liabilities from a permitted authority to the Crown as a consequence of variation or revocation of a delegation under section 16.

***Section 18: Duty to consider proposals for exercise of powers under sections 15 and 17***

52. *Section 18* places a duty on the Secretary of State to consider a proposal from a permitted authority for the transfer of local public functions and the transfer of property, rights or liabilities under sections 15 and 17 respectively. The Secretary of State is required to notify the permitted authority of what, if any, action he or she intends to take in relation to the proposal. *Subsection (2)* allows the Secretary of State to set out in regulations the criteria to which he or she should have regard in considering any relevant proposal. Before making such regulations the Secretary of State must consult such persons as he or she considers appropriate.

***Section 19: Orders under section 15: procedure***

53. This section sets out the procedure for Parliamentary consideration before an order under section 15 for the transfer of local public functions to a permitted authority can be made. Following appropriate consultation, the order must be laid in draft for 60 days, during which time formal representations may be made, and either House, or a committee charged with consideration of the order, can effectively block it. After this the order must be approved by a resolution of each House before it can be made.

***Section 20: Interpretation of Chapter***

54. This section defines terms used throughout Chapter 4 of Part 1. A “permitted authority” is defined as a county council in England, a district council, an economic prosperity board (established under section 88 of the Local Democracy, Economic Development and Construction Act 2009) or a combined authority (established under section 103 of the same Act). Only functions that fall within the definition of “local public function” may be subject to a transfer order under section 15. This is defined in section 20, in relation to a permitted authority, as a function of a public authority in so far as it relates to the permitted authority’s area or persons living, working or carrying on activities in that area, and which does not consist of a power to make regulations or other instruments of a legislative character. For these purposes, “public authority” includes a Minister of the Crown or a government department.

***Chapter 5: Governance***

***Section 21: New arrangements with respect to governance of English local authorities***

55. *Section 21* gives effect to Schedule 2. Part 1 of Schedule 2 inserts new Part 1A into the Local Government Act 2000. New Part 1A makes provision in relation to local authority governance arrangements in England. Part 2 of Schedule 2 inserts the sections of new Schedule A1 into the 2000 Act to make further provision in relation to executive arrangements in England. Part 2 of the 2000 Act is restricted, in its application, to Wales by the amendments to the 2000 Act made by Schedule 3 (see below).

## **Schedule 2Part 1: New Part 1A of the Local Government Act 2000– Arrangements with respect to local authority governance in England**

### **Chapter 1: Permitted forms of governance**

#### **New section 9B: Permitted forms of governance for local authorities in England.**

56. New section 9B specifies the forms of governance a local authority in England can operate. These are executive arrangements, a committee system, or prescribed arrangements.

#### **New section 9BA: Power of Secretary of State to prescribe additional permitted governance arrangements.**

57. New section 9BA provides that the Secretary of State may make regulations prescribing arrangements that local authorities in England may operate. It provides that the Secretary of State must have regard to any proposals received from a local authority when the Secretary of State considers whether or how to make regulations under this section. Under new section 9BA(5) a local authority can put forward a proposal asking the Secretary of State to make regulations under this section as long as the local authority:
- a) considers that the conditions set out in subsection (6) are met;
  - b) can explain why those conditions have been met; and
  - c) describes the provision that it thinks the regulations should make in respect of the way functions of the authority should be discharged and/or delegated under its proposal.

### **Chapter 2: Executive arrangements**

#### **New section 9C: Local authority executives**

58. New section 9C provides that an executive of a local authority in England must take the form of either:
- a) a directly elected mayor together with two or more councillors of the authority appointed to the executive by the mayor, or
  - b) an executive leader, elected by full council from among the councillors, together with two or more councillors of the authority appointed to the executive by the leader.

It also prevents the chairman or vice-chairman of the authority from being a member of the executive, and limits the number of councillors who can be on the executive to 10 (unless a different maximum number is specified in regulations).

#### **New sections 9D and 9DA: Functions which are the responsibility of an executive**

59. New Sections 9D and 9DA provide the mechanism for determining which local authority functions are to be the responsibility of the executive. Section 9D allows the Secretary of State to make regulations to specify those functions which may, but need not, be the responsibility of the executive, and those functions which must not be the responsibility of the executive. The presumption is that all functions of the authority are to be the responsibility of the executive unless specified in regulations made under this section or specified in any enactment passed or made after the Local Government Act 2000 was passed. New section 9DA makes further provision about the discharge of executive functions in a local authority.



### **New sections 9E to 9EB: Discharge of functions**

60. These sections set out in greater detail how decision-making is to be undertaken under executive arrangements and provide for the mayor or leader, as the senior executive member, to determine how functions which are the responsibility of the executive should be carried out.

### **New sections 9F to 9FE: Overview and scrutiny committees**

61. New section 9F requires local authorities, which are operating executive arrangements, to set up overview and scrutiny committees.
62. Executive arrangements must ensure that these committees have power to make reports and recommendations, either to the executive or authority, on any aspect of council business. They must also have the power to make reports and recommendations on other matters which affect the authority's area or its inhabitants.
63. Where an overview and scrutiny committee reviews or scrutinises an executive decision which has been made but not implemented, subsection (4) provides that it may recommend that it is reconsidered by those responsible, or else arrange for the authority to review the decision and, where necessary, ask those responsible for the decision to reconsider.
64. New section 9FA describes in detail how overview and scrutiny committees may carry out their functions, giving them the power to appoint sub-committees and make arrangements for these sub-committees to discharge any functions of the overview and scrutiny committee. It also allows an overview and scrutiny committee to require officers of the authority and members of the executive to appear before it and invite any other person to appear before it. Neither the overview and scrutiny committee nor any of its sub-committees may include any member of the authority's executive, but can include people who are not members of the authority.
65. Overview and scrutiny committees are able to co-opt people who are not members of the authority. However, in general, such co-optees will not have voting rights unless they are permitted to vote under paragraphs 11 and 12 of new Schedule A1. The restriction on voting rights is also subject to provision made by or under paragraphs 6 to 8 of Schedule A1 or section 20(6) of the Police and Justice Act 2006. New section 9FA(6) provides that Part 5A of the Local Government Act 1972 on access to meetings and documents of certain authorities, committees and sub-committees, and Section 15 of the Local Government and Housing Act 1989 on the duty to allocate seats to political groups will apply to overview and scrutiny committees.
66. New section 9FB provides that local authorities (except those district councils for an area for which there is a county council) must designate one of their officers as scrutiny officer to perform the functions set out in this section. New section 9FB(4) provides that the local authority may not designate its head of paid service, monitoring officer or chief finance officer as its scrutiny officer.
67. New section 9FC provides that a local authority's executive arrangements must make provision to enable members of an overview and scrutiny committee, including a sub-committee of such a committee, to refer matters to the committee or sub-committee. It also stipulates that such local authorities must make arrangements to enable councillors who are not members of either the committee or sub-committee to refer any matters, which are not local crime and disorder matters (within the meaning of section 19 of the Police and Justice Act 2006), or specified as excluded matters in an order, to overview and scrutiny committees. A person is treated as enabled to refer a matter if that person is able to ensure that the matter is put on the agenda and discussed at a meeting of the committee or sub-committee.
68. New section 9FD makes further provision in relation to references of matters to overview and scrutiny committees by a member of a local authority who is not also

a member of the committee. It specifies certain factors that the committee may have regard to when considering whether to exercise its powers to review and scrutinise matters which have been referred by such a non-member.

69. New section 9FE makes further provision about reports and recommendations of overview and scrutiny committees. It provides that overview and scrutiny committees may publish reports and recommendations and must, in writing, require the authority or executive to take steps set out in new section 9FE(3). Subsections (4) to (6) of the new section describe how the local authority or executive must comply with notices made under subsection (3).

**New section 9FF: Reports and recommendations of overview and scrutiny committees: duties of certain partner authorities**

70. New section 9FF applies where an overview and scrutiny committee or sub-committee makes a report or recommendations to an authority or an executive and the report or recommendations relate to the functions of a relevant partner authority that are exercised in the authority's area or affect the people in that area. It does not apply where the report or recommendations are made by a crime and disorder committee by virtue of section 19(1)(b) or (3)(a) of the Police and Justice Act 2006.
71. The overview and scrutiny committee or sub-committee may give the relevant partner authority notice in writing requiring them to have regard to the report or recommendations in exercising their functions. A relevant partner authority which is a health service body i.e. a National Health Service Trust, an NHS Foundation Trust or a Primary Care Trust cannot be required to have regard to a report or recommendations made to that body under regulations made under section 244 of the National Health Service Act 2006. Alternatively, a health service body cannot be required to have regard to a report or recommendations made to it by a committee of a non-unitary district council. The relevant partner authority has a duty to comply with the requirement specified in the notice.

**New section 9FG: Publication etc of reports, recommendation and responses: confidential and exempt information**

72. New section 9FG makes provision in relation to an overview and scrutiny committee or a local authority excluding "confidential information" and "relevant exempt information" when publishing a document or providing a copy of it to a relevant partner authority. "Confidential information" is defined in new section 9FG(8) and has the meaning given by section 100A(3) of the Local Government Act 1972. "Exempt information" is also defined in that subsection and has the meaning given by section 100I of the 1972 Act but also includes exempt information under section 246 of the National Health Service Act 2006.

**New section 9FH: Overview and scrutiny committees: flood risk management**

73. New section 9FH requires lead local flood authorities to make arrangements for overview and scrutiny committees to review and scrutinise risk management authorities. Risk management authorities are placed under a duty to comply with a request made by an overview and scrutiny committee for information or a response to a report in relation to its flood or coastal erosion risk management functions. New section 9FH(4) provides for the Secretary of State to make regulations about this duty.

**New section 9FI: Overview and scrutiny committees: provision of information etc by certain partner authorities**

74. New section 9FI enables the Secretary of State to make regulations which determine what information relevant partner authorities must provide to a relevant committee or may not disclose to such a committee. This does not apply to information in relation to which provision can be made regarding the supply or non-disclosure of information

under the power conferred by section 20(5)(c) or (d) of the Police and Justice Act 2006 or section 244(2)(d) or (e) of the National Health Service Act 2006.

### **New Sections 9G and 9GA: Meetings and access to information etc**

75. New sections 9G and 9GA allow the Secretary of State to specify in regulations the circumstances in which meetings of the executive or its committees must be open to the public and which must be held in private. Other than where specified in regulations, it will be for the executive to choose whether to meet in private or in public. Written records of prescribed decisions made at meetings of the executive held in private or by individual members of the executive must be kept, including reasons for the decisions. These records, together with such reports and background papers as may be prescribed, must be made available to the public. Regulations could ensure that failure by the executive to cause to have such a record made and failure by the proper officer of the authority to make the record public would be criminal offences.
76. Regulations under these sections would also be able to apply provisions of Part 5A of the Local Government Act 1972, with or without modifications, to meetings of the executive and its committees, whether held in public or in private. The regulations may make provision requiring prescribed information about prescribed decisions to be made publicly available, and may also make provision about access to meetings of joint committees which are discharging functions which are the responsibility of the executive.
77. New section 9GB gives effect to Schedule A1.
78. New section 9GC provides that section 15 of the Local Government and Housing Act 1989, which is about the duty to allocate seats to political groups, does not apply to a local authority executive or a committee of an executive.

### **New section 9H: Elected mayors etc**

79. New section 9H provides that an “elected mayor” means an individual elected to that post by local government electors in the authority’s area. The section provides that references in any enactment to a member or councillor of a local authority do not include the elected mayor, unless the Secretary of State has provided in regulations that an elected mayor is to be treated as a member or councillor for the purpose of an enactment, or contrary intention appears in an enactment.
80. The section also provides that subject to regulations made under new sections 9HB or 9HE the elections of mayors are to take place on the same day as council elections, and that an elected mayor’s term of office is four years.

### **New section 9HA: Election as elected mayor and councillor**

81. New section 9HA provides that no one may be the elected mayor and a councillor for the same authority. It also makes provision in relation to circumstances where an individual elected as mayor is already a councillor of the authority or stands for election as both mayor and councillor at the same elections.

### **New section 9HB to 9HE: Mayoral elections**

82. New section 9HB enables the Secretary of State to make regulations providing for the timing of mayoral elections. It also empowers the Secretary of State to make provision by regulations in relation to the term of office of elected mayors and the filling of vacancies in the office of elected mayor.
83. New section 9HC and Schedule 2 to the 2000 Act describe the method for electing a directly elected mayor. This will normally be by a supplementary vote system unless there are fewer than three candidates where it will be by simple majority (first past the

post). Section 9HD provides that entitlement to vote at elections of elected mayors is the same as the electoral franchise for local government elections.

84. New section 9HE provides for the Secretary of State to make regulations regarding the conduct of elections for elected mayors. This includes a power to apply or modify any statutory provision relating to the conduct of elections. Before making any regulations under this section, the Secretary of State must consult the Electoral Commission.

#### **New section 9I: Election and term of office of leader**

85. This section provides what executive arrangements by a local authority operating a leader and cabinet executive may and must include with respect to the election of a leader and their term of office.

#### **New section 9IA: Removal of leader**

86. This section provides that executive arrangements by a local authority operating a leader and cabinet executive must include provision for the council to remove the executive leader by resolution. If such a resolution is passed then a new leader must be elected at the meeting where the leader is removed from office or at a subsequent meeting.

#### **New section 9IB: Leader to continue to hold office as councillor**

87. This section provides that the person who is the executive leader of a leader and cabinet executive remains a member of the council during the period that they are the leader. While they remain executive leader any enactment which provides for their early retirement as a councillor does not apply. This section does not affect anything by which the executive leader may cease to be a councillor otherwise than by retirement.

#### **New section 9IC: No other means of removing leader**

88. This section applies to a local authority which operates a leader and cabinet executive. An executive leader may not be removed from office except in accordance with new section 9IA or regulations under new section 9ID.

#### **New section 9ID: Regulations**

89. This section allows the Secretary of State by regulations to make provision in relation to the election and removal from office of executive leaders, their terms of office and the filling of vacancies in the office of executive leader of a leader and cabinet executive.

### **Chapter 3: The committee system**

#### **New section 9J: Secretary of State's power to prohibit delegation of functions etc**

90. New section 9J provides that the Secretary of State may by regulations specify or describe those functions or actions of a committee system local authority that are to be non-delegable functions or actions and specify or describe cases or circumstances in which any specified or described function or action is to be non-delegable. If these functions or actions are non-delegable then they must be carried out by the local authority and section 101 of the Local Government Act 1972 does not apply to them.

#### **New section 9JA: Overview and scrutiny committees**

91. New section 9JA states that a committee system local authority may by resolution appoint one or more committees as its overview and scrutiny committee or committees. There is, however, no statutory requirement for such local authorities to appoint an overview and scrutiny committee.
92. Under this section the Secretary of State may by regulations make provision about the functions, composition and procedure of a committee that has been appointed as

an overview and scrutiny committee and also the appointment by committee system local authorities of joint committees and sub-committees as overview and scrutiny committees. Regulations made by the Secretary of State may include provision which applies or reproduces any provision of, or made under, new sections 9F to 9FI or paragraphs 6 to 13 of Schedule A1.

#### **New section 9JB: Overview and scrutiny: flood risk management**

93. New section 9JB makes provision for committee system local authorities that are lead local flood authorities to review and scrutinise the exercise by risk management authorities of flood risk management or coastal erosion risk management functions which may affect the local authority's area.

### **Chapter 4: Changing governance arrangements**

#### **New sections 9K and 9KA: Changing from one form of governance to another or from one form of executive to another**

94. These sections make provision for local authorities to change their forms of governance, or to vary their executive arrangements so that they provide for a different form of executive, if they wish to.

#### **New section 9KB: Executive arrangements: other variation of arrangements**

95. This section makes provision for local authorities that operate executive arrangements to vary these if they wish to so that they differ from the existing arrangements in any respect but still provide for the same form of executive.

#### **New section 9KC: Resolution of local authority**

96. New section 9KC provides that a local authority must make a resolution if it wants to change its governance arrangements and outlines the steps that the local authority needs to undertake once a resolution to change governance arrangements has been passed.
97. This section also provides that a local authority which passes a resolution to change its governance arrangements, in the manner set out in new sections 9K and 9KA ('Resolution A'), cannot pass another resolution ('Resolution B') that makes such a change until 5 years have elapsed since Resolution A was passed. This is unless Resolution B is approved in a referendum held in accordance with this Chapter.
98. New section 9KC(5) provides that the section does not apply in relation to a change to a mayor and cabinet executive as a result of an order made by Secretary of State under new section 9N.

#### **New section 9L: Implementation: change in form of governance or change in form of executive**

99. This section provides that if a local authority passes a resolution which makes a change in governance arrangements of the kind set out in new sections 9K or 9KA, at a 'relevant change time' the local authority must cease operating the old form of governance and start operating the new form of governance. It provides that a local authority may take steps to prepare for or implement its change in governance arrangements. 'Relevant change time' is defined according to the form of governance that is currently in operation and the form that is proposed.

#### **New section 9M: Cases in which change is subject to approval in a referendum in accordance with sections 9MA and 9MB**

100. This section provides that a where a local authority proposes to change its governance arrangements by resolution, that change is subject to a referendum where either the



proposed change is of a kind set out in new sections 9K or 9KA and the implementation of the local authority's existing form of governance or executive was approved in a referendum under this Chapter, or where the authority resolves that the proposed change is to be subject to approval in a referendum.

#### **New sections 9MA and 9MB: Referendums**

101. These sections apply to a local authority that wishes to make a change in governance arrangements that is subject to approval in a referendum and outlines what a local authority must do in such an event.

#### **New sections 9MC to 9ME: Referendum following petition, direction or order**

102. New section 9MC gives the Secretary of State a power to make regulations concerning public petitions in relation to whether a local authority should operate a certain form of governance arrangements. It provides that regulations made under this section could require a local authority to hold a referendum where it has received a petition signed by at least 5% of local electors. Regulations may specify matters such as the form of petitions (including electronic petitions), their verification, the timing of referendums, the action to be taken by a local authority on receipt of a petition, and the manner in which and times at which the number of electors required to sign the petition is to be calculated and publicised. Regulations may also vary the 5% threshold for petitions.
103. New section 9MD allows the Secretary of State to make regulations specifying circumstances in which the Secretary of State may direct a local authority to hold a referendum on whether to adopt a particular form of governance. The regulations may include provision as to the timing of the referendum and the action to be taken by the authority in relation to it.
104. New section 9ME enables the Secretary of State, by order, to require all local authorities, or all authorities of a particular description, to hold a referendum on a particular form of governance arrangements.

#### **New section 9MF: Further provision with respect to referendums**

105. New section 9MF provides that if a local authority holds a referendum (Referendum A), it may not hold, or be required to hold, another referendum (Referendum B) for ten years, except in the following circumstances:
- a) where Referendum A was held by virtue of an order under section 9N and the proposal to operate a mayor and cabinet executive was rejected; or
  - b) Referendum B is required by virtue of an order made by the Secretary of State under new section 9N.

