EXPLANATORY NOTES

Levelling-up and Regeneration Act 2023

Chapter 55

£53.28

EXPLANATORY NOTES—LEVELLING-UP AND REGENERATION ACT 2023

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Published by TSO (The Stationery Office), a Williams Lea company, and available from:

Online
www.tsoshop.co.uk

Mail, Telephone & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
E-mail: customer.services@tso.co.uk
Textphone: 0333 202 5077

ISBN 978-0-10-560381-8

9 780105 603818

LEVELLING-UP AND REGENERATION ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Levelling-up and Regeneration Act 2023 which received Royal Assent on 26 October 2023 (c. 55).

- These Explanatory Notes have been prepared by the Department for Levelling Up, Housing and Communities in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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These Explanatory Notes relate to the Levelling-up and Regeneration Act 2023 which received Royal Assent on 26 October 2023 (c. 55).

Overview of the Act

1 The Levelling-up and Regeneration Act 2023 supports the Government's manifesto commitment to level up the United Kingdom. The Government's objective is to reduce geographical disparities between different parts of the United Kingdom by spreading opportunity more equally.

2 To this end, on 2 February 2022, the Government published the Levelling Up the United Kingdom White Paper[1]. This highlighted disparities between regions and within regions of the UK across economic, social and environmental measures, including that:

a. People living in the most deprived communities in England live up to 18 years less of their lives in good general health than the least deprived.

b. Nearly a quarter of all neighbourhood crime in 2018-19 was concentrated in just 5% of local areas.

c. London's transport and housing infrastructure, despite higher investment, is under the greatest strain and it has worse outcomes in subjective measures of social capital than many other parts of the county.

3 The White Paper outlined the causes of geographic disparities across the United Kingdom, before proposing a roadmap to reduce them by:

a. Boosting productivity, pay, jobs and living standards by growing the private sector, especially in those places where they are lagging;

b. Spreading opportunities and public services, especially in those places where they are weakest;

c. Restoring a sense of community, local pride and belonging, especially in those places where they have been lost; and

d. Empowering local leaders and communities, especially in those places lacking local agency.

4 The White Paper set out twelve missions, defined as medium-term areas of focus and goals to serve as an anchor for policy across government, as well as catalysing innovation and action by the private and civil society sectors, to reduce geographic disparities over the next decade.

5 The White Paper noted that by levelling up the UK has the potential to unlock tens of billions of pounds each year. For instance, if cities in the North and Midlands were as productive as London and the South East, UK GDP could be boosted by around £180bn.

6 To support the change needed, the Levelling-up and Regeneration Act has four overarching objectives:

a. To place a duty on the Government to set, and report annually on progress towards achieving, levelling up missions to reduce geographical disparities across the United Kingdom;

b. To create a framework to support the devolution of powers through the creation of a new model of combined county authorities to support delivery of the Government's levelling up mission that 'by 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement'[2];

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[1] https://www.gov.uk/government/publications/levelling-up-the-united-kingdom

[2] Ibid.

c. To deliver new powers for local authorities to regenerate their towns through high street rental auctions and reforms to compulsory purchase to support delivery of the Government's levelling up mission that 'by 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between top performing and other areas closing'; and

d. To create a planning system which delivers more beautiful and greener homes, with the associated infrastructure and democratic support for neighbourhoods.

7 The Act contains 13 parts and 24 schedules. The Act makes a number of changes to existing legislation including in the areas of local government, planning and compulsory purchase.

8 Part 1 establishes the concept of levelling-up missions and the framework in which they lie.

9 Part 2 deals with Local Democracy and Devolution in the form of combined county authorities and sets out provisions to empower local leaders.

10 Part 3 makes changes to planning including in relation to data, development plans, heritage, decision-making, planning fees and enforcement.

11 Part 4 makes provision for the Infrastructure Levy which enables Local Authorities to raise money from developments to regenerate their areas through infrastructure in a manner which does not require negotiation with the developer.

12 Part 5 deals with Community Land Auctions.

13 Part 6 replaces the EU environmental assessment system with a new framework for Environmental Outcome Reports.

14 Part 7 is concerned with nutrient pollution standards.

15 Part 8 deals with Development Corporations ensuring they have the powers and functions to deliver strategic development across England.

16 Part 9 amends the powers and procedures of Compulsory Purchase to clarify the powers available to Local Authorities and ensure pursuit of regeneration.

17 Part 10 contains provisions that deal with vacant commercial properties in town centers and high streets.

18 Part 11 is concerned with information about dealings and interests in land and the making of this data public.

19 Part 12 details other provisions including short-term rental properties, pavement licensing, historic environment records, a review of governance of the Royal Institution of Chartered Surveyors, marine licensing, the building safety regulator and qualifying leases under the Building Safety Act 2022, transferring local authority land to academy schools, open access mapping, childcare, a blue plaque scheme for England, reporting upon the enforcement of the Vagrancy Act 1824, road user charging in London and protected landscapes.

20 Part 13 contains the technical sections related to the Act, including Data protection, Crown application and power to make consequential provision.

Policy background

Framework for Levelling Up and setting and reporting on missions

21 The Levelling Up the United Kingdom White Paper sets out the Government's long-term programme for addressing geographic disparities across the United Kingdom. The Government concludes in the White Paper that no single policy or intervention can achieve levelling up on its own. Instead, it requires action from both the public and private sectors and cuts across almost all areas of central and local government – from education, criminal justice and health to transport, planning and the economy. Central to setting the right ambitions and driving change are the twelve cross-cutting missions set out below. The White Paper explained that the missions do not limit or constrain the Government's ambitions, but rather represent the first priorities in a medium-term, continuously evolving and collaborative programme across the UK.

The 12 Levelling Up Missions

Boosting productivity, increasing pay, and creating jobs

a. Increasing living standards: pay, employment and productivity will have risen in every area of the UK, with each containing a globally competitive city, and the gap between the top performing and other areas closing.

b. Backing Research and Development (R&D) by increasing public investment in R&D outside the South East by at least 33% over this Parliament and at least 40% by 2030.

c. Overhauling public transport so local connectivity will be significantly closer to the standards of London, with better services, simpler fares and integrated ticketing.

d. Transforming digital connectivity across the UK with nationwide gigabit-capable broadband with 4G and 5G coverage for the majority.

Spreading opportunity and improving public services

e. Improving education outcomes so that 90% of primary school children achieve the expected standard of reading, writing and maths.

f. Increasing the number of adults who complete high quality skills training, with 200,000 more people completing training annually in England.

g. Increasing healthy life expectancy, and narrowing the gap between areas where it is highest and lowest.

h. Improving wellbeing in every area of the UK with a closing gap between the top performing and low performing areas.

Restoring pride in place and community

i. Boosting satisfaction with town centres and engagement with local culture and