#### **New section 9MG: Voting in and conduct of referendums**

106. New section 9MG provides that entitlement to vote at referendums is the same as the electoral franchise for local government elections. This section gives the Secretary of State the power, by regulations, to make provision for the conduct of referendums. This includes a power to apply or modify any statutory provision relating to the conduct of elections or referendums. Before making any regulations under this section that include provision as to the question to be asked in a referendum, the Secretary of State must consult the Electoral Commission.

#### **New section 9N: Requiring a referendum on change to mayor and cabinet executive**

107. This section gives the Secretary of State the power by order to require a specified local authority to hold a referendum on whether the authority should operate the mayor and

cabinet executive. An order made under this section may make provision as to the date of the referendum.

#### **New section 9NA: Effect of section 9N order**

108. This section provides that should local people vote in favour of the mayor and cabinet executive at a referendum instigated by an order under new section 9N, then the local authority may not move away from that governance model.

#### **New section 9NB: Variation of mayoral executive**

109. New section 9NB provides that a local authority may not resolve to vary its existing mayor and cabinet executive arrangements without the written consent of the elected mayor. This provision only applies to proposals to vary existing arrangements, and not to proposals for changes from one form of governance arrangements to another.

#### **New section 9O: General**

110. This section provides that a local authority may not cease operating a form of governance arrangements, or vary executive arrangements, other than in accordance with this Chapter.

### **Chapter 5: Supplementary**

#### **New section 9P: Local authority constitution**

111. New section 9P requires a local authority to maintain a constitution and ensure that it is available for inspection by members of the public. The authority will have to supply a copy to anybody who requests one, upon payment of a reasonable fee. The constitution is to include the standing orders, a copy of the authority's code of conduct, such information as the Secretary of State may direct and such other information as the authority considers appropriate. In the case of a local authority operating the committee system the constitution must also contain a statement as to whether it has an overview and scrutiny committee.

#### **Section 9Q: Guidance**

112. Section 9Q provides that a local authority must have regard to any guidance issued by the Secretary of State for the purposes of Part 1A of the Local Government Act 2000.

### **Schedule 2Part 2: New Schedule A1 to the Local Government Act 2000 - Executive arrangements in England: further provision**

113. New Schedule A1 sets out further details of the working of executive governance arrangements and makes provision about the role of church and parent governors on overview and scrutiny committees.
114. For a mayor and cabinet executive, the arrangements must allow the mayor to determine the size of the executive (subject to a maximum of 10 members - unless a different maximum is specified under new section 9C(5)). These arrangements must also require the mayor to appoint his or her own deputy mayor from amongst the executive.
115. For a leader and cabinet executive, the arrangements must allow the leader to determine the size of the executive (subject to a maximum of 10 members - unless a different maximum is specified under new section 9C(5)). The arrangements must also require the leader to appoint his or her own deputy leader from amongst the executive.
116. The Schedule permits executive arrangements to cover such matters as the conduct of meetings, and similar matters in relation to meetings of committees of the executive. It also enables the Secretary of State to make regulations for appointment of an assistant for the mayor.

117. The Schedule also makes detailed provision about the appointment of church and parent governor representatives to overview and scrutiny committees.

***Section 22 - New local authority governance arrangements: amendments***

118. **Section 22** gives effect to Schedule 3 which makes amendments which are consequential upon the provisions of section 21 and Schedule 2.

***Section 23 - Changes to local authority governance in England: transitional provision etc***

119. **Section 23** allows the Secretary of State, by order, to make such transitional, transitory or saving provisions as he or she considers appropriate in connection with the coming into force of sections 21 and 22 and Schedules 2 and 3.

***Section 24 – Timetables for changing English district councils’ electoral schemes***

120. **Section 24** amends the Local Government and Public Involvement in Health Act 2007, and the Local Democracy, Economic Development and Construction Act 2009, in relation to electoral schemes in district councils. A district council in England may resolve at any time to change its scheme of elections, rather than being restricted to making this resolution during a permitted resolution period, as was previously the case. Where a district council has passed a resolution to change electoral schemes, it may not pass another such resolution for five years beginning with the day on which the first resolution is passed. Where a district council resolves to move to a scheme of whole council elections, it must also specify, in its resolution, the year in which it will hold its first whole-council election. The only restriction is that district councils in two tier areas are prevented from specifying a year in which the county council in its area holds an election (a “fallow” year). Once the district council has held its first whole-council election it will then hold whole-council elections in every fourth year afterwards. Provision is also made to provide that after a district council has passed a resolution it will continue to hold elections under its previous electoral scheme until the date it specifies as its first year of whole-council elections.

***Chapter 6: Predetermination***

***Section 25 - Prior indications as to view of a matter not to amount to predetermination***

121. **Section 25** clarifies how the common law concept of "predetermination" applies to councillors in England and Wales. Predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision. Decisions made by councillors later judged to have predetermined views have been quashed. The section makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.
122. **Section 25** applies to members of all councils in England and Wales to which there are direct elections - although it applies both to elected and to co-opted members of those councils, and also to members of National Parks Authorities and the Broads Authority.

***Chapter 7: Standards***

***Section 26: Amendments of existing provisions***

123. **Section 26**, and Schedule 4 which it introduces, abolish the Standards Board regime, which consists of the Standards Board for England, standards committees of local

authorities, the jurisdiction of the First-tier Tribunal in relation to local government standards in England, and model codes of conduct for councillors. The abolition of the Standards Board for England and revocation of the model code of conduct will take place on a date appointed by the Secretary of State. None of the functions of the Standards Board for England are to be preserved. The power for the Secretary of State to issue a model code of conduct and to specify principles to govern the conduct of members of relevant authorities (see section 27(6)) is removed together with the requirement for relevant authorities to establish standards committees. The First-tier Tribunal loses its jurisdiction over councillor conduct issues.

124. [Schedule 4](#) contains provision for the Secretary of State to make an order regarding the transfer of the assets and liabilities from the Standards Board for England. It also makes provision for the Secretary of State to issue directions in connection with the abolition, including directions about information held by the Standards Board for England, and makes provision for the final statement of accounts for the Standards Board for England to be prepared by the Secretary of State.

### ***Section 27: Duty to promote and maintain high standards of conduct***

125. [Section 27](#) places a duty on a relevant authority to ensure that its members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members. “Relevant authority is defined by *subsection (6)*. Section 27 provides for a parish council to adopt the code adopted by its principal authority if it wishes. In the case of the Greater London Authority, it provides that the standards functions are to be discharged jointly by the Mayor and Assembly. It also defines what a ‘co-opted member’ is and what a relevant authority is for the purpose of this Chapter.

### ***Section 28: Codes of conduct***

126. [Section 28](#) requires a relevant authority to adopt a code whose contents must be consistent with the seven ‘Nolan’ principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and must set out the rules that the authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests. It requires an authority to put in place arrangements under which it can investigate an allegation of a breach of a code made in writing and, if it is considered that an investigation is warranted, requires the authority to appoint at least one independent person whose views must be sought after it has made an investigation and before it takes a decision. It allows members who have had an allegation made against them to seek the views of the independent person if they wish. The section prevents councillors, officers or their relatives or friends from being appointed as independent persons and provides for the appointment process to be publicised and transparent.

### ***Section 29: Register of interests***

127. [Section 29](#) requires monitoring officers of relevant authorities to establish and maintain a register of members’ and co-opted members’ interests, to make the register available for inspection and to publish it on their authority’s website. It also requires the monitoring officer of a principle council to make the register of members’ interests for parish councils in its area available for inspection and to publish it on the website of the principal council. In addition, parish councils are required to publish the register on their own website, if they have one.

### ***Section 30: Disclosure of pecuniary interests on taking office***

128. [Section 30](#) requires members of relevant authorities to notify the monitoring officer of any disclosable pecuniary interests of them or a spouse or civil partner they live with, within 28 days of taking up office. The section allows the Secretary of State to make

regulations defining a “disclosable pecuniary interest”, and requires the monitoring officer to enter any notified disclosable pecuniary interest in the authority’s register, as well as any other interest notified to them, whether or not it is pecuniary.

***Section 31: Pecuniary interests in matters considered at meetings or by a single member***

129. **Section 31** requires a member of a relevant authority to disclose a disclosable pecuniary interest that they are aware of (apart from a sensitive interest – see section 32), at a meeting or if acting alone, where any matter to be considered relates to their interest. If the interest is not already registered, it requires members to register it within 28 days. The monitoring officer must then enter the interest in the authority’s register. It prohibits a member from participating in discussion or voting on any matter relating to their interest or, if acting alone, from taking any steps in relation to the matter (subject to any dispensations – see section 33). Local authorities may also, should they so wish, amend their standing orders to require a member to leave the room when a matter in which they have a disclosable pecuniary interest is debated or voted on.

***Section 32: Sensitive interests***

130. **Section 32** provides for details about a registered interest to be excluded from versions of the register that are available for public inspection or published where a member and monitoring officer agree that the disclosure of these details could lead to harm or intimidation of the member or their family. It provides for members to disclose only the fact that they have a disclosable pecuniary interest in the matter concerned at meetings or when acting alone.

***Section 33: Dispensations from section 31(4)***

131. **Section 33** empowers a relevant authority, on receipt of a written request, to grant dispensations for up to four years for a member to be able to participate in or vote at meetings where they have a disclosable pecuniary interest. Authorities may grant dispensations if they consider that by not granting a dispensation, the business of the authority or committee is likely to be impeded; or that the political balance of the committee or authority is so upset as to alter the outcome of a vote; or that granting the dispensation is in the interests of residents; or that all members of the executive are unable to participate in business to be carried out by the executive; or that they consider it appropriate to grant a dispensation for other reasons.

***Section 34: Offences***

132. **Section 34** makes it a criminal offence if a member or co-opted member fails, without reasonable excuse, to comply with requirements under section 30 or 31 to register or declare disclosable pecuniary interests, or take part in council business at meetings or when acting alone when prevented from doing so. It empowers the magistrates’ court, upon conviction, to impose a fine of up to level 5 (currently £5,000), and an order disqualifying the person from being a member of a relevant authority for up to five years. It extends the time for bringing a prosecution for the offence by allowing a prosecution to be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.

***Section 35: Delegation of functions by Greater London Authority***

133. **Section 35** empowers the London Assembly and the Mayor of London, acting jointly, to delegate standards functions to a committee or member of staff. This mirrors the powers local authorities have to delegate these functions to a committee or member of staff.



***Section 36: Amendment of section 27 following abolition of police authorities***

134. **Section 36** removes police authorities from the list of “relevant authorities” in section 27(6). The Police Reform and Social Responsibility Act 2011 contains provision for the abolition of police authorities and for their replacement with police and crime commissioners. The section will be commenced when police authorities cease to exist.

***Section 37: Transitional provision***

135. **Section 37** gives particulars of the Secretary of State’s power to make transitional provision in relation to the abolition of the Standards Board regime. Allegations of misconduct can be brought against a member up to the date when section 57A of the Local Government Act 2000 is repealed. The transitional provisions mentioned in this section could make provision for any such allegations to be transferred from the Standards Board for England to local authority standards committees, and could make provision for the penalties which can be imposed by those committees, and rights of appeal, to be modified.

***Chapter 8: Pay Accountability***

***Section 38: Pay policy statements***

136. **Section 38** places a requirement on a relevant authority (being a local authority or fire authority, as defined by section 43(1)) to prepare, annually, a statement setting out the authority’s policies on the remuneration of its chief officers, the remuneration of its lowest paid employees and the relationship between the remuneration of its chief officers and the remuneration of its employees who are not chief officers. Chief officers are the most senior officers of the authority. Authorities are required to state the definition of lowest paid employees they have adopted in the statement, and explain the reasons for adopting that particular definition. The statement may also set out the authority’s policies relating to other terms and conditions applying to chief officers. In preparing its statement, the authority must have regard to any guidance issued or approved by the Secretary of State (if an English authority) or Welsh Ministers (if a Welsh authority) (see section 40).

***Section 39: Supplementary provisions relating to pay policy statements***

137. **Section 39** requires the pay policy statement to be approved by, and allows the statement to be amended by, resolution of the authority. The statement may be amended even during the financial year to which it applies. The statement must be published. The authority must have regard to any guidance issued or approved by the Secretary of State (if an English authority) or Welsh Ministers (if a Welsh authority) when performing its functions under this section (see section 40).

***Section 41: Determinations relating to remuneration***

138. **Section 41** requires the relevant authority to comply with its pay policy statement for the relevant financial year when making a determination that relates to the remuneration, or other terms and conditions, of a chief officer of the authority.

***Section 42: Exercise of functions***

139. **Section 42** prevents the functions in this Chapter from being exercised by the executive of the authority, and prevents the passing of a resolution under this Chapter from being delegated by the authority to a committee or an individual officer.

## ***Chapter 9: Commission for Local Administration in England***

### ***Section 44: Arrangements for provision of services and discharge of functions***

140. **Section 44** allows the Commission for Local Administration in England (known as the Local Government Ombudsman service) to make arrangements with the Parliamentary and Health Service Ombudsman, and a housing ombudsman to share administrative services; and also makes express provision for delegation of administrative functions by the Commission to individuals such as employees of the Commission.

## ***Chapter 10: Miscellaneous Repeals***

### ***Section 45: Repeal of duties relating to promotion of democracy***

141. This section removes the requirements for principal local authorities, in England and Wales, to provide information to people about how local governance systems work, including information on the role of the council, councillors, other relevant public bodies and civic roles such as magistrates, and how people can get involved.

### ***Section 46: Repeal of provisions about petitions to local authorities***

142. This section removes the requirements for principal local authorities in England and Wales to make, publish and comply with a scheme for the handling of petitions made to the authority, and to provide a facility for making petitions in electronic form to the authority. It also removes the powers of the Secretary of State and Welsh Ministers to make provision by order in relation to petitions schemes.

### ***Section 47: Schemes to encourage domestic waste reduction by payments and charges***

143. This section removes sections 71 to 75 of and Schedule 5 to the Climate Change Act 2008 and so removes the powers for local authorities to pilot charge-and-reward waste reduction schemes. Local Authorities will still be free to introduce schemes which reward householders for waste reduction, under their well-being powers or general powers of competence, as appropriate, but will no longer need to complete the processes required under the Climate Change Act 2008.

## ***Part 2: Eu Financial Sanctions***

### ***Section 48: Power to require public authorities to make payments in respect of certain EU financial sanctions***

144. **Section 48** gives discretionary power to a Minister of the Crown to require a public authority to pay all, or part, of a financial sanction imposed on the UK by the Court of Justice of the European Union. Such a sanction would be imposed for failure by the UK to remedy a breach of EU law that the Court had previously found. This requirement can only be imposed if the public authority has been designated in relation to the specific EU infraction case in question (also see section 52), and it must be imposed by way of a final notice (see section 56), which must be preceded by a warning notice (see section 54).

### ***Section 49: Duty of the Secretary of State to issue a policy statement***

145. The Secretary of State must issue a policy statement concerning the operation of Part 2 of the Localism Act and consult prior to publication. Any Minister using the powers under this Part and any independent panel set up under them (described in section 53) must have regard to the policy statement.

***Section 50: The EU sanctions to which Part 2 applies***

146. **Section 50** clarifies that Part 2 applies in principle to EU financial sanctions imposed on the UK after the commencement of Part 2. It also enables a Minister to give a certificate which has the effect of specifying a part of an EU financial sanction to which the powers under this Part do not apply. The intention is that this power will be used for parts of the EU financial sanction which relate to devolved matters.

***Section 51: Meaning of “public authority and related terms”***

147. **Section 51** defines some of the terms used in this Part. A public authority is a local authority (as specified) or any other body or person which has any non-devolved public functions. A public authority with mixed functions is one which has both devolved and non-devolved functions; and the ‘appropriate national authority’, in relation to a public authority with mixed functions, is such of the devolved administrations of Scotland, Wales and Northern Ireland as are relevant, depending on the body’s devolved functions.

***Section 52: Designation of Public Authorities***

148. **Section 52** gives power to a Minister to designate by order one or more named public authorities, identify the specific infraction case to which the designation relates, and describe the activities of the authority covered by the designation. Only acts or omissions after designation can be taken into account when passing on a financial sanction, and only activities which are carried out in the exercise of non-devolved functions of the authority can be included.
149. The Minister must consult with a public authority, and the appropriate national authority if the public authority has mixed functions, designating it. A Minister would be able to make an order at any point once an infraction case had been initiated by the Commission, and the UK Government had been formally notified – the earliest would be following a formal notice letter under Article 258 on the Treaty of the Functioning of the European Union.
150. All orders under this section are subject to the affirmative procedure, that is, the approval of both Houses of Parliament must be obtained – see section 235.

***Section 53: Establishment of independent panel***

151. **Section 53** sets out that, once a financial sanction has been imposed on the UK and a public authority has been designated by order for the related infraction case, then the Minister must set up an independent advisory panel before issuing any warning notice. The panel will have a number of functions under Part 2, including dealing with representations following the giving of a warning notice to a designated public authority.

***Section 54: Warning notices***

152. **Section 54** sets out the procedural requirements for warning notices. The Minister must consult with the independent panel and any appropriate national authority before issuing a warning notice.
153. Following any representations on procedures, the Minister may consult with the independent panel and then issue a revised warning notice, listing any changes to the timetable or procedures set out in the notice for the particular case.

***Section 55: Matters to be determined before a final notice is given***

154. **Section 55** sets out the matters which must be determined before issuing a final notice. The independent panel must provide an evidenced report containing recommendations about the apportionment of the lump sum and any periodic penalties due under the

terms of the EU financial sanction, and the report must be published. The Minister must then invite further representations from the public authority, and appropriate national authority if relevant, on ability of the authority to pay and potential impact on finances and any devolved functions. The Minister must have regard to the independent panel's report, any impact on the authority's finances and not prejudicing the performance by the authority of any of its devolved functions.

### ***Section 56: Final notices***

155. **Section 56** sets out the contents of a final notice, requiring payment following a determination under section 55 that a public authority should be required to pay. This will deal with all parts of the EU financial sanction including the lump sum, periodic payments already due from the UK and future periodic payments. The Minister may terminate the requirement to make payments towards future periodic payments, or vary it to make it less onerous, if he or she sees fit due to changing circumstances, either on the application of the public authority or of his or her own motion. If such an application is made then, while the application is being considered the Minister may suspend any payments which would otherwise fall due, but this does not affect the liability to make any payment once the suspension is ended, unless the Minister so decides. The Minister may consult the independent panel, and seek representations from the public authority and any appropriate national authority, before reducing or terminating the requirement to pay.

## **Part 3: Eu Financial Sanctions: Wales**

### ***Sections 58 to 67: EU Financial sanctions: Wales***

156. This Part sets out a discretionary power for the Welsh Ministers to require a Welsh public authority exercising devolved functions in Wales to pay all, or part of, any financial sanction imposed on the UK, replicating the provisions and procedures as set out in sections 48 to 57. Part 3 only applies in relation to the activities of a Welsh public authority in the exercise of its devolved functions.
157. The main differences are that:
- Section 60 provides that the Welsh Ministers must certify that these powers apply to the whole or part of an EU financial sanction for Part 3 to apply.
  - Section 61 includes a definition of a Welsh public authority as a council of a county or county borough in Wales, or any other person or body which has any Welsh devolved functions of a public nature; and the definition of 'appropriate national authority' includes a Minister of the Crown if the Welsh public authority has any functions which are not devolved.
  - Sections 62, 64 and 65 set out that the Welsh Ministers must consult with the appropriate national authority if the Welsh public authority has any functions other than Welsh devolved functions.
  - Section 65 sets out that, if the Welsh public authority has functions other than Welsh devolved functions, then the Welsh Ministers must have regard to the need to avoid any prejudicial effect on the performance by the authority of those other functions.

## **Part 4: Non-Domestic Rates**

### ***Section 68: Ballot for imposition and certain variations of a business rate supplement***

158. **Section 68** amends the Business Rate Supplements Act 2009 to provide that all proposals for the imposition of a Business Rate Supplement will require approval by a ballot of all persons eligible to vote, as opposed to the current position where a ballot

is only required if the Business Rate Supplement is to fund more than one third of the total cost of the project to which the Business Rate Supplement relates. *Subsection (6)* also requires that certain further information about the result of any ballot is to be published in the initial and final prospectuses for the Business Rate Supplement. The amendments do not apply in relation to a Business Rate Supplement that has already been imposed as the time the amendments come into force (whether or not the Business Rate Supplement is payable at that time)

### ***Section 69: Non-domestic rates: discretionary relief***

159. **Section 69** amends section 47 of the Local Government Finance Act 1988 to replace the limited circumstances in which local authorities can currently give discretionary relief with a power to grant relief in any circumstances. This is subject to the condition that, except in the limited circumstances specified, the local authority may only grant relief if it would be reasonable to do so having regard to the interests of council tax payers in its area. The amendments also require a local authority to have regard to any relevant guidance issued by the Secretary of State (or, in relation to Wales, the Welsh Ministers) when deciding whether to grant relief under section 47 of the 1988 Act. Section 69 also, in limited circumstances associated with changes to section 47 of the 1988 Act, removes the statutory deadline by which amendments need to be made to non-domestic rating contributions regulations for the 2012-13 financial year.

### ***Section 70: Small business relief***

160. **Section 70** amends section 43 of the Local Government Finance Act 1988 to enable the Secretary of State to make provision for a new small business rate relief scheme (made under that section) which does not require ratepayers to apply for small business rate relief in some or all cases. In those cases (if any) where an application is required, it will still be a criminal offence if the applicant knowingly or recklessly makes a false statement in that application

### ***Section 71 - Cancelling of liability to backdated non-domestic rates***

161. **Section 71** amends the Local Government Finance Act 1988 to provide a power for the Secretary of State to prescribe by regulations conditions for the cancellation of certain backdated non-domestic rates, but only where a property is shown in a local non-domestic rating list compiled on 1st April 2005 as the result of an alteration of the list made after the list was compiled. The regulations are subject to the negative procedure.

## **Part 5: Community Empowerment**

### ***Chapter 1: Council Tax***

#### ***Section 72: Referendums relating to council tax increases***

162. *Subsection (1)* gives effect to Schedule 5 which inserts a new Chapter 4ZA into Part I of the Local Government Finance Act 1992. *Subsection (2)* gives effect to Schedule 6.

#### **Schedule 5: New Chapter 4ZA: Referendums relating to council tax increases**

##### **New Section 52ZB: Duty to determine whether council tax excessive**

163. New section 52ZB sets out the duty on billing authorities, major precepting authorities and local precepting authorities to each determine whether their relevant basic amount of council tax for a financial year is excessive. If an authority's relevant basic amount of council tax is excessive, the provisions in relation to the duty to hold a referendum apply.



**New section 52ZC: Determination of whether increase is excessive**

164. New section 52ZC provides that a set of principles determined by the Secretary of State will be used to decide whether an authority's relevant basic amount of council tax for the year is excessive. One or more principles may be set. The set of principles must include a comparison between the relevant basic amount of council tax for the year under consideration, and the preceding year. Two different relevant basic amounts of council tax are applicable to the area of the Greater London Authority because the special expense of the Mayor's Office for Policing and Crime<sup>1</sup> relates to only part of the Greater London Authority's area. The different amounts are defined as the unadjusted relevant basic amount and the adjusted relevant basic amount in new section 52ZX(3). Principles which apply to the Greater London Authority may only make a comparison between unadjusted relevant basic amounts of council tax, a comparison between adjusted relevant basic amounts of council tax or a comparison between unadjusted relevant basic amounts of council tax and a comparison between adjusted relevant basic amounts of council tax. A comparison between unadjusted relevant basic amounts of council tax and adjusted relevant basic amounts of council tax cannot therefore be made. Other than the principle comparing relevant basic amounts of council tax, the Secretary of State can determine other principles. One of the other principles could potentially include a *de minimis* threshold or thresholds. This may state that neither council tax increases, nor a basic amount of council tax, would be considered excessive if these are below a specified threshold level.
165. New section 52ZC also provides that the Secretary of State may determine principles for particular categories of authority. The principles must be applied to all authorities falling within that category. Where the Secretary of State determines categories and an authority does not fall within any category, its relevant basic amount of council tax for the financial year cannot be determined as excessive. Where no categories are determined, any principles determined will apply to all authorities.

**New section 52ZD: Approval of principles**

166. New section 52ZD provides that the principles for a financial year must be specified in a report to be laid before the House of Commons before the date on which the local government finance report for the year is approved by resolution of the House of Commons. Where the report is not laid, or not approved by resolution of the House of Commons, no principles can take effect and no authority's relevant basic amount of council tax can be determined as excessive for the year under consideration.

**New section 52ZE: Alternative notional amounts**

167. New section 52ZE provides the Secretary of State with the power to make a report setting alternative notional amounts to be used in place of an authority's relevant basic amount of council tax for the preceding year. The alternative notional amounts will be used when making a comparison with an authority's relevant basic amount of council tax for the year under consideration to determine whether its council tax is excessive. An alternative notional amount report may be made when an authority did not exist at the beginning of the financial year preceding the one under consideration, or where the functions of an authority have changed. This is to enable a like-for-like comparison of council tax changes for the purposes of determining whether an amount of council tax is excessive by reference to the principles. The amount should be set out in a report that may relate to more than one authority. It must contain such explanations as the Secretary of State thinks desirable of the need for an alternative notional amount to be calculated and the method of calculation, and must be laid before the House of Commons. The report takes effect if approved by resolution of the House of Commons.

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<sup>1</sup> Once the relevant provisions of the Police Reform and Social Responsibility Act 2011 are in force, the Metropolitan Police Authority will be replaced by the Mayor's Office for Policing and Crime.

**New section 52ZF: Billing authority's duty to make substitute calculations**

168. New section 52ZF sets out what a billing authority must do if it sets an excessive council tax increase. It must make substitute calculations which will have effect, in the event that the authority's proposed excessive increase in council tax is rejected in a referendum or the authority fails to hold a referendum when it is required to do so. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be below the amount which is considered excessive under the principles.

**New section 52ZG: Arrangements for referendum**

169. New section 52ZG provides that a billing authority must make arrangements to hold a referendum where the billing authority itself has set an excessive increase in council tax. The referendum can be held at any time of the authority's choosing subject to this being no later than the first Thursday in May or a date specified by the Secretary of State by order.

**New section 52ZH: Effect of referendum**

170. New section 52ZH requires the billing authority to inform the Secretary of State of the result of the referendum. Where the result of the referendum is that an authority's excessive increase in council tax is rejected the authority's substitute calculations have effect for the financial year.

**New section 52ZI: Failure to hold referendum**

171. New section 52ZI sets out the position where a billing authority is required to hold a referendum but, for any reason, fails to do so by the deadline date which would be either the first Thursday in May, or another date the Secretary of State may specify by Order. In such circumstances, the authority's substitute calculations will have effect.

**New section 52ZJ: Major precepting authority's duty to make substitute calculations**

172. New section 52ZJ provides that where a major precepting authority sets an excessive council tax increase it must make substitute calculations, which will have effect in the event that the authority's proposed council tax increase is rejected in a referendum. The substitute calculations will also have effect where a referendum is not held on an excessive increase by the required date. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be below that which is considered excessive under the principles. The section outlines the different methods of calculation which are required by (i) all major precepting authorities except the Greater London Authority and (ii) the Greater London Authority, to reflect the different way in which it must make its calculations.

**New section 52ZK: Major precepting authority's duty to notify appropriate billing authorities**

173. New section 52ZK provides that where a major precepting authority has set an excessive increase in council tax it should notify each appropriate billing authority that its council tax is excessive and that the billing authority is therefore required to hold a referendum. The section outlines the different calculations which must be included in the notification for (i) all major precepting authorities except the Greater London Authority and (ii) the Greater London Authority, to reflect the different way in which it calculates its basic amount of council tax. The date by which the notification is to be given is to be prescribed by the Secretary of State in regulations.

**New section 52ZL: Local precepting authority's duty to make substitute calculations**

174. New section 52ZL provides that where a local precepting authority sets an excessive council tax increase it must make substitute calculations which will have effect in the event that the authority's proposed increase is rejected in a referendum. The substitute calculations will also have effect where a referendum is not held on an excessive increase by the required date. The amount calculated as an authority's relevant basic amount of council tax in the substitute calculations must be an amount below that which is considered excessive under the principles.

**New section 52ZM: Local precepting authority's duty to notify appropriate billing authority**

175. New section 52ZM requires that where a local precepting authority has set an excessive amount of council tax it must notify its appropriate billing authority that it is required to hold a referendum. The section sets out the calculations which must be included in the notice. The date by which the notification is to be given is to be prescribed by the Secretary of State in regulations.

**New section 52ZN: Arrangements for referendum**

176. New section 52ZN provides that where a major or local precepting authority sets an excessive amount of council tax and gives the required notification to a billing authority, the billing authority must make arrangements to hold a referendum. The referendum can be held at any time of the billing authority's choosing subject to this being no later than the first Thursday in May or a date specified by the Secretary of State by Order. However, where a precepting authority sets an excessive increase in relation to which two or more billing authorities must organise a referendum, the referendums must be held on the first Thursday in May or such other date as the Secretary of State may specify by Order. This section provides that, subject to any regulations made by the Secretary of State, the billing authority can recover the costs of holding a referendum triggered by a precepting authority from that precepting authority.

**New section 52ZO: Effect of referendum**

177. New section 52ZO requires that the precepting authority must inform the Secretary of State of the result of the referendum. Where the result of the referendum is that an authority's increase in council tax is rejected the authority's substitute calculations have effect for the financial year.

**New section 52ZP: Failure to hold referendum**

178. New section 52ZP sets out the position where a billing authority is required to hold a referendum on behalf of a precepting authority but, for any reason, fails to do so by the deadline date of the first Thursday in May or such other date as is specified by Order. In such circumstances, the precepting authority's substitute calculations have effect.

**New section 52ZQ: Regulations about referendums**

179. New section 52ZQ allows the Secretary of State to make regulations concerning the conduct of referendums. It also allows the Secretary of State to make provision in regulations to combine polls where more than one referendum on a council tax increase is being held or where other elections or referendums are being held.

**New sections 52ZR to 52ZW: Directions**

180. New sections 52ZR to 52ZW make provision for a situation in which an authority is in financial difficulty. Under new section 52ZR if it appears to the Secretary of State that an authority will be unable to discharge its functions in an effective manner, or unable

to meet its financial obligations unless it sets a council tax increase which exceeds the principles determined under new section 52ZC, the Secretary of State may direct that the referendums provisions do not apply to the authority for a financial year. In the case of the Greater London Authority, a direction may be given where it appears to the Secretary of State that one or more of the Greater London Authority's constituent bodies will be unable to discharge its functions in an effective manner or one or more of the bodies will be unable to meet its financial obligations unless it sets a council tax increase which exceeds the principles. The Greater London Authority's constituent bodies are the Mayor of London, the London Assembly or a functional body. For the Greater London Authority, a direction may only be given after the authority has calculated its council tax for the financial year. For other authorities, a direction may also be given before the authority has calculated its council tax for the financial year. A direction may not be given in any case where an authority's relevant basic amount of council tax for the financial year has been rejected in a referendum.

181. Under new sections 52ZS and 52ZT, where a direction is given to a billing authority or a major precepting authority other than the Greater London Authority, the direction must state the amount that is to be the authority's council tax requirement for the financial year. Where the direction is given before the authority has calculated its council tax, the authority is required to comply with the Secretary of State's direction when calculating its council tax for the financial year. If the direction is given after the authority has calculated its council tax the authority must make substitute calculations to comply with the direction.
182. Under new section 52ZU, where a direction is given in relation to the Greater London Authority, the direction must state the amount that is to be the council tax requirement for the relevant constituent body. The Greater London Authority must then make substitute calculations in relation to the relevant constituent body to comply with the direction and it may also make substitute calculations for other constituent bodies. Where the substitute calculations result in an increase in the consolidated council tax requirement for the Greater London Authority, or the council tax calculations made for the Greater London Authority would differ from the last relevant calculations made, the Greater London Authority must make substitute calculations. The increase in the Greater London Authority's consolidated council tax requirement as a result of the substitute calculations must not exceed the increase which was required to be made to the component council tax requirement for the relevant constituent body to comply with the direction.
183. New section 52ZV provides that where a direction is given in relation to a local precepting authority, the direction must state the amount that is to be the amount of the local precepting authority's council tax requirement for the financial year. This amount is to be treated as the authority's council tax requirement for the year.
184. New section 52ZW sets out the time period in which an authority must make substitute calculations where it is required to so after a direction has been issued. Where a billing authority fails to make the required calculations within the time period stated it will have no power to transfer any amount from its collection fund to its general fund. This restriction will continue to apply until the authority makes the required substitute calculations. Where a precepting authority fails to make the required substitute calculations within the relevant time period, no billing authority to which it has power to issue a precept will be able to pay anything in respect of a precept issued until the precepting authority makes those calculations and issues any precept that is required to be issued in substitution.

#### **New section 52ZX: Meaning of relevant basic amount of council tax**

185. New section 52ZX sets out the meaning of an authority's relevant basic amount of council tax and how this should be calculated. Two different definitions of the relevant basic amount of council tax are applicable to the area of the Greater London Authority.

The unadjusted relevant basic amount of council tax relates to the area of the Greater London Authority in relation to which the special expense of the Mayor's Office for Policing and Crime does not apply. The adjusted relevant basic amount of council tax relates to the part of the Greater London Authority's area to which the special expense of the Mayor's Office for Policing and Crime does apply.

### **New section 52ZY: Information for purposes of Chapter 4ZA**

186. New section 52ZY provides that the Secretary of State may require an authority to supply information for the purpose of the performance of the Secretary of State's functions under this Chapter. Where an authority fails to comply, the Secretary of State may exercise those functions based on such estimates and assumptions as the Secretary of State sees fit. The Secretary of State may also take account of any other available information.

### **Schedule 6: Council tax referendums: further amendments**

187. Schedule 6 of the Localism Act makes further amendments in relation to council tax referendums. In particular, it amends Chapter 4A of the Local Government Finance Act 1992 which deals with the limitation of council tax and precepts so that the Secretary of State will no longer have the power to cap council tax increases and the provisions of this Chapter will only continue to apply in relation to Wales.
188. A number of other amendments are made in the Schedule. Paragraph 37 amends Schedule 6 to the Greater London Authority Act 1999 so that the procedure for determining the Greater London Authority's consolidated council tax requirement includes a duty to prepare and approve a substitute consolidated council tax requirement. This duty will apply if the amount determined as the Greater London Authority's consolidated council tax requirement for the year results in a relevant basic amount of council tax which does not comply with the principles approved under new section 52ZD. The amount determined as the authority's substitute consolidated council tax requirement under Schedule 6 will be used when the Greater London Authority makes substitute calculations under new section 52ZJ.

### **Sections 73 to 79 - Local authority requisite calculations**

189. [Sections 73 to 79](#) amend the calculations ("the requisite calculations") which billing authorities, major precepting authorities and local precepting authorities in England must make to determine their basic amounts of council tax for a financial year. The principal effect of these sections is to replace the obligation to calculate a budget requirement for a financial year with an obligation to calculate a council tax requirement. This change has been made possible in relation to England by the repeal of the Secretary of State's power to cap an authority's budget requirement (see generally paragraphs 4 to 28 of Schedule 6) and the introduction of referendums in relation to council tax increases (see section 72 and Schedule 5).
190. Under previous legislation an authority's budget requirement for a financial year was the amount that the authority requires from council tax, revenue support grant, redistributed non-domestic rates and certain other income sources in order to finance its budget for the year. Powers in the Local Government Finance Act 1992 and the Greater London Authority Act 1999 were used to make annual Alteration of Requisite Calculations Regulations in relation to England the purpose of which was to ensure that the requisite calculations for local authorities in England operate appropriately each financial year. In particular, those Regulations ensured that the correct items were taken into account in the respective calculations of an authority's budget requirement and its basic amount of council tax.
191. The changes made by sections 73 to 79 place local authority requisite calculations on a simpler footing and avoid the need for regulations each financial year.

192. Under the new provisions an authority's council tax requirement for a financial year is the amount that the authority requires from council tax alone in order to finance its budget for the year and this amount is used to calculate the authority's basic amount of council tax. This approach simplifies the council tax calculations, since it avoids the need to deduct revenue support grant, redistributed non-domestic rates and the other income sources from the authority's budget requirement before the authority's council tax is calculated.
193. The new provisions also make explicit reference to "proper practices". Proper practices for these purposes are the accounting practices that govern the preparation of local authorities' annual accounts. Including references to proper practices in the requisite calculations simplifies and clarifies the operation of those calculations.

### ***Section 73 – References to proper accounting practices***

194. **Section 73** amends the definition of "proper practices" in section 21 of the Local Government Act 2003 so that that section applies to the Local Government Finance Act 1992 and the Greater London Authority Act 1999. This amendment enables the term "proper practices" to be used in the amendments which are made to those Acts by sections 74 to 79.

### ***Section 74 – Council tax calculations by billing authorities in England***

195. **Section 74** inserts new sections 31A and 31B into the Local Government Finance Act 1992. In relation to England these provisions replace sections 32 and 33 of that Act which require a billing authority to calculate its budget requirement and basic amount of council tax for a financial year.
196. New section 31A requires a billing authority to calculate its council tax requirement each financial year. A billing authority is required to calculate its expected outgoings and income for the year under new section 31A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 31A(4)).
197. New section 31A(5) to (9) specifies rules in relation to the calculations and new section 31A(10) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 11th March in the financial year preceding that to which they relate (new section 31A(11)).
198. New section 31B(1) requires a billing authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A billing authority's council tax base must be calculated in accordance with regulations made by the Secretary of State (new section 31B(3)) and this amount must be notified to the major precepting authorities that have power to issue precepts to the billing authority within the prescribed period (see the definition of item T in new section 31B(1)).

### ***Section 75 – Council tax calculations by major precepting authorities in England***

199. **Section 75** inserts new sections 42A and 42B into the Local Government Finance Act 1992. In relation to England these provisions will replace sections 43 and 44 of that Act which require a major precepting authority (other than the Greater London Authority) to calculate its budget requirement and basic amount of council tax for a financial year.
200. The provisions operate in a similar way to new sections 31A and 31B inserted by section 74 of the Localism Act. New section 42A requires a major precepting authority to calculate its council tax requirement each financial year. A major precepting authority is required to calculate its expected outgoings and income for the year under new section 42A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 42A(4)).



201. New section 42A(5) to (10) specifies rules in relation to the calculations and new section 42A(11) enables the Secretary of State to alter the calculations and the rules by regulations. The calculations must be made before 1st March in the financial year preceding that to which they relate (see section 41(4) of the Local Government Finance Act 1992).
202. New section 42B(1) requires a major precepting authority to calculate its basic amount of council tax for the year by dividing its council tax requirement by its council tax base. A major precepting authority's council tax base is the aggregate of the amounts which are calculated by the billing authorities to which the authority issues precepts as their council tax bases for their areas or parts of their areas (see the definition of item T in new section 42B(1)). These calculations must be made in accordance with regulations made by the Secretary of State (new section 42B(3)).

### ***Section 76 – Calculation of council tax requirement by the Greater London Authority***

203. **Section 76** amends sections 85 and 86 of the Greater London Authority Act 1999.
204. Previously section 85 of the 1999 Act required the Greater London Authority to calculate component budget requirements for each of the constituent bodies and a consolidated budget requirement for the Greater London Authority as a whole. That section is amended so that the Greater London Authority is instead required to calculate component and consolidated council tax requirements (see generally section 76(1) to (9) of the Localism Act). As with other major precepting authorities the calculations must be made before 1st March in the financial year preceding that to which they relate (see section 41(4) of the Local Government Finance Act 1992)
205. Section 86 of the Greater London Authority Act 1999 specifies rules in relation to the calculations made under section 85 of that Act. Those rules are amended in consequence of the amendments made to sections 85, 88 and 89 of that Act (see generally section 76(10) to (15) of the Localism Act).
206. In particular, new subsections (4D) to (4F) of section 86 of the Greater London Authority Act 1999 enable the Secretary of State to prescribe amounts of grant which the Greater London Authority must use in making calculations in respect of the Mayor's Office for Policing and Crime<sup>2</sup> under section 85 of that Act. These new subsections have been inserted as a result of amendments to sections 88 and 89 of the Greater London Authority Act 1999 and the changes are more fully explained in relation to section 77 below.

### ***Section 77 – Calculation of basic amount of council tax by the Greater London Authority***

207. **Section 77** makes amendments to sections 88 and 89 of the Greater London Authority Act 1999 and the way in which the Greater London Authority calculates its basic amounts of tax under those sections. These amendments are consequential to the amendments made by section 76 of the Localism Act.
208. The Metropolitan Police Authority (currently) exercises functions in relation to the metropolitan police district. That area constitutes part only of the Greater London Authority's area and as a result the Greater London Authority is required to calculate two basic amounts of council tax-
  - a basic amount (calculated under section 88 of the Greater London Authority Act 1999) for that part of its area which is outside the metropolitan police district, and

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<sup>2</sup> The Police Reform and Social Responsibility Act 2011 will transfer the functions currently exercised by the Metropolitan Police Authority to the Mayor's Office for Policing and Crime.

- a basic amount (calculated under section 89 of the Greater London Authority Act 1999) for that part of its area which is within the metropolitan police district.
209. As previously drafted the basic amount calculated under section 88 of the Greater London Authority Act 1999 does not include the component budget requirement of the Metropolitan Police Authority, whereas that calculated under section 89 of that Act does.
210. In addition, the Greater London Authority Act 1999 enables the Secretary of State to prescribe amounts in relation to certain grants which represent the portion of those grants which relate to defraying the Metropolitan Police Authority's budget requirement in whole or in part (see items P1 and P2 in sections 88(2) and 89(4) of that Act). In other words, the Secretary of State is able to prescribe amounts of grant which the Greater London Authority must allocate to the Metropolitan Police Authority.
211. The amendments to section 88 of the Greater London Authority Act 1999 (see section 77(1) to (5) of the Localism Act) alter the way in which the basic amount of council tax is calculated under that section. The basic amount of council tax under section 88 is calculated by dividing the Greater London Authority's consolidated council tax requirement by the Greater London Authority's council tax base for the whole of its area. However, the council tax requirement of the Mayor's Office for Policing and Crime<sup>3</sup> is excluded from the calculation (see generally new subsection (2) of section 88 of the Greater London Authority Act 1999).
212. The amendments to section 89 of the Greater London Authority Act 1999 (see section 77(6) to (9) of the Localism Act) also alter the way in which the basic amount of council tax is calculated under that section. What in effect is the basic amount of council tax payable in respect of the Mayor's Office for Policing and Crime is calculated by dividing the council tax requirement for that body by the council tax base for the metropolitan police area (see generally new subsection (4) of section 89 of the Greater London Authority Act 1999).
213. As part of the amendments made by sections 76 and 77 of the Localism Act, items P1 and P2 are omitted from sections 88 and 89 of the Greater London Authority Act 1999 and replaced by new subsections (4D) to (4F) of section 86 of that Act. These new subsections will play a similar role in relation to the calculations for the Mayor's Office for Policing and Crime as items P1 and P2 currently play in relation to the calculations for the Metropolitan Police Authority.

### ***Section 78 – Council tax calculations by local precepting authorities in England***

214. **Section 78** inserts new sections 49A and 49B into the Local Government Finance Act 1992. In relation to England these provisions will replace sections 50 and 51 of that Act which require a local precepting authority to calculate a budget requirement for a financial year and enable such an authority to make substitute calculations for that year.
215. New section 49A requires a local precepting authority to calculate its council tax requirement each financial year. A local precepting authority is required to calculate its expected outgoings and income for the year under new section 49A(2) and (3). Where the authority's expected outgoings exceed its expected income the difference is the authority's council tax requirement for that year (new section 49A(4)).
216. New section 49B enables a local precepting authority to calculate a substitute council tax requirement for a financial year, but the substitute calculations have no effect if the amount calculated would exceed that previously calculated by the authority.

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**3** As mentioned above, the Metropolitan Police Authority is to be replaced by the Mayor's Office for Policing and Crime.

***Section 79 – Council tax: minor and consequential amendments***

217. **Section 79** and Schedule 7 make a number of minor and consequential amendments to other enactments as a consequence of the provisions in sections 73 to 78. In particular, a number of provisions in the Local Government Finance Act 1992 are amended so that they apply in relation to Wales only.

***Section 80 – Council tax revaluations in Wales***

218. **Section 80** amends the Local Government Finance Act 1992 to provide the Welsh Ministers with the power, by order, to determine the timing of council tax revaluations in Wales, rather than being bound to the timetable for Wales currently set out by the Local Government Finance Act 1992. This provides the Welsh Ministers with the option to cancel the planned 2015 council tax revaluation in Wales. The orders are subject to the affirmative resolution procedure in the Assembly.

***Chapter 2: Community Right to Challenge***

***Section 81: Duty to consider expression of interest***

219. **Section 81** requires a relevant authority, defined as including a county council, a district council or a London borough council, to consider an expression of interest submitted by a voluntary or community body, charity, parish council, or employees of the authority in relation to providing or assisting in providing a service provided by or on behalf of the local authority. This section also defines terms used in the rest of this Chapter. The Secretary of State may specify what an expression of interest should contain and which services may be excluded from the Right. The Secretary of State may specify other persons as relevant authorities or relevant bodies and make changes to defined terms and other amendments to Chapter 2 as a consequence.

***Section 82: Timing of expressions of interest***

220. **Section 82** enables a relevant authority to set out periods when an expression of interest may be submitted. Any such period must be published. Where no period is specified, an expression of interest may be submitted at any time.

***Sections 83 and 84: Consideration of expressions of interest***

221. **Sections 83** and **84** require a relevant authority that has received an expression of interest to consider it and respond by either accepting it, with or without modification, and running a procurement exercise for the service; or rejecting it on grounds specified by the Secretary of State. Any modification can only be made where the expression of interest would otherwise be rejected and must be agreed by the body submitting it. An authority must notify the body that submitted an expression of interest of their decision, including the reasons where it decides to reject or modify, and publish the notification. The relevant authority must specify minimum and maximum periods between an expression of interest being accepted and it starting a procurement exercise; and the maximum period between an expression of interest being accepted and the relevant body being notified of the decision. The relevant authority must consider how both the expression of interest and the procurement exercise might promote or improve the social, economic or environmental well-being of the authority's area. An expression of interest can be withdrawn by the submitting body at any time.

***Section 85: Supplementary***

222. **Section 85** allows the Secretary of State to make further provision in regulations about the process to be followed by a relevant authority receiving an expression of interest. A relevant authority exercising functions in relation to Chapter 2 must also have regard to any guidance issued by the Secretary of State.

***Section 86: Provision of advice and assistance***

223. **Section 86** authorises the Secretary of State to provide advice and assistance in relation to the community right to challenge, either directly or through others. This could include financial assistance to a relevant body, such as a grant or loan, or education and training.

***Chapter 3: Land of Community Value***

***Section 87: Lists of assets of community value***

224. This section places a duty on local authorities in England and Wales to maintain a list of assets of community value. Listed assets will be removed from the list after 5 years (unless already removed) with a power to the appropriate authority (the Secretary of State for England and the Welsh Ministers for Wales) to amend that period. The local authority can determine the form and content of the list, subject to any specific requirements set out in regulations.

***Sections 88 and 105: Land of community value***

225. **Section 88** defines land of community value. It also gives a power to set out in regulations types of land that are not of community value and includes a list of factors that may be referred to by the appropriate authority when exercising this power. Section 105 provides that this Chapter applies to the Crown.

***Sections 89, 90 and 91: Procedures for including land in list***

226. **Section 89** provides that land may only be included on the list in response to a community nomination or where permitted in regulations made by the appropriate authority. It defines community nominations as nominations made by a parish council (in England) or community council (in Wales) or a voluntary or community body with a local connection. It provides for regulations to define voluntary and community body and set out the conditions for “local connection”, to prescribe the contents of community nominations, and to set out procedures that local authorities will be required to follow in considering whether to list. Section 90 requires a local authority to consider a community nomination, and to list the land if it is of community value and in the authority’s area. It also requires the local authority to give a community nominator written reasons for not listing the land. Section 91 requires local authorities to give notice to specified persons of inclusion on or removal from the list together with a description of the statutory provisions, or, where it does not seem to the local authority practical to give notice to a person, to take reasonable alternative steps to bring it to the attention of that person. When notifying parties about the removal of an asset, the reasons for removal must be given.

***Section 92: Review of decision to include land in list***

227. This section gives the owner of the land a right to have the decision to list it reviewed by the local authority, specifies what the local authority must do if the review reverses the decision, and provides for the appropriate authority in regulations to set out the procedure for carrying out such reviews. It also includes a power to provide for an appeal against the review decision.

***Section 93: List of land nominated by unsuccessful community nominations***

228. This section requires local authorities also to maintain a list of assets that have been nominated unsuccessfully through the community nomination process, and specifies that it should include the reasons why the nomination was unsuccessful. The local authority may (but does not have to) remove land from the list after it has been on it for five years. The local authority can determine the form and content of the list.

***Section 94: Publication and inspection of the lists***

229. This section places a duty on local authorities to publish both lists, to make them available for free inspection within its area, and provide one copy, free of charge, to anyone who asks for one.

***Sections 95, 96 and 97: Moratorium on the disposal of listed assets***

230. **Section 95** prohibits the owner of listed land from entering into a relevant disposal of it except where specified conditions are satisfied. These conditions provide for notification to the local authority by the owner of an intention to make a relevant disposal, and for either a six week interim moratorium or a six month full moratorium (which may be triggered by a community interest group) to apply. They also provide for an eighteen month protected period when no further moratorium will apply. Types of relevant disposals that are exempted from the moratorium conditions are listed, with a power to specify further exemptions in regulations. ‘Community interest group’ is to be defined in regulations. **Section 96** defines a relevant disposal as being a disposal with vacant possession of a freehold estate or the grant or assignment with vacant possession of a lease granted for at least 25 years. A power is included to amend the definition. **Section 97** specifies what the local authority must do on receiving notice under section 95 from the owner.

***Section 98: Informing owner of request to be treated as bidder***

231. This section provides that where an owner has notified the local authority under section 95 of intending to sell, the local authority must as soon as practicable notify the owner of a written request from a community interest group to be treated as a potential bidder if the request is received during the interim moratorium.

***Section 99: Compensation***

232. This section gives the appropriate authority power to provide for payment of compensation.

***Section 100: Local land charge***

233. This section provides for the listing of an asset of community value to be a local land charge, administered by the listing local authority.

***Section 101: Enforcement***

234. **Section 101** enables regulations to be made by the appropriate authority in order to reduce or prevent contravention of the provisions.

***Section 102: Co-operation***

235. This section specifies that local authorities must co-operate in instances where nominated land falls within different local authority areas.

***Sections 103 and 104: Advice and assistance***

236. **Section 103** authorises the Secretary of State to do anything the Secretary of State considers appropriate for the purpose of providing advice or assistance to anyone in England in relation to Chapter 3 of Part 5 of the Localism Act. This includes doing anything the Secretary of State considers appropriate for giving advice or the making of arrangements to provide advice or assistance to community interest groups in connection with bidding for, or acquiring, land listed as being of community value (including considering whether to bid and preparing bids); or in connection with considering bringing, or preparing to bring, such land into effective use. Things that may be done under the section include direct financial assistance (such as grants, loans,



guarantees or indemnities), or the making of arrangements for such assistance. Section 104 makes parallel provision in relation to assistance by the Welsh Ministers in Wales.

### ***Sections 106 and 107: Definitions***

237. These sections define “local authority” (in England and in Wales) and “owner” for the purposes of this Chapter. For any listed land the owner will be either the freeholder or the qualifying leaseholder most distant from the freeholder. A qualifying leasehold estate must have been granted for at least 25 years. Powers are included for the appropriate authority to amend both definitions.

### ***Section 108: Interpretation of Chapter: general***

238. “Appropriate authority” is defined as meaning the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales. The definition of “land” needs to be read alongside the definition of “land” set out in Schedule 1 to the Interpretation Act 1978.

## **Part 6: Planning**

### ***Chapter 1: Plans and Strategies***

#### ***Section 109: Abolition of Regional Strategies***

239. **Section 109** provides for the abolition of the regional planning tier, by repealing Part 5 of the Local Democracy, Economic Development and Construction Act 2009, which only applies in relation to England. This removes responsible regional authorities which are made up of the relevant leaders’ board and regional development agency. Provision is also made to revoke the eight existing regional strategies outside London by order.
240. There is also an additional order making power allowing the Secretary of State to revoke any remaining county structure plan policies that were saved as part of the transitional provisions for the Planning and Compulsory Purchase Act 2004 so that those policies will cease to have effect. Currently, such saved policies form part of the development plan.
241. Finally, this section provides for the necessary consequential amendments to primary legislation, which are set out in Schedule 8 and Parts 15 and 16 of Schedule 25.

#### ***Section 110: Duty to co-operate in relation to planning of sustainable development***

242. **Section 110** provides for a duty on local planning authorities, county councils and other bodies with statutory functions to co-operate with each other. Those other bodies will be defined in regulations. Co-operation includes constructive and active engagement as part of an ongoing process to maximise effective working on the preparation of development plan documents, other local development documents and marine plans in relation to strategic matters including sustainable development that would have significant wider impacts.
243. Those that are subject to the requirements of the duty will be expected to consider whether to consult on and prepare, and enter into and publish, agreements on joint planning approaches. Local planning authorities will also be expected to consider whether to prepare joint local development documents.
244. Local authorities, county councils and prescribed bodies that are subject to the requirements of the duty to co-operate will also be required to have regard to the activities of other bodies, also to be prescribed in regulations.
245. At independent examination of development plan documents local authorities will have to provide evidence that they have complied with the duty if their plans are not to be rejected by the examiner.



246. This section also makes provision that local authorities and other public bodies must have regard to guidance issued by the Secretary of State about how they should comply with this duty.

### ***Section 111: Local development schemes***

247. **Section 111** amends section 15 of the Planning and Compulsory Purchase Act 2004. Section 15 sets out the roles of the local planning authority, the Secretary of State and Mayor of London in relation to a local planning authority's local development scheme. The local development scheme sets out certain matters related to how the local planning authority is going to plan for development in its area. This includes the contents and timing of proposed development plan documents. Previously these schemes were submitted to the Secretary of State or the Mayor of London who could direct that the scheme should be modified.
248. This section amends section 15 of the Planning and Compulsory Purchase Act 2004 so that local planning authorities will have to publish up to date information direct to the public on the scheme, including their compliance with their timetable for the preparation or revision of development plan documents. They will no longer be required to submit the local development scheme to the Secretary of State or, if a London borough, the Mayor of London. The Secretary of State and Mayor of London will retain powers to direct changes, but will only be able to use them for the purpose of ensuring effective plan coverage.

### ***Section 112: Adoption and withdrawal of development plan documents***

249. **Section 112** amends sections 20 to 23 of the Planning and Compulsory Purchase Act 2004. Section 20 of that Act provides that every development plan document must be submitted for independent examination to a planning inspector - a person appointed on behalf of the Secretary of State. The inspector produces a report determining whether or not the document is suitable for adoption; the inspector was able to recommend modifications to the draft document. The local planning authority was bound, under section 23, to implement the inspector's recommendations.
250. This section amends section 20 so that the inspector must recommend adoption where the inspector considers that it would be reasonable to conclude that the document satisfies the statutory requirements and can be considered sound. During the examination the local planning authority will have the power to request recommendations for modifications from the inspector that would make the document suitable for adoption. If the local planning authority does not make this request, the inspector will be unable to recommend any modifications.
251. This section also amends section 23 so that local planning authorities do not have to implement inspectors' recommendations. They will still only be able to adopt the development plan document if the inspector has recommended adoption. Where the inspector has not recommended adoption, the authority will be able to adopt after following the inspector's modifications or make their own modifications and re-submit the draft document to the inspector for examination. The authority will also be able to make non-material changes before adoption.
252. **Section 22** previously restricted a local planning authority from withdrawing a development plan document after it had been submitted to the inspector. They could only do so if the inspector recommends withdrawal or the Secretary of State directed withdrawal. This section amends section 22 so that a local planning authority can withdraw a development plan document at any time before its adoption. The local planning authority will no longer require a recommendation from the person carrying out the examination or a direction from the Secretary of State. The Secretary of State retains the power to direct withdrawal, but this power has now been moved to section 21 so that it is with the Secretary of State's other powers.

***Section 113: Local development: monitoring reports***

253. **Section 113** amends section 35 of the Planning and Compulsory Purchase Act 2004. Section 35 required local planning authorities to make an annual report to the Secretary of State about the implementation of their local development schemes and local development policies. This section amends this requirement so that local planning authorities must publish this information direct to the public at least yearly in the interests of transparency. The local planning authority is no longer required to send a report to the Secretary of State. The Secretary of State has powers to make regulations prescribing the timing, content and form of reports.

***Chapter 2: Community Infrastructure Levy***

***Section 114: Community Infrastructure Levy: approval of charging schedules***

254. This section makes amendments to Part 11 of the Planning Act 2008 concerning the Community Infrastructure Levy. The Community Infrastructure Levy may be charged by “charging authorities” (normally the local planning authority) in accordance with a charging schedule. A charging authority must, before approving a charging schedule, submit a draft to an independent examiner and was required to implement any recommendations made by the examiner. The draft charging schedule was required to be accompanied by a declaration that the charging authority has complied with all the relevant requirements in drafting the charging schedule.
255. The effect of this section is to change the relationship between the charging authority and the examiner. The charging authority will no longer be required to submit a declaration to the examiner with the draft charging schedule. The examiner will now consider whether the charging authority has complied with the relevant requirements within Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations, which will now be referred to as “drafting requirements”. Any recommended modifications to the draft charging schedule made by the examiner will no longer be binding on the charging authority.
256. One of these drafting requirements is that the charging authority must have used appropriate available evidence to inform the charging schedule. The section enables the Secretary of State to make regulations that set out how this test is to be applied.
257. Where the examiner considers that the charging authority has not complied with the drafting requirements and that no modifications are capable of securing compliance, the examiner must recommend that the draft charging schedule should be rejected and a charging authority will continue to be bound by this recommendation. Otherwise, the section requires the examiner to recommend approval and the charging authority will have discretion over how they respond to any recommended modifications.
258. If the examiner has identified a failure to comply with the drafting requirements, the charging authority may only approve the charging schedule after they have had regard to the examiner’s recommendations and reasons and have made such modifications as are necessary to secure compliance. But these modifications need not be the same as those recommended by the examiner. In such a case, the section requires the charging authority to draft a report saying how they have amended the draft charging schedule so as to comply with the drafting requirements. The section enables the Secretary of State to make regulations about the form or content of such a report.

***Section 115: Use of Community Infrastructure Levy***

259. This section amends Part 11 of the Planning Act 2008, concerning the Community Infrastructure Levy. The section extends the permitted uses of levy receipts, in specified situations, so that they may be applied to any matter that supports development by addressing the demands that it places on the areas that host it.

260. The section also amends the purpose of the Community Infrastructure Levy to explicitly require that regulations must aim to ensure that the imposition of a levy charge in an area will not make the development of the area economically unviable. The section also allows for regulations to require charging authorities to consider the costs of, and other sources of funding for, the matters that may be funded through the extended permissible uses of levy receipts when setting a charge in their area.
261. The section provides clarification that permitted spending on infrastructure includes providing it initially, improving or replacing infrastructure, and operating and maintaining it, where doing so supports development. Provisions for regulations to set out activities relating to maintenance, operation and promotion that may or may not be funded by the Community Infrastructure Levy are also included.
262. This section also provides regulation-making powers for requiring charging authorities to pass funds raised through the Community Infrastructure Levy to other bodies to spend. Where regulations require a local authority to pass funds to another person, those funds may be applied to infrastructure or any other matter that supports development by addressing the demands that it places on the areas that host it. This section sets out the framework for this process, providing for regulations to set out the details including: the area in which it will apply; the bodies it will apply to; the amount and timings of payments; things that may or may not be funded; monitoring, accounting and reporting responsibilities of charging authorities; and when funding is to be returned to the charging authority. The section also provides that regulations may allow a charging authority to apply some or all of their levy receipts raised in an area to the same extended matters, but only where they are not required to pass a proportion of their levy receipts to other bodies.

### **Chapter 3: Neighbourhood Planning**

#### **Section 116: Neighbourhood planning**

263. **Section 116** gives effect to Schedule 9 – Part 1 of which amends the Town and Country Planning Act 1990 by inserting a number of new sections in to it - and Schedules 10 and 11 which insert two Schedules (Schedules 4B and 4C) into that Act. These new provisions will allow for planning permission to be granted through neighbourhood development orders – including a category of such orders to be known as “Community Right to Build Orders”. Part 2 of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to make provision in that Act on a new category of development plan – neighbourhood development plans. These plans and orders will be made by local planning authorities on the initiative of parish councils or neighbourhood forums.

#### **Schedule 9Part 1: Neighbourhood Development Orders**

264. **Part 1** of Schedule 9 inserts a number of new sections into the Town and Country Planning Act 1990 relating to neighbourhood development orders (a number of which will also apply in relation to neighbourhood development plans because of new section 38C of the Planning and Compulsory Purchase Act 2004 – which is inserted by paragraph 7 of the Schedule).

#### **New section 61E: Neighbourhood Development Orders**

265. New section 61E empowers either a parish council or a neighbourhood forum (as “qualifying bodies”) to initiate the process for making a neighbourhood development order. It also places a duty on local planning authorities to make a neighbourhood development order as soon as reasonably practicable, if there is a referendum vote in favour of the order in each applicable referendum under new Schedule 4B. This is except in the narrow circumstances in which the authority considers that making the order would be incompatible with any EU obligation (a term which is defined in Schedule 1 to the European Communities Act 1972) or any of the rights under the

European Convention on Human Rights which are referred to in section 1 of the Human Rights Act 1998. New section 61E(5) empowers, but does not require, the local planning authority to make a neighbourhood development order if there is a referendum vote in favour of the order in one of the referendums (but not the other) held in a business neighbourhood area designated under new section 61H (where there are two applicable referendums – one of residents and one of non-domestic rate payers). The new section also confers powers on the Secretary of State to make regulations about the procedure to be followed by a local planning authority where it intends to refuse to make a neighbourhood development order despite a “yes” vote in a referendum. For example, requirements to consult before making a final decision could be imposed, as well as requirements for the local planning authority to give notice that they propose to refuse to make an order.

### **New section 61F: Authorisation to act in relation to neighbourhood areas**

266. New section 61F (which will also apply in relation to neighbourhood development plans) sets out the circumstances in which qualifying bodies are authorised to bring forward proposals for neighbourhood development orders. In relation to any neighbourhood area (see new section 61G) which has a parish council, only a parish council (all or part of whose area is within the neighbourhood area) may make proposals for a plan or order. These proposals must be made with the consent of any other parish council for the area and proposals must be made one at a time (see new sections 61F(1), (2) and (10)). In relation to neighbourhood areas without a parish council, only a person or body which has been designated as a “neighbourhood forum” for the particular neighbourhood area by the local planning authority may bring forward proposals (see new section 61F(3) to (7)). The conditions that must be met by an organisation seeking to be designated as a neighbourhood forum are set out in subsection new section 61F(5), though regulations may either add to those conditions or specify other categories of organisations that can become neighbourhood forums. Existing residents associations or civic groups may become neighbourhood forums. New section 61F(7) requires local planning authorities to have regard to the desirability of designating forums which meet certain criteria relating to the membership and purpose of the forum. New section 61F(8) empowers a local planning authority to withdraw a forum’s designation in certain circumstances.

### **New section 61G: Meaning of “neighbourhood area”**

267. New section 61G provides for a system under which local planning authorities are to designate neighbourhood areas, where they have received an application for an area to be designated as such either from a parish council or a body that could potentially be a neighbourhood forum. “Neighbourhood areas” are the areas that neighbourhood development plans and orders can be made in respect of. It is expected that in many cases these areas will follow the boundaries of existing parishes for which there is a parish council (see new section 61G(4)). This is unless the local planning authority concerned considers that some other area is more suitable for the purposes of neighbourhood planning.

### **New section 61H: Neighbourhood areas designated as business areas**

268. New section 61H requires a local planning authority in designating neighbourhood areas (under new section 61G) to consider whether they should designate the area as a “business area”. This is an area which they consider is wholly or predominantly business in nature (see new section 61H(3)). Regulations can be used to add criteria to be used by an authority in determining whether an area is a business area.

**New section 61I: Neighbourhood areas in areas of two or more local planning authorities**

269. New section 61I allows for neighbourhood areas to be designated which cross local planning authority boundaries. It also provides the Secretary of State with regulation-making powers to adapt the provisions in the Act relating to neighbourhood planning to ensure the appropriate operation of neighbourhood planning in such areas. For example, regulations could specify that local planning authorities must consult each other before deciding whether to approve a plan or order for referendum or that they may only take such a decision when acting jointly through a committee.

**New section 61J: Provision that may be made by neighbourhood development order**

270. New section 61J places restrictions on the contents of neighbourhood development orders (for example, they cannot relate to more than one neighbourhood area). In addition, it permits orders to grant either site-specific planning permission(s) or to grant planning permissions that relate to all or part of a neighbourhood area – for example, planning permission to build extensions to existing buildings.

**New section 61K: Meaning of excluded development**

271. New section 61K sets out a number of descriptions of development (“excluded development”) which neighbourhood development orders or plans cannot relate to (because of new section 61J). For example, paragraph (a) has the effect to exclude mining-related development.

**New section 61L: Permission granted by neighbourhood development orders**

272. New section 61L allows neighbourhood development orders to give planning permission either with or without conditions. Regulation-making powers allow for parish councils to be given the option of determining decisions on conditions within neighbourhood development orders.

**New section 61M: Revocation or modification of neighbourhood development orders**

273. New section 61M allows for the Secretary of State and a local planning authority (with the consent of the Secretary of State) to revoke a neighbourhood development order and allows regulations to be made prescribing actions to be taken in relation to the revocation of an order. New section 61M also allows a local planning authority to modify a neighbourhood development order to correct errors.

**New section 61N: Legal challenge in relation to neighbourhood development orders**

274. New section 61N sets out the conditions for legal challenges in relation to decisions on neighbourhood development orders, requiring that challenges are filed within 6 weeks of the decision being published.

**New section 61O: Guidance**

275. New section 61O requires local planning authorities to have regard to any guidance issued by the Secretary of State relating to neighbourhood development orders.

**New section 61P: Provision as to the making of certain decisions by local planning authorities**

276. New section 61P provides power to regulate the decision-making of local planning authorities in relation to neighbourhood development orders. Provision might be made,

for example, as to whether or to what extent decisions may be delegated to officers or committees or prescribe that decisions need to be taken by the executive or by a majority of those members present at the meeting of an authority.

### **New section 61Q: Community right to build orders**

277. New section 61Q makes provision for a particular type of neighbourhood development order - a “community right to build order”. Details of the provisions are set out in Schedule 4C to the Town and Country Planning Act 1990 inserted by Schedule 11 to the Localism Act (see below).

### **Schedule 9Part 2: Neighbourhood development plans**

278. **Part 2** of Schedule 9 amends the Planning and Compulsory Purchase Act 2004 to empower parish councils and neighbourhood forums to propose neighbourhood development plans. Unlike neighbourhood development orders, these do not give planning permissions but instead set out policies in relation to the development and use of land in all or part of a defined neighbourhood area (see new section 38A(2)).
279. The amendments to section 38 of the Planning and Compulsory Purchase Act 2004 made by paragraph 6 of Schedule 9 mean that neighbourhood development plans, once they are made, will become part of the development plan for an area. Consequently, by virtue of section 38(6) of that Act certain decisions will need to be made in accordance with neighbourhood development plans unless material considerations indicate otherwise. Such decisions include decisions on applications for the grant of planning permission and appeals against the refusal of such applications.
280. New section 38A (inserted by paragraph 7 of Schedule 9) requires local planning authorities to make a neighbourhood development plan if there is a referendum vote in favour of the order in each applicable referendum under Schedule 4B. As with neighbourhood development orders, there are narrow circumstances in which a local planning authority may refuse here – for example, where the authority considers that making the plan would be incompatible with any EU obligation. As with neighbourhood development orders, new section 38A(5) empowers, but does not require, the local planning authority to make a neighbourhood development plan if there is a referendum vote in favour of the plan in one of the applicable referendums (but not the other) held in a business neighbourhood area designated under new section 61H (where there are two applicable referendums – one of residents and one of non-domestic rate payers).
281. New section 38B deals with the form and contents of neighbourhood development plans, requiring, for example, that they must specify the period for which they are to have effect and that they cannot relate to the classes of excluded development set out in new section 61K of the Town and Country Planning Act 1990 – such as development falling within Annex 1 of the Environmental Impact Assessment Directive (Council Directive [85/337/EEC](#)). This section also specifies that only one neighbourhood development plan may be made for each neighbourhood area. A regulation-making power is provided (new section 38B(4)) which enables provision to be made, for example, on whether any maps need to be incorporated into a plan to show the extent of a policy and to what scale those maps should be.
282. New section 38C applies new provisions which are to be inserted into the Town and Country Planning Act 1990 on neighbourhood development orders to neighbourhood development plans (as if they were orders but with the necessary modification). Therefore, the provisions on revocation and modification of orders in new section 61M apply in relation to plans (though this does not need to be done by order – see new section 38C(3)), as do those on legal challenges by judicial review (new section 61N). Similarly, because of new section 38C(5) the provision in Schedule 10 (described below) will not only apply in relation to the making of neighbourhood development orders, but plans as well.



**Schedule 10: Process for Making of Neighbourhood Development Orders**

283. Schedule 10 of the Localism Act makes further provisions about making neighbourhood development orders and plans by inserting a new Schedule 4B into the Town and Country Planning Act 1990.
284. Paragraph 1 of Schedule 4B makes provision in connection with proposals to local planning authorities for neighbourhood development orders or plans. It allows the Secretary of State to prescribe the form of any such proposals in regulations and to require that other documents and information must accompany them. In addition, the Secretary of State may set minimum standards for the documentation which needs to be submitted along with proposal for plans or orders. These standards, as well as requirements set out in regulations under this paragraph, would be mandatory – i.e. a failure to meet them would result in an application being rejected – see paragraph 6(2) of Schedule 4B.
285. Paragraph 2 of Schedule 4B allows a qualifying body to withdraw its proposals for a plan or order at any time before the local planning authority makes a decision on the examiner's recommendations. Because of paragraph 7 each draft plan and order will be subject to examination by an independent person who will report back to the local planning authority recommending either that the plan or order is refused or put to a referendum (with or without modifications). Paragraph 2 also provides for what happens to proposals made by a qualifying body or designated neighbourhood forum whose designation is withdrawn – with submission to independent examination being the key point in making the decision as to whether proposals should be seen as valid (see paragraph 2(2) and 2(3)).
286. Paragraph 3 of Schedule 4B places a duty on local planning authorities to provide advice and assistance to qualifying bodies in developing proposals for plans or orders. This support could involve providing technical advice on how to draw up an order or plan or facilitating consultations with the public on proposals. There is no requirement here on local planning authorities to provide financial assistance.
287. Paragraphs 4 to 6 of Schedule 4B set out the arrangements for neighbourhood development orders and plans before they are submitted to independent examination. Paragraph 4 allows the Secretary of State to prescribe further requirements in regulations that must be complied with before proposals are submitted to a local planning authority. Paragraph 4(3) specifically requires the Secretary of State to use his or her regulation-making powers to prescribe consultation requirements which must be complied with before a neighbourhood planning proposal can be submitted to a local planning authority, including the requirement to submit a statement about the consultation carried out. Again, a failure to comply with these requirements will be a ground upon which a local planning authority is to reject an application. The regulations may make provision on procedural matters, for example, about notifying people or bodies and about consultation with and participation by the public.
288. Paragraph 5 of Schedule 4B allows a local planning authority to decline repeat proposals. These are proposals which are similar to other ones which have been made up to two years previously and which were refused by a local planning authority or which did not get sufficient votes in a referendum.
289. Paragraph 6 of Schedule 4B sets out matters which the local planning authorities must be satisfied with before proposals for a plan or order can be submitted to independent examination. This includes checking whether the body making the application is a qualified applicant – i.e. a parish council or designated neighbourhood forum, and that the application meets the requirements set out in legislation and regulations, including the requirement for a consultation statement under paragraph 4 (see paragraph 6(2)(d)). The local planning authority must notify the applicant whether or not the proposals will be submitted for examination and, if not, the reasons for refusing it.

290. Paragraphs 7 to 11 of Schedule 4B set out the arrangements for the independent examination of proposed orders and plans.
291. Paragraph 7 of Schedule 4B empowers the local planning authority to appoint an examiner, but only with the agreement of the parish council or neighbourhood forum. The Secretary of State may appoint an examiner if no agreement can be reached. The paragraph also requires that the examiner is independent of the body making the proposals and the local planning authority, and that he or she must not have any interest in land affected by the proposals and must have appropriate qualifications and experience.
292. Paragraph 8 of Schedule 4B lists the matters that the examiner must consider in their examination of the proposed plan or order. These include whether the plan or order is appropriate having regard to national policy, whether it contributes to the achievement of sustainable development, whether it is in general conformity with the strategic policies in the local development plan and whether the order is compatible with EU obligations. There is also a basic condition relating only to orders (see new section 38C(5)(d) of the Planning and Compulsory Purchase Act 2004) relating to the appropriateness of an order having regard to considerations relating to listed buildings and conservation areas (paragraph 8(2)(b) and (c) and (3) to (5) of Schedule 4B). The examiner is not able to consider any matter that doesn't fall within the list of matters in paragraph 8(1) of the Schedule (apart from compatibility with the Convention rights, as defined in the Human Rights Act 1988). The examiner will also consider whether the referendum area should extend beyond the neighbourhood area to which the draft order or plan relates. The paragraph also provides a power to require the examiner to consider such matters as are prescribed in regulations - for example, taking into account an environmental statement which meets the requirements of the Environmental Impact Assessment Directive.
293. Paragraph 9 of Schedule 4B prescribes the general rule that the examination will take the form of consideration of written representations but allows for oral representations. The examiner is required to hold a hearing where they consider oral representations are needed to ensure adequate examination of an issue or to ensure people get a fair chance to put their case. Where there are to be oral representations, the paragraph sets out those bodies who are entitled to be heard, including the parish council or neighbourhood forum promoting the plan or order and the local planning authority. The Secretary of State is given power to prescribe by regulation additional persons who will be entitled to make oral representations at any hearing held into a neighbourhood plan or order. For example, it may be appropriate to permit certain statutory parties to provide oral evidence on a particular issue where they have relevant expertise.
294. Paragraph 10 of Schedule 4B sets out how the examiner must report on proposals for an order or plan, including recommendations on whether the proposals should be put to referendum, or whether any modifications are needed so that the proposals can go to referendum, and whether the referendum area should be extended beyond the neighbourhood area. It may be appropriate to extend the referendum beyond the neighbourhood area to which a plan or order relates if, for example, proposals include development close to the boundary of a neighbourhood area which would have impacts on an adjoining area. The examiner will be obliged to give reasons for recommending a particular course of action and to provide a summary of his or her main findings.
295. Paragraph 11 of Schedule 4B gives the Secretary of State the power to make regulations in connection with the independent examination and sets out examples of what provision can be made. For example, regulations may require that notice is given of the time and place of an examination and how that is given and may regulate the procedure at an examination.
296. Paragraph 12 of Schedule 4B sets out the issues to be considered by the local planning authority, following an independent examination, in deciding whether or not a proposed plan or order should be put to a referendum (or referendums in the case

of a designated business area) and whether or not the proposed plan or order should be modified. These considerations include the recommendations of the examiner and like the examiner, for example, whether the proposals are appropriate having regard to national policy, whether they are in general conformity with the strategic policies of the local development plan and whether the referendum (or referendums in the case of a business area) should extend beyond the neighbourhood area to which the plan or order relates. The Secretary of State is given power to prescribe matters other than the recommendations in the report that the local planning authority must take into account. This is to ensure that relevant material is considered by the local planning authority before it reaches a decision on a draft order or plan.

297. Paragraph 13 of Schedule 4B provides for the situation where the local planning authority proposes to make a decision that differs from that recommended by the examiner because of new evidence, a new fact or a different view taken by the authority in relation to a particular fact. In such a case, the local planning authority may decide to refer the issue to independent examination. The Secretary of State is given power to make regulations relating to this independent examination. But in any event, in such circumstances the local planning authority is obliged to invite representations on what they propose from such persons as are prescribed in regulations and, by implication, take these into account before reaching a final view.
298. A referendum must be held on a plan or order once it is approved by the local planning authority (with or without modifications) under paragraph 12 of Schedule 4B. Paragraph 14 of Schedule 4B sets out provision in relation to such referendums, including who is responsible for holding the referendum (see paragraph 14(2)), who is entitled to vote in them and which local authorities are responsible for making arrangements for them. Paragraph 15 of Schedule 4B sets out provision in relation to additional referendums held in a designated “business area” (see new section 61H), including who is entitled to vote. The provisions about additional referendums do not apply to community right to build orders, on which only residents will have a vote in a referendum (see paragraph 10(6) of Schedule 4C inserted by Schedule 11). The Secretary of State is given the power to make provision in regulations about referendums, including additional referendums, under paragraph 16 of Schedule 4B – such as about how they are to be conducted (e.g. how postal voting can occur) or to impose duties on local authorities to publicise the time and place of a referendum. Before making these regulations, the Electoral Commission must be consulted by the Secretary of State.

### **Schedule 11: Neighbourhood Planning: Community Right to Build Orders**

299. **Schedule 11** inserts a new Schedule 4C to the Town and Country Planning Act 1990 which makes special provision about a particular type of neighbourhood development order called a community right to build order providing for community-led site-specific development. It gives a power for community organisations to apply for such an order to be made and sets out how the provisions in respect of neighbourhood development orders should apply to such an application. Schedule 4C sets out powers to disapply or modify certain enfranchisement rights in relation to land the development of which is authorised by a community right to build order.

### **Section 117: Charges for meeting costs relating to neighbourhood planning**

300. This section confers a power on the Secretary of State to make regulations (with the consent of the Treasury) for the imposition of charges in relation to development authorised by neighbourhood development orders. The charges may either be set out in the regulations or the charges may be decided upon by local planning authorities for their areas, if this is what the regulations allow for (see *subsection(4)*). The purpose of these charges is to allow local planning authorities to recover costs which they have incurred in putting neighbourhood development plans or orders in place.

301. A charge will be payable to a local planning authority when development authorised by an order is commenced (see *subsection (3)*). In addition, the regulation-making powers permit liability for the charge to be imposed on owners or developers (see *subsections (6)(e) and (7)*) and for arrangements to be made for other persons to assume liability for the charge in advance of development being commenced (see *subsection (6)(a)*).

***Section 118: Regulations under section 117: collection and enforcement***

302. This section specifies that any regulations made under section 117 must include provisions on the collection of the charge (such as allowing for payments by instalments) and its enforcement. Whilst regulations might be made for different methods of enforcement, the section requires that at a minimum the enforcement of the charge is to be by treating it as a civil debt, which is recoverable through the magistrates' courts.

***Section 119: Regulations under section 117: supplementary***

303. *Section 119* makes supplementary provision in connection with charges imposed under the regulations. For example, local planning authorities have a duty imposed on them (see *subsection (6)*) to have regard to guidance issued by the Secretary of State in relation to functions they might have under the regulations. Also, a power is provided in *subsections (1) and (2)* to prescribe in the regulations the procedures that must be followed by local planning authorities in relation to the charge. The provisions could include, for example, requirements for a local planning authority to publicise any charges on the internet (before they become payable) and to make a copy of them available at their principal offices or consult publicly before setting any charges.

***Section 120: Financial assistance to neighbourhood development***

304. This section authorises the Secretary of State to give financial assistance in connection with neighbourhood planning. The powers could be used, for example, to help fund a neighbourhood forum to develop a draft neighbourhood plan or order or to give assistance to help establish such a forum or a community right to build organisation or to support an education campaign about neighbourhood planning.

***Section 121: Consequential amendments***

305. This section (by giving effect to Schedule 12 to the Act) makes consequential amendments in connection with neighbourhood planning.

***Chapter 4: Consultation***

***Section 122: Consultation before applying for planning permission***

306. *Subsection (1)* amends the Town and Country Planning Act 1990 by inserting new sections to require prospective developers to consult local communities before submitting planning applications for certain developments.
307. New section 61W requires any person who intends to apply for planning permission for development of a prescribed description first to consult the local community and any specified persons, so that they may collaborate or comment. The prospective developer must have regard to any advice that the local planning authority may have provided.
308. New section 61X requires the developer to have regard to any comments or responses generated by the consultation undertaken in accordance with section 61W, when deciding whether to make any changes to their proposals before submitting their planning applications.
309. New section 61Y enables the Secretary of State to set out further provisions as to how the consultation required under new section 61W should be undertaken in practice.

310. *Subsection (2)* amends section 62 of the Town and Country Planning Act 1990 so that an account of the consultation undertaken in accordance with new section 61W must accompany any planning application for development to which the new duty applies, in order to make it valid.

## ***Chapter 5: Enforcement***

### ***Section 123: Retrospective planning permission***

311. *Subsection (2)* inserts new section 70C into the Town and Country Planning Act 1990 – it provides that a local planning authority in England may decline to determine a retrospective planning application if an enforcement notice has previously been issued in relation to any part of the development.
312. *Subsection (4)* amends section 174 of the Town and Country Planning Act 1990 to provide (in relation to England only) that if a retrospective planning application has been made, but an enforcement notice has been issued before the time for making a decision has expired, the developer cannot then appeal against the enforcement notice on the ground in section 174(2)(a) (that planning permission ought to be granted – “ground (a)”).
313. *Subsections (5) and (6)* amend section 177 of the Town and Country Planning Act 1990 such that the Secretary of State (again, in relation to England only) may only grant planning permission when allowing an enforcement appeal if the appeal was made under ground (a) and that only ground (a) appeals result in a deemed application for planning permission.

### ***Section 124: Time limits for enforcing concealed breaches of planning control***

314. *Subsection (1)* inserts new sections 171BA, 171BB and 171BC into the Town and Country Planning Act 1990 to allow enforcement action, in England, to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.
315. In order to use these powers, the local planning authority must apply to the magistrates’ court for a “planning enforcement order” within six months of the day on which the apparent breach came to the authority’s knowledge. If an order is granted, the authority has one year to take enforcement action. The authority can also apply for a planning enforcement order before the time limits for taking action have expired, as the expiry date may be in dispute.
316. The authority must serve a copy of the application on the persons on whom they would be required to serve an enforcement notice. Anyone served would be able to appear in court when the application was heard.
317. A magistrates’ court may make the order only if satisfied, on the balance of probabilities, that a person or persons have deliberately concealed the apparent breach.
318. *Subsection (2)* provides for planning enforcement orders to be included in the local planning authority’s enforcement register.

### ***Section 126: Planning offences: time limits and penalties***

319. **Section 126** makes amendments to a number of planning-related offences in England. *Subsection (2)* raises the maximum penalty from level 3 on the standard scale (currently £1,000) to level 4 (currently £2,500) for failure to comply with a breach of condition notice under section 187A of the Town and Country Planning Act 1990.
320. For most offences prosecuted in the magistrates’ court proceedings must be brought within six months of commission. In some cases it is not clear when an offence was committed, which can lead to difficulties in bringing forward a prosecution.



*Subsections (3) and (4)* provide that prosecution for the offences of lopping or damaging a protected tree under section 210(4) of the Town and Country Planning Act 1990, and of contravening regulations on the control of advertisements in section 224(3) of that Act, may be brought within six months of sufficient evidence of the offence coming to the prosecutor's knowledge (but no more than three years after the offence was committed).

***Section 127: Powers in relation to: unauthorised advertisements; defacement of premises***

321. *Subsection (1)* inserts five sections at the end of Chapter 3 of Part 8 of the Town and Country Planning Act 1990.

**New sections 225A and 225B: Power to remove structures used for unauthorised display**

322. New section 225A allows a local planning authority in England to remove any display structure in their area which, in their opinion, is used for the display of illegal advertisements. This is not effective against a structure in a building to which the public have no right of access.
323. Before taking any action, the local planning authority must serve a removal notice on the person responsible for the erection and maintenance of the structure, provided they can identify the person. If not, the authority must fix the removal notice to the structure or display it in the vicinity and serve a copy on the occupier of the land, if one is known or can be identified. If the removal notice is not complied with within the time allowed (at least 21 days), the authority may remove the structure and recover its expenses from anyone served with the removal notice. A person who can satisfy the authority that he or she was not responsible for either the erection or maintenance of the structure cannot be required to pay the expenses.
324. If the authority damages any land or chattels in removing the structure, they must pay compensation, but not for damage to the structure removed or for damage reasonably caused in moving the structure.
325. There is a right of appeal to the magistrates' court against a section 225A notice. However, in proceedings for cost recovery the applicant cannot raise any issue that they could have raised in an appeal against the notice.

**New sections 225C to 225E: Remedying persistent problems with unauthorised advertisements**

326. New section 225C allows local planning authorities in England to take action against persistent fly-posting on 'surfaces'. They may serve an action notice on the owner or occupier of the land where the surface is situated if their name and address are known or can be discovered. If not, they may fix the notice to the surface. The action notice requires the owner or occupier to take specified measures to prevent or reduce the frequency of the unauthorised advertisements. At least 27 days must be allowed for action to be taken. If action is not taken, the authority may take the specified action itself and recover its expenses from the owner or occupier. Expenses cannot be recovered if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.
327. There is a right of appeal to the magistrates' court against a section 225C notice. However, in proceedings for cost recovery the applicant cannot raise any issue that they could have raised in an appeal against the notice.
328. New section 225E modifies the notice procedure for statutory undertakers. If a notice under new section 225C is served on a statutory undertaker, it can serve a counter-notice



on the local planning authority specifying alternative measures which would have the same effect as the notice in dealing with fly-posting.

329. *Subsection (2)* of section 127 inserts new Chapters 4 and 5 into Part 8 of the Town and Country Planning Act 1990.

### **New sections 225F to 225J: Power to remedy defacement of premises**

330. New section 225F allows local planning authorities in England to take action against signs (graffiti) which it considers to be detrimental to the amenity of the area or offensive. The authority may serve a notice on the occupier of the premises requiring them to remove or obliterate the sign allowing at least 14 days to comply. If there appears to be no occupier, the authority may fix the notice to the surface. If action is not taken within the time specified, the authority may take the action itself and recover its expenses from the person who should have done it. Expenses cannot be recovered if the surface is on, within the curtilage of, or forms part of the curtilage boundary of, a dwellinghouse.
331. New sections 225G and 225H provide that the local planning authority must give 28 days' notice of their intention to serve a notice under new section 225F on the owners of letter boxes and bus shelters and other street furniture.
332. There is a right of appeal to the magistrates' court against a section 225F notice. However, in proceedings for cost recovery the applicant cannot raise any issue that they could have raised in an appeal against the notice.
333. New section 225J enables the local planning authority to remove signs at the request of the owner or occupier of premises at that person's expense.
334. New section 225K modifies the provisions to enter land and do works to remove hoardings, fly-posters or graffiti so far as they apply to the operational land of transport statutory undertakers (except airports). The power can only be exercised if the local planning authority has given 28 days' notice of its intention to do so. The statutory undertaker can serve a counter-notice which, on safety or operational grounds or to protect other works or apparatus, would impose conditions on the taking of the action. The statutory undertaker can also prevent the action being taken.
335. [Section 127](#) replaces provisions of certain London Local Authorities Acts that apply only in relation to London with provisions that apply throughout England.

## ***Chapter 6: Nationally Significant Infrastructure Projects***

### ***Section 128: Abolition of Infrastructure Planning Commission***

336. [Section 128](#) and Schedule 13 provide for the abolition of the Infrastructure Planning Commission. All property, rights and liabilities of the Infrastructure Planning Commission will transfer to the Secretary of State. The transfer will be treated as a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 if it would not otherwise be treated as a relevant transfer under those regulations.

### **Schedule 13: Infrastructure Planning Commission: transfer of functions to Secretary of State**

337. [Schedule 13](#) makes amendments consequential to the abolition of the Infrastructure Planning Commission including amendments transferring its functions to the Secretary of State. In particular, the amendments enable the Secretary of State to appoint an inspector, or a panel of three to five inspectors, to examine an application and make a recommendation to the Secretary of State as to the decision to be made on the application. The Secretary of State must decide the application in accordance with any relevant national policy statement, subject to specified exceptions.

338. A number of other amendments are made by Schedule 13, including the following:
- paragraph 3 amends section 4 of the Planning Act 2008 to provide for the Secretary of State to charge fees in connection with specified functions
  - paragraph 6 repeals provision for the Secretary of State to prescribe non-compulsory model provisions.

***Section 129: Transitional provision in connection with abolition***

339. **Section 129** enables the Secretary of State to make transitional provision governing how applications, or proposed applications, to the Infrastructure Planning Commission should be handled once the Infrastructure Planning Commission has been abolished. This section provides the Secretary of State with a power of direction to enable:
- the effect after abolition of things done before abolition to be specified
  - the Act as it applied before abolition to continue to apply, with modifications if necessary
  - the Act as it applies after abolition to apply with modifications
  - Commissioners appointed to a panel or as a single Commissioner to continue to provide this service after abolition
  - other transitional and savings provision to be made.

***Section 130: National policy statements***

340. *Subsections (2) to (7) and (13)* amend sections 5, 6 and 9 of the Planning Act 2008 to require House of Commons approval of national policy statements and material amendments to existing national policy statements. House of Commons approval is required in addition to complying with the existing consultation, publicity and Parliamentary scrutiny arrangements in sections 7 and 9 of the Planning Act 2008. A draft national policy statement or amendment to an existing national policy statement (a “proposal”) must be laid before Parliament and can only be designated if the House of Commons resolves within 21 sitting days that it should be proceeded with, or that period ends without the House of Commons resolving that it should not be proceeded with.
341. *Subsection (8)* inserts a new section 6A into the Planning Act 2008 Act. The rule in new section 6A(2) provides that if a proposal is an amended version of an earlier proposal, further consultation need not be carried out if the earlier proposal was consulted on, and the amendments do not materially affect the policy. In a situation where the amendments do materially affect the policy, the rule in new section 6A(3) provides that it is sufficient for further consultation to be limited to the material amendments.
342. New section 6A(4) of the Planning Act 2008 provides that, where a proposal is laid before parliament for approval of the House of Commons, it is not necessary to comply with the Parliamentary scrutiny requirements in section 9(2) to (7) of that Act in relation to that proposal if they have been complied with in relation to an earlier version of that proposal.
343. Section 8 of the Planning Act 2008 requires the Secretary of State to consult with certain local authorities on publicity requirements in relation to a proposal where the policy set out in the proposal identifies locations as suitable or potentially suitable for specified descriptions of development. *Subsections (9) to (12)* of section 130 of the Localism Act amend section 8 to bring it in line with the provisions amended by section 133 of the Localism Act.

***Section 131: Power to alter effect of requirement for development consent on other consent regimes***

344. Section 33 of the Planning Act 2008 provides that where a project requires development consent it will no longer require certain other consents listed in that section, for instance consent under section 36 of the Electricity Act 1989. Section 131 amends section 33 of the Planning Act 2008 to give the Secretary of State the ability to amend section 33 in an affirmative procedure order, to add or remove a type of consent or vary the cases in relation to which a type of consent is required. This section only applies to Wales in respect of non-devolved matters.

***Section 132: Secretary of State's directions in relation to projects of national significance***

345. **Section 132** amends section 35 of the Planning Act 2008. The amendments allow the Secretary of State to direct that a development is to be treated as requiring development consent under that Act before any application has been made in relation to the development.
346. **Section 132** also inserts a new section 35A into the Planning Act 2008, which provides a timetable for dealing with requests for the Secretary of State to exercise the powers of direction in section 35 of that Act. A request for a direction must specify the development to which it relates, and explain why the conditions in section 35(1)(b) and (c) are met. The Secretary of State must make a decision on a request within 28 days of the date the request is made, unless the Secretary of State asks for further information from the person who made the request, in which case the Secretary of State must make a decision within 28 days of the information being provided.

***Section 133: Pre-application consultation with local authorities***

347. Sections 42 to 44 of the Planning Act 2008 require the applicant to consult certain persons and categories of person about a proposed application for an order granting development consent, including certain local authorities. Section 133 amends section 43 to alter the local authorities required to be consulted. Prior to this amendment being made where development is sited in a two-tier local authority area, all authorities which share a boundary with the upper-tier authority must be consulted. The effect of the amendments to section 43 is that, where development is sited in a two-tier local authority area, lower-tier district authorities will only need to be consulted if they share a boundary with the lower-tier district authority in whose area the development is sited.

***Section 134: Reform of duties to publicise community consultation statement***

348. Section 47 of the Planning Act 2008 requires the applicant for development consent to prepare and publish a statement setting out how the applicant proposes to consult local people about a proposed application. Section 134 amends section 47 of the Planning Act to remove the requirement for the statement to be published in a newspaper in full. Instead, the statement must be made available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land. The applicant must also publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected.

***Section 135: Claimants of compensation for effects of development***

349. **Section 135** amends section 52 of the Planning Act 2008 to provide an additional power for the Secretary of State to authorise an applicant (or a proposed applicant) to serve a notice on certain people requiring them to provide information.
350. The power in section 52 enables the Infrastructure Planning Commission to authorise an applicant (or a proposed applicant) to serve a notice on certain people (those falling within one of the categories specified in section 52(3)), requiring them to provide the

applicant with the names and addresses of people with an interest in the land to which the application relates.

351. The additional power enables the Secretary of State to authorise an applicant (or a proposed applicant) to serve a notice on those same people, requiring them to provide the applicant with the names and addresses of persons entitled to make a relevant claim (as defined in new subsection (14) of section 52). For this additional power, the definition of land is widened to include land in respect of which a relevant claim may be made.
352. New subsection (14) of section 52 defines a relevant claim as:
- a) a claim under section 10 of the Compulsory Purchase Act 1965 (compensation where satisfaction not made for compulsory purchase of land or not made for injurious affection resulting from compulsory purchase);
  - b) a claim under Part 1 of the Land Compensation Act 1973 (compensation for depreciation of land value by physical factors caused by public works); or
  - c) a claim under section 152(3) of the Planning Act 2008.

### ***Section 136: Rights of entry for surveying etc in connection with applications***

353. **Section 136** amends section 53 of the Planning Act 2008 to clarify that entry to land may be authorised for the purpose of fulfilling the requirements of the Environmental Impact Assessment and Habitats Directives ([85/337/EC](#) and [92/43/EC](#)).
354. The amendments also remove the requirements that the application must be likely to seek authority to compulsorily purchase the land, and for compliance with the consultation requirements of section 42 of the Planning Act 2008, before rights of entry can be granted.

### ***Section 137: Acceptance of applications for development consent***

355. **Section 137** removes the requirement, when the Secretary of State is deciding whether to accept an application, for absolute compliance with certain standards and guidance in order for the application to be accepted. This is replaced with a requirement that the Secretary of State must be satisfied that the application has been prepared to a satisfactory standard, and in coming to this decision must have regard to these standards and guidance.

### ***Section 138: Procedural changes relating to applications for development consent***

356. **Section 138** amends sections 56, 60, 88, 89 and 102 of the Planning Act 2008, and inserts new sections 56A, 88A, 102A and 102B.
357. **Subsection (8)** amends section 102 of the Planning Act 2008 to amend the definition of interested party for the purposes of Chapter 4 of Part 6 of the Act. New subsection (1ZA) of section 102 provides that a person ceases to be an interested party upon notifying the Examining authority in writing that the person no longer wishes to be an interested party.
358. **Subsection (9)** inserts new sections 102A and 102B in to the Planning Act 2008. Section 102A provides that a person may make a request to become an interested party where they believe that they fall within one or more of the categories in section 102B and they were not notified of the acceptance of the application by the applicant.
359. Section 88 of the Planning Act 2008 requires the Examining authority to make an initial assessment of the principal issues arising on an application. When it has done this it must hold a preliminary meeting, inviting the applicant and each other interested party. **Subsection (5)** amends section 88 to provide that the Examining authority must also

invite each statutory party and each local authority within new section 88A (inserted by *subsection (6)*) to the preliminary meeting.

360. Section 89 of the Planning Act 2008 requires the Examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application. The Examining authority must inform every interested party of its decisions. *Subsection (7)* amends section 89 to provide that the Examining authority must also inform each statutory party and local authority invited to the meeting under section 88 of those decisions, and that those persons may notify the Examining authority if they wish to become interested parties.
361. *Subsections (2) to (4)* make amendments which are consequential on the other amendments made by the section.

***Section 139: Timetables for reports and decisions on applications for development consent***

362. *Section 139* amends sections 98 and 107 of the Planning Act 2008 to set the deadline for the submission of a report to the Secretary of State by reference to the deadline for completion of the examination, or the day of completion if earlier, and the deadline for deciding an application by reference to the deadline for the completion of the examination, or the day on which the Secretary of State receives a report of the examination if earlier.

***Section 140: Development consent subject to requirement for further approval***

363. Prior to the coming in to force of this section, section 120 of the Planning Act 2008 enabled a consent order to require subsequent approval by the Secretary of State or another person (e.g. a local authority) for a matter connected with the development after the consent order has been granted. This subsequent approval is akin to planning conditions which may be imposed under the town and country planning system.
364. However, a limitation exists under section 120(2) of the Planning Act 2008, in that a requirement for subsequent approval can only be imposed if an equivalent requirement could have been imposed under one of the consent regimes listed in section 33(1) of that Act (that is those regimes under which applications had to be made before the introduction of the Planning Act 2008).
365. *Section 140* allows the order to impose a requirement for subsequent approval whether or not an equivalent requirement could have been imposed under the consent regimes listed in section 33(1) of the Planning Act 2008.

***Section 141: Local authority, statutory undertakers' and National Trust land***

366. *Section 141* amends sections 128 and 130 of the Planning Act 2008, to require an order granting development consent to be subject to special parliamentary procedure only if the relevant body has made a representation which contains an objection to the compulsory acquisition of that body's land and has not withdrawn the objection. This applies to land owned by a local authority or the National Trust, or which has been acquired by a statutory undertaker for their undertaking.

***Section 142: Changes to notice requirements for compulsory acquisition***

367. Section 134 of the Planning Act 2008 require a person (the prospective purchaser) who has been authorised to acquire land compulsorily to serve a notice about this on persons with certain interests in that land. Section 142 amends section 134 to remove the requirement for a copy of the order to be served instead requiring a copy of the order to be made available, at a place in the vicinity of the land, for inspection by the public at all reasonable hours.



368. The definition of ‘compulsory acquisition notice’ (*subsection (7)*) is also amended to include a requirement that it must state where and when a copy of the order is available for inspection.

## **Chapter 7: Other planning matters**

### **Section 143: Applications for planning permission: local finance considerations**

369. **Section 143** amends section 70(2) of the Town and Country Planning Act 1990 which sets out the matters to which regard is to be had when determining a planning application. The new subsection (2)(b) expressly mentions certain matters that have previously fallen within the reference to “any other material considerations”. These matters are “local finance considerations” (a phrase which is defined in a new subsection (4)), in so far as they are material to the application.
370. The new provision applies to England only. *Subsection (5)* clarifies that the amendments made to section 70 of the Town and Country Planning Act 1990 do not alter whether (under subsection (2) of that section) regard is to be had to any particular consideration, or the weight to be given to any consideration to which regard is had under that subsection. It will remain for the decision-maker, such as the local planning authority, to decide the weight to be given to each material consideration in the context of each application. The amendment is clarificatory, making it clear to decision-makers (without the need to consult case law) that local finance considerations are capable of being taken into account when determining a planning application – in so far as they are material to the application.

## **Part 7: Housing**

### **Chapter 1: Allocation and Homelessness**

#### **Sections 145, 146 and 147: Allocation**

371. **Sections 145, 146 and 147** make reforms to the legislation on the allocation of social housing under Part 6 of the Housing Act 1996 (the 1996 Act). They give local housing authorities in England the power to determine what classes of persons are or are not qualifying persons to be allocated housing and take existing social tenants out of the scope of Part 6 of that Act, with the exception of those who must be given reasonable preference for an allocation.

#### **Section 148 and 149: Duties to homeless persons**

372. **Section 148** enables a local authority in England or Wales fully to discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant’s agreement. Tenancies must be for a minimum fixed term of 12 months.
373. **Section 149** provides that the main homelessness duty will recur, regardless of whether the applicant has a priority need for accommodation, if the applicant becomes unintentionally homeless again within 2 years of accepting a private sector offer and re-applies for accommodation.

### **Chapter 2: Social Housing: Tenure Reform**

#### **Sections 150 to 153: Tenancy strategies**

374. **Section 150** places a new duty on every local housing authority to publish a tenancy strategy setting out, in high-level terms, the matters to which all registered providers of social housing should have regard in framing their own tenancy policies.



375. [Section 151](#) sets out the procedure an authority must follow when preparing its strategy or making a modification to it that involves a major change of policy, and in particular its obligation to consult private registered providers on a draft of the strategy.
376. [Section 152](#) provides that the Secretary of State may direct the social housing regulator to set a standard on tenure. [Section 153](#) requires that a local housing authority, when formulating its homelessness strategy, must have regard to its current allocations scheme, tenancy strategy and, where the authority is a London borough council, the London housing strategy.

### ***Sections 154 and 155: Flexible tenancies***

377. [Section 154](#) gives local authorities the power to offer flexible tenancies to new social tenants and to family intervention tenants. A flexible tenancy is a secure tenancy of a fixed term (not less than two years). [Section 154](#) provides for the circumstances in which a new tenancy will be a flexible tenancy. It also provides for the process by which a landlord may offer and terminate a flexible tenancy as well as a tenant's right to terminate a tenancy or request a review of a landlord's decision with regard to the offer or termination process.
378. [Section 155](#) provides that certain statutory rights to improve and to be compensated for improvements will not apply to a flexible tenancy. The section also prescribes the circumstances in which an introductory tenancy will, on coming to an end, become a flexible tenancy. The section also prescribes that when a flexible tenancy is demoted, on successful completion of the period of demotion, the landlord may grant another flexible tenancy. These provisions will apply where prior written notice has been served on the tenant advising them that the tenancy will become a flexible tenancy.

### ***Sections 156 to 166: Other provisions relating to tenancies of social housing***

379. [Sections 156](#) and [157](#) provide that flexible tenancies and assured tenancies granted by private registered providers in England, except where they are long tenancies or shared ownership leases, do not have to be executed by deed or registered with the Land Registry
380. [Sections 158](#) and [159](#) and [Schedule 14](#) together provide that, subject to certain conditions, existing secure and assured tenants will be able to retain a similar level of security on exchanging their property with a social tenant with a less secure tenancy.
381. [Section 160](#) removes the statutory right of those other than spouses and partners to succeed to a secure tenancy. It also provides discretion for landlords to grant succession rights in addition to the statutory minimum of one succession to a spouse or partner. [Section 161](#) enables landlords to grant additional succession rights for assured tenancies. Tenancies commenced before these sections come into force are not affected by these changes.
382. [Section 162](#) provides that the court may direct that the period during which a local authority landlord in England or Wales can seek to recover possession of a property can run from six to twelve months after the landlord becomes aware of the previous tenant's death, rather than only from the date of death, where the landlord is: seeking possession because the previous tenant has died; a person other than the previous tenant's spouse or civil partner has succeeded to the tenancy; the property is too large for that person and the landlord proposes to move them to a smaller property. It also ensures that where an individual inherits the balance of a fixed term tenancy in England the landlord can recover possession.
383. [Section 163](#) provides that, where the tenant under an assured shorthold tenancy becomes the tenant under a family intervention tenancy, the landlord may subsequently convert the family intervention tenancy into an assured tenancy that is an assured shorthold tenancy. It also provides that, where an assured shorthold tenancy for a fixed term of

at least two years is demoted, the landlord can secure that the tenancy reverts to being an assured shorthold tenancy in the event of the tenant successfully completing the demotion period.

- 384. [Section 164](#) provides that a court cannot make an order for possession of a property let by a private registered provider of social housing with a fixed term of at least two years, unless the landlord has given the tenant at least six months' notice in writing stating that they do not intend to grant another tenancy and informing the tenant how they can obtain help and advice.
- 385. [Section 165](#) provides that tenants of private registered providers with assured shorthold tenancies will have the right to acquire their property subject to the same conditions applicable to assured tenants and further exclusions made by way of regulation.
- 386. [Section 166](#) extends repairing obligations on the landlord to include flexible tenancies and assured tenancies granted by registered providers with a fixed term of seven years or more.

### ***Chapter 3: Housing Finance***

#### ***Sections 167 to 175: Housing Finance***

- 387. [Sections 167 to 175](#) and Schedule 15 provide for a new system of council housing finance. The Housing Revenue Account subsidy system will end and councils that operate a Housing Revenue Account will keep all of their rental income and use it to support their own housing stock.
- 388. [Section 168](#) sets out the framework for calculating the value of each local housing authority's housing service. To implement the new system some local housing authorities will be required to make a payment to Government and other local housing authorities will receive a payment from Government. The framework will be used in calculating the values of those payments, known as "the settlement payment", the details of which will be provided in a determination published by the Secretary of State.
- 389. [Section 169](#) allows the Secretary of State to issue a further determination if there has been a change in any matter that was taken into account when the settlement payment was calculated.
- 390. [Section 170](#) provides for the Secretary of State to require that payments to or by central government under sections 168 and 169 are made in a certain way.
- 391. [Section 171](#) gives the Secretary of State the power to set a maximum amount of housing debt that can be held by each local housing authority.
- 392. [Section 172](#) requires local housing authorities to provide information necessary to exercise powers in this Chapter.
- 393. [Section 173](#) allows determinations issued according to powers in this Chapter to apply to all local housing authorities, groups of local housing authorities or individual local housing authorities and requires the Secretary of State to consult before making a determination
- 394. [Section 174](#) amends the Local Government Act 2003 to enable the Secretary of State to continue to enter into agreements with local authorities to exempt certain council homes from the requirement, in regulations made under that Act, that a percentage of the net receipt be surrendered to central Government should those homes be sold.

## ***Chapter 4: Housing Mobility***

### ***Section 176: Standards facilitating exchange of tenancies***

395. **Section 176** inserts section 193(2)(ga) and section 197(2)(d) into the Housing and Regeneration Act 2008.
396. New section 193(2)(ga) will give the regulator of social housing the power to set a standard for registered providers in respect of assisting tenants with regard to mutual exchanges.
397. New section 197(2)(d) will give the Secretary of State power to direct the regulator to set a standard under section 193 of the Housing and Regeneration Act 2008 Act, or about the content of standards under section 193, or to have regard to specified objectives when setting standards under section 193 or 194, where the direction relates in the Secretary of State's opinion to methods of assisting tenants to exchange tenancies.

### ***Section 177: Assisting tenants of social landlords to become home owners***

398. **Section 177** enables tenants who are shareholders of their landlord organisation to benefit from payments which assist tenants to move out of their social rented property into owner occupation of another dwelling.

## ***Chapter 5: Regulation of social housing***

### ***Section 178: Transfer of functions from the Office for Tenants and Social Landlords to the Homes and Communities Agency;***

399. **Section 178** introduce Schedule 16 which abolishes the Office for Tenants and Social Landlords (known as the Tenant Services Authority) and transfers the functions of regulation of social housing to the Homes and Communities Agency through the creation of a regulation committee of that body.

### ***Section 179: Regulation of social housing***

400. **Section 179** introduces Schedule 17 which makes amendments to the Housing and Regeneration Act 2008 primarily in order to enact a change in the role of the regulator in relation to consumer matters. This includes provision to ensure the regulator may only use its monitoring and enforcement powers if it has reasonable grounds to believe that there has been a serious failure affecting tenants (or if there is a risk that there will be such a failure without the intervention of the regulator).

## ***Chapter 6: Other Housing Matters***

### ***Section 180: Housing Complaints***

401. **Section 180** makes changes to the way in which a tenant may make a complaint about their social landlord to a housing ombudsman. A complaint must be referred to the relevant ombudsman by way of a referral from a member of the House of Commons, a councillor (a member of the local housing authority for the district in which the property concerned is located) or a designated tenant panel; unless 8 weeks have elapsed since the end of the landlord's complaints process, or the designated person declines to refer the complaint, or agrees it may be made direct by the tenant.
402. This section also provides an order-making power to enable the Secretary of State to provide that the housing ombudsman may apply to a court or a tribunal in order that a determination it makes against a social landlord may be made enforceable.

***Sections 181 and 182: Transfer of functions to the housing ombudsman***

403. Sections 181 and 182 provide for the creation of a unified service for investigating complaints about the provision of social housing. Under existing arrangements tenants of a local housing authority make their complaints to the Local Government Ombudsman (Local Commissioner) and tenants of private providers of social housing make their complaints to the Independent Housing Ombudsman. These sections extend the Housing Ombudsman's remit to cover local authorities in their capacity as registered providers or managers of housing services while removing these matters from the jurisdiction of the Local Government Ombudsman.

***Section 183 – Abolition of Home Information Packs***

404. This section repeals Part 5 of the Housing Act 2004 which is concerned with the duty to provide a home information pack.

***Section 184: Tenancy deposit schemes***

405. Section 184 amends the tenancy deposit provisions in the Housing Act 2004. It amends section 213(3) and (6) of that Act to extend the time limits within which a landlord must comply with the requirement to protect a deposit taken in connection with an assured shorthold tenancy in accordance with the rules of a tenancy deposit scheme and within which a landlord must provide prescribed information to the tenant from 14 to 30 days. It amends section 214(1)(a) and (2) of the Housing Act 2004 to make clear that penalties for non-compliance will apply when the landlord has not complied within those time limits. It inserts subsections (2A) and (3A) into section 214 of the Housing Act 2004 to clarify that penalties for non-compliance will also apply when the tenancy has ended and to make clear what order the court may make as regards the deposit in those circumstances. Section 214(4) of the Housing Act 2004 is amended to give the courts discretion about the level of the penalty that may apply. Finally, in section 215 of the Housing Act 2004, subsections (1) and (2) are amended and subsection (2A) inserted to clarify that landlords are able to seek possession under section 21 of the Housing Act 1988, where the deposit is not held in a tenancy deposit scheme or the time limits have not been complied with, provided action has been taken to rectify the situation.

***Section 185: Exemption from HMO licensing for buildings run by co-operatives***

406. Section 185 adds houses in multiple occupation (“HMOs”) that are controlled or managed by a co-operative society to Schedule 14 to the Housing Act 2004 (buildings which are not HMOs for the purposes of that Act (excluding Part 1)), which exempts such buildings from HMO licensing.

***Part 8: London***

***Chapter 1: Housing and Regeneration Functions***

***Section 186: Removal of limitations on Greater London Authority’s general power***

407. Section 30 of the Greater London Authority Act 1999 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 of competence, 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 otherwise have undertaken.
408. The Greater London Authority’s general power of competence is limited by section 31 of the Greater London Authority Act. Section 186 removes the prohibition against housing expenditure in section 31 and provides that the prohibition against expenditure

on education services does not apply to expenditure on sponsoring or facilitating the sponsorship of academies.

***Section 187: New housing and regeneration functions of the Authority***

409. **Section 187** makes the following provisions by amending Part 7A of the Greater London Authority Act 1999 (housing):

- It empowers the Greater London Authority compulsorily to acquire land and new rights over land for housing and regeneration purposes, subject to authorisation by the Secretary of State.
- It applies Part 1 of Schedule 2 to the Housing and Regeneration Act 2008 to compulsory acquisition by the Greater London Authority. Part 1, as applied to the Greater London Authority, applies the standard procedural model (contained in the Acquisition of Land Act 1981) to the compulsory acquisition of land by the Greater London Authority and makes provision for the extinguishment of private rights over land, with compensation to be paid.
- It applies Schedule 3 to the Housing and Regeneration Act 2008 to land of the Greater London Authority held for housing and regeneration purposes. Schedule 3, as applied to the Greater London Authority, makes provision that: enables the Greater London Authority to override easements; enables the Greater London Authority to apply to the Secretary of State for a public right of way to be extinguished and prescribes the statutory procedure that must be followed; and enables the Greater London Authority to use land that is, or forms part of, a burial ground, consecrated land and other land connected to religious worship, and includes power for the Secretary of State to make regulations prescribing requirements about the disposal of such land and about the removal and reinterment of human remains.
- It applies Schedule 4 to the Housing and Regeneration Act 2008 to land held by the Greater London Authority for housing and regeneration purposes. Schedule 4 makes provision for powers in relation to, and for, statutory undertakers including when notices can be served and representations made to the Secretary of State and appropriate Minister for an extension or modification to the functions and obligations of statutory undertakers.
- It makes provision to prohibit the Greater London Authority from disposing of land held for housing and regeneration purposes for less than the best consideration which can reasonably be obtained unless the Secretary of State consents (with the exception of certain disposals by way of a short tenancy). It provides that the Secretary of State may give consent, where required, generally or specifically.
- It provides that the Greater London Authority may authorise a person to enter and survey land in connection with a proposal by the Greater London Authority to acquire that land or other land for housing and regeneration purposes, or a claim for compensation in respect of the acquisition of such land.
- It places duties on the Greater London Authority in relation to social housing when it acquires, constructs or converts any housing or land for use as low cost rental accommodation and when it disposes of housing or land, or it provides infrastructure or gives financial assistance, on condition that low cost rental accommodation is provided. This is to ensure that when the accommodation is made available for rent the landlord is a “relevant provider of social housing” and thus subject to regulation. It provides that in relation to social housing located in Greater London, repayments of grant are made to the Greater London Authority and not the Homes and Communities Agency and that repaid grant monies received by the Greater London Authority may only be spent by it on providing social housing financial assistance to registered providers.



- It sets out the relationship between the Regulator of Social Housing and the Greater London Authority. The Regulator is given the power to direct the Greater London Authority not to give financial assistance in connection with social housing to a specified registered provider. The purpose of this power is to prevent financial assistance from being given to a registered provider where there are serious concerns about mismanagement or about the viability of that organisation.
- It enlarges the powers of the Greater London Authority to deal with certain property, rights and liabilities transferred to it from an urban development corporation, or transferred to it under section 190 from the Homes and Communities Agency having previously been transferred to that Agency from either an urban development corporation or the Commission for the New Towns.
- It provides that the Secretary of State may, with the consent of Treasury, pay grants to the Greater London Authority for its housing and regeneration functions. A grant may be paid in such instalments and at such times and subject to such conditions as the Secretary of State may determine.

### ***Section 188: The London housing strategy***

410. **Section 188** concerns the London housing strategy and makes changes to sections 333A and 333D of the Greater London Authority Act 1999 to reflect that the Greater London Authority is responsible for exercising housing functions in Greater London rather than the Homes and Communities Agency.

### ***Section 189: Modification to the Homes and Communities Agency's functions***

411. **Section 189** introduces a definition of England in respect of the Homes and Communities Agency's objects which excludes Greater London. It also makes other amendments to Part 1 of the Housing and Regeneration Act 2008 to exclude Greater London from references to "England".

### ***Section 190: Transfer of property of the Homes and Communities Agency etc***

412. **Section 190** empowers the Secretary of State to make schemes to provide for the transfer of property, rights and liabilities from the Homes and Communities Agency or the Secretary of State to the Greater London Authority, a functional body, a subsidiary company of the Authority, the Secretary of State, a London Borough or the Common Council of the City of London. The Secretary of State may also specify by order any other persons to whom the property, rights and liabilities may be transferred.

### ***Section 191: Abolition of the London Development Agency***

413. **Section 191** abolishes the London Development Agency. The date of abolition will be the date on which the section comes into force as specified by commencement order. Schedule 20 contains amendments to primary legislation required in consequence of the Agency's abolition. Part 32 of Schedule 25 contains repeals of primary legislation required in consequence of the Agency's abolition.
414. **Section 191** also makes provision for the Secretary of State to make schemes for the transfer of the property, rights and liabilities of the London Development Agency. A scheme may be made in favour of the Greater London Authority, a functional body, a subsidiary company of the Authority, the Secretary of State, a London borough council, the Common Council of the City of London or any body specified by order made by the Secretary of State. The Secretary of State is required to consult the Mayor of London about the contents of a transfer scheme.



***Section 192: Mayor's economic development strategy for London***

415. **Section 192** amends the Greater London Authority Act 1999. It requires the Mayor to prepare and publish an Economic development strategy for London. This will replace section 7A of the Regional Development Agencies Act 1998, under which the London Development Agency must prepare and publish an equivalent strategy under the supervision of the Mayor.
416. The Economic development strategy must contain an assessment of the economic conditions of London and the Mayor's policies and proposals for the economic development and regeneration of London. In preparing the strategy, the Mayor is required to consult representatives of employers and employees in London. The functional bodies must have regard to the strategy in the exercise of their functions.
417. This section empowers the Secretary of State to issue guidance about the matters to be covered by the strategy and issues to be taken into account in preparing or revising it. It also empowers the Secretary of State to direct the Mayor to revise the strategy if it is inconsistent with national policies or has a detrimental effect on any area outside London.

***Section 193: Transfer schemes: general provisions***

418. **Section 193** makes general provision about transfer schemes that the Secretary of State may make to transfer property, rights and liabilities of the Homes and Communities Agency and London Development Agency. General provision includes provision applying the Transfer of Undertakings (Protection of Employment) Regulations 2006 to contracts of employment transferred by a transfer scheme (whether or not they would otherwise be transferred under those Regulations). It also allows provision to be made in a transfer scheme to enable section 36(3)(c) of the London Olympic Games and Paralympic Games Act 2006 to continue to apply to any land transferred: this is to ensure no enactment regulating the use of commons, open spaces or allotments prevents or restricts the use, for Olympic purposes, of land transferred.

***Section 194 and 195: Consequential provision***

419. **Section 194** empowers the Secretary of State to make consequential, transitory or transitional provision or savings for the purposes of or in consequence of the other provisions in Chapter 1 of Part 8 of the Localism Act. An order may, in particular, provide for the continuation, of things started by or in relation to the Homes and Communities Agency or the London Development Agency, by the Greater London Authority or another recipient of property, rights and liabilities under a transfer scheme.
420. **Section 195** introduces Schedules 19 and 20, which make amendments to legislation that are consequential on the other provisions in Chapter 1 of Part 8. Schedule 19 includes provision for any function exercisable on behalf of the Greater London Authority by the Mayor of London to be exercised, if so authorised by the Mayor, by the Homes and Communities Agency.

***Chapter 2: Mayoral development corporations***

***Sections 196 to 200: Establishment and areas***

421. **Section 197** provides for the Mayor of London to designate any area of land in Greater London, including separate parcels of land, as a mayoral development area provided the Mayor has consulted, where necessary, the individuals and bodies specified in the Act. The Mayor must submit a document detailing the proposal for designation to the London Assembly and allow them 21 days to consider. If a two-thirds majority of the London Assembly object to the proposal then they can veto it. If the Mayor designates a mayoral development area successfully, the Mayor must publicise the designation and

notify the Secretary of State of both the designation and the name to be given to the mayoral development corporation for the area.

422. **Section 198** provides that if the Secretary of State is notified of the designation of a mayoral development area, the Secretary of State must, by order, establish a mayoral development corporation for the area giving it the name notified by the Mayor. A mayoral development corporation will be a body corporate. The section introduces Schedule 21 which makes provision about the constitution and governance of a mayoral development corporation.
423. **Section 199** provides that the Mayor may alter the boundaries of a mayoral development area to exclude any area of land. Prior to this, the Mayor must consult the London Assembly and any other person the Mayor considers appropriate.
424. **Section 200** provides that the Secretary of State may, at any time, make a scheme transferring (to a mayoral development corporation) property, rights and liabilities of the persons specified in the Act, once the Secretary of State has consulted with the persons concerned and the Mayor. The Mayor may make a scheme transferring property, rights and liabilities of the Greater London Authority or a functional body, other than the mayoral development corporation, to a mayoral development corporation.

### ***Section 201: Object and powers***

425. **Section 201** provides that a mayoral development corporation's object is to secure the regeneration of its area. It may do anything it considers appropriate for that purpose or incidental purposes. A mayoral development corporation can also have specific powers, which must be exercised for that purpose or incidental purposes.

### ***Sections 202 to 205: Planning and infrastructure functions***

426. **Section 202** makes provision for a mayoral development corporation to become the local planning authority for the purposes, separately or collectively, of plan-making, development control and neighbourhood planning.
427. **Section 203** provides that a mayoral development corporation may make arrangements for the discharge of its development control functions, in whole or part, by the relevant council(s). The mayoral development corporation may also seek the relevant council's or councils' assistance in the discharge of its plan-making functions.
428. **Section 204** provides that if an order establishing a mayoral development corporation has been made, the Mayor may decide to remove the mayoral development corporation's planning functions or apply restrictions to their use.
429. **Section 205** provides that a mayoral development corporation may provide or facilitate the provision of infrastructure. It may do so by way of acquisition, construction, conversion, improvement or repair.

### ***Sections 206 to 210: Land functions***

430. **Section 206** provides that a mayoral development corporation may carry out or facilitate a range of specified activities including the regeneration or development of land and bringing about the effective use of land.
431. **Section 207** provides that a mayoral development corporation can acquire land within its area or elsewhere by agreement. With the authorisation of the Secretary of State, and the prior consent of the Mayor, a mayoral development corporation can acquire compulsorily land or new rights over land within its area or elsewhere within Greater London.

432. **Section 208** provides for Schedules 3 and 4 to the Housing and Regeneration Act 2008 to apply in relation to a mayoral development corporation and its land. The powers include powers to override easements and extinguish public rights of way, powers in relation to burial grounds and consecrated land, and powers in relation to, and for, statutory undertakers. Where a mayoral development corporation wishes to extinguish rights of way, it requires the Mayor's agreement.
433. **Section 209** provides that a mayoral development corporation is not permitted to dispose of land for less than best consideration, unless the Mayor consents, but this does not apply to granting or assigning a short tenancy of seven years or less.
434. **Section 210** provides that a mayoral development corporation can: authorise a person to enter land in connection with a proposal by the mayoral development corporation to acquire that land or other land, or a claim for compensation in respect to the acquisition of land; and exercise this power for the purposes of surveying land or estimating its value.

#### ***Sections 211 to 214: Other functions***

435. **Section 211** provides that if street works in a mayoral development corporation's area are needed and involve a private street, the mayoral development corporation can serve an adoption notice on the street works authority – making the street (or part of it) a highway maintainable at public expense. The authority may appeal against a notice and ask the Secretary of State to decide how to proceed.
436. **Section 212** provides that a mayoral development corporation may carry on any business and, if the Mayor agrees, set up or take a stake in bodies corporate. Mayoral development corporation subsidiaries cannot take part in activities which mayoral development corporations themselves cannot. A subsidiary of a mayoral development corporation cannot borrow from, or raise money by issuing shares or stock to, a person other than the mayoral development corporation without the Mayor's approval.
437. **Section 213** provides that with the Mayor's consent, a mayoral development corporation can give financial assistance to any person and in any form.
438. **Section 214** provides that the Mayor may decide, subject to prior consultation, that the power to grant discretionary relief from business rates should be transferred from the relevant local authorities to a mayoral development corporation.

#### ***Sections 215 to 217: Dissolution***

439. **Section 215** provides that the Mayor is obliged to review, from time to time, the continuing existence of a mayoral development corporation.
440. **Section 216** provides for the Mayor to transfer any mayoral development corporation property, rights or liabilities to: the Greater London Authority; a subsidiary company of the Authority; a functional body of the Greater London Authority other than the mayoral development corporation; or a London borough council; the Common Council of the City of London or any other body - with their agreement.
441. **Section 217** provides that the Mayor can ask the Secretary of State to revoke the order that established a mayoral development corporation, provided the mayoral development corporation has no property, rights or liabilities. The Secretary of State must make an order giving effect to any such request from the Mayor.

#### ***Sections 218 to 222: General***

442. **Section 218** sets out general provisions for the transfer of property, rights or liabilities (including in relation to a contract of employment) under a transfer scheme.

- 443. [Section 219](#) provides that the Mayor can, following consultation, issue guidance or revoke or vary previous guidance to mayoral development corporations. A mayoral development corporation must have regard to any guidance issued to it by the Mayor.
- 444. [Section 220](#) provides that the Mayor may give directions or revoke or vary previous general or specific directions to a mayoral development corporation.
- 445. [Section 221](#) provides that the Mayor can give consent under this Chapter unconditionally or subject to conditions; and generally or specifically. The Mayor may vary or revoke such consents, subject to various conditions and limitations.
- 446. [Section 222](#) introduces Schedule 22 which makes consequential amendments.

### ***Chapter 3 – Greater London Authority Governance***

#### ***Sections 223 to 231 – Greater London Authority Governance***

- 447. [Sections 223 to 231](#) reform miscellaneous aspects of the Greater London Authority's governance framework under the Greater London Authority Act 1999.
- 448. [Section 223](#) gives Government Ministers the power to delegate certain functions to the Mayor of London. The functions which can be delegated are those which do not consist of a power to make regulations or other instruments of a legislative character, or a power to set fees or charges and which the Secretary of State considers can appropriately be exercised by the Mayor. Section 409 of the Greater London Authority Act 1999 enables a Minister to transfer associated property, rights or liabilities and this section amends that section to enable these to be transferred back if a delegation is revoked.
- 449. [Section 224](#) requires the Greater London Authority, if it carries on specified activities for a commercial purpose, to do so through a taxable body, to ensure tax parity with the private sector. This could be through a subsidiary company of the Authority or the delegation of the activity to a taxable body using the Mayor's powers of delegation under section 38 of the Greater London Authority Act 1999.
- 450. Specified activities will be defined in regulations made by the Secretary of State with the consent of the Treasury and may include activities such as development of land. If any specified activity is not carried out through a taxable body, the Authority (or body acting under a delegation) will not be treated as exempt from income tax, corporation tax and capital gains tax in respect of that activity.
- 451. [Section 225](#) consolidates the six current statutory environmental strategies which the Mayor must publish into a strategy known as "the London Environment Strategy". The Secretary of State may give guidance to the Mayor on the content and preparation of that strategy, and subject to conditions, may give the Mayor a direction as to its content. Schedule 23 makes amendments to the Greater London Authority Act 1999 to reflect this consolidation.
- 452. [Section 226](#) repeals the duty on the Mayor to publish four-yearly reports on the state of environment in Greater London.
- 453. [Section 227](#) amends the general provisions in relation to the Mayor's strategies. The Mayor when preparing a strategy must have regard to the need to ensure consistency with the UK's EU obligations and other international obligations as well as national policies. The Mayor must also have regard to the strategies listed in section 41(1) of the Greater London Authority Act 1999.
- 454. [Section 228](#) removes the duty on the Mayor to carry out a two-stage consultation process in relation to each of the statutory strategies, by removing the obligation to consult the Assembly and functional bodies first, before conducting a wider public consultation.
- 455. [Section 229](#) provides the London Assembly with a power to reject any of the Mayor's statutory strategies if a two-thirds majority of Assembly members vote against its

publication. No power of veto applies, however, if a change to a strategy is made to comply with a direction from the Secretary of State.

456. **Section 231** extends the provisions of Part 5A of the Local Government Act 1972, which provide for access to meetings and documents of most local authorities, to Transport for London, bringing that body into line with the position of the Greater London Authority. The application of Part 5A to Transport for London is modified in two respects: the requirement to disclose the addresses of members is removed; and the requirement to list the titles of officers to whom functions are delegated is limited to those officers who have a function delegated to them directly by Transport for London or a committee of Transport for London (and does not include any further sub-delegations).

## **Part 9: Compensation for Compulsory Acquisition**

### **Section 232 - Taking account of planning permission when assessing compensation**

457. **Section 232** reforms the planning assumptions for compulsory purchase compensation by substituting sections 14 to 18 of the Land Compensation Act 1961.
458. Substituted section 14 provides that for land taken by compulsory purchase, planning permission must be assumed for:
- any planning permission in force at the valuation date;
  - the prospect on the assumptions set out, in the circumstances known to the market, of planning permission being given on the valuation date;
  - “appropriate alternative development”: being development for which planning permission would have been granted in the absence of the scheme for the compulsory purchase was made.

The main assumption is that the scheme was cancelled on the launch date, defined as the date the compulsory notices were first issued.

459. Substituted section 15 provides that planning permission is also to be assumed for the acquiring authority’s proposals underlying the compulsory purchase. This substitution omits the previous subsections (3) and (4) which allow compensation to be paid for wartime and pre-1948 rebuilding rights under Schedule 3 to the Town and Country Planning Act 1990.
460. The omission of the previous section 16 means that assumptions based on the provisions of the development plan would not be considered. These are intended to be subsumed in the assumptions to be provided in substituted section 14.
461. Substituted section 17 provides for local planning authorities to grant certificates of appropriate alternative development as an aid to valuation on application by any party to the compulsory purchase. The certificate would describe what types of development (if any) would have received planning permission or would say that only planning permission for the scheme would have been granted.
462. Substituted section 18 provides for appeals against a certificate to be made to the Upper Tribunal. The Tribunal will hear the case afresh and could confirm, vary or cancel the certificate and issue a substitute.
463. Subsections (4) to (8) of section 232 contain various consequential and clarificatory provisions.

## **Part 10: General**

### **Section 233: Tax**

464. **Section 233** introduces Schedule 24 - Transfers and transfer schemes: tax provisions



465. [Schedule 24](#) makes tax provision in relation to the transfer of property, rights and liabilities from the Office for Tenants and Social Landlords (the Office), the Homes and Communities Agency and the London Development Agency and enables the Treasury to make tax regulations in relation to transfers to permitted authorities under section 17 and transfers to or from a mayoral development corporation.
466. [Paragraph 1](#) of Schedule 24 ensures that the transfer from the Office to the Homes and Communities Agency is tax neutral for income tax and corporation tax purposes.
467. [Paragraph 2](#) defines terms used in Part 2 of the Schedule. In particular it defines a public body and includes a power enabling the Treasury to prescribe a person as a public body for the purposes of Part 2.
468. [Paragraph 3](#) provides continuity of treatment for corporation tax purposes for the computation of profits and losses of a trade on the transfer under a transfer scheme of a trade, or part trade, from the Homes and Communities Agency or the London Development Agency to a public body within the charge to corporation tax
469. [Paragraph 4](#) applies where trading stock of the Homes and Communities Agency or the London Development Agency is transferred to a public body within the charge to corporation tax under a transfer scheme where the transferee does not succeed to the transferor's trade, or part of it. For corporation tax purposes the stock is treated as being disposed of for an amount that would result in no profit or loss being brought into account for the transferor.
470. [Paragraph 5\(1\)](#) provides continuity, for corporation tax purposes, for the transfer under a transfer scheme of a trade loan relationship from the Homes and Communities Agency or the London Development Agency to a public body within the charge to corporation tax. [Paragraph 5\(2\)](#) provides continuity, for corporation tax purposes, for the transfer under a transfer scheme of a non-trade loan relationship from the Homes and Communities Agency or the London Development Agency to a public body.
471. [Paragraph 6](#) ensures that a transfer to a public body under a transfer scheme, that constitutes a capital gains disposal for the Homes and Communities Agency or the London Development Agency, is treated as a disposal giving rise to no gain or loss, and adds the provision to the "no gain/no loss" provisions in section 288(3A) of the Taxation of Chargeable Gains Act 1992.
472. [Paragraph 7](#) prevents stamp duty arising on a transfer scheme under section 191 where the transferee is a public body.
473. [Paragraph 8](#) provides for situations where a transfer scheme is modified subsequent to the delivery of a company return causing the company's return to be incorrect. It enables the company to amend its return to correct the error, notwithstanding the normal time limits for doing so, within 12 months of the end of the accounting period in which the modification occurred. Where the company does not do so HM Revenue and Customs may make a discovery assessment or determination within 24 months of the end of the accounting period in which the modification occurred.
474. [Paragraph 9](#) enables the Treasury to make tax regulations in relation to transfer schemes effecting transfers to permitted authorities under Chapter 4 of Part 1 and to or from a mayoral development corporation.

### **[Sections 234 to 241: General](#)**

475. The remainder of Part 10 of the Act makes general provisions about pre-commencement consultation and about orders and regulations under the Act and for the Parliamentary or Assembly procedures that apply in relation to such instruments. Schedule 25, introduced by section 237, makes various repeals and revocations consequential to the provisions of the Act, and the Secretary of State and, in relation to Wales, Welsh



*These notes refer to the Localism Act 2011 (c.20)  
which received Royal Assent on 15 November 2011*

Ministers are given powers to make further consequential amendments as appropriate.  
This Part also provides for the extent, commencement and short title of the Act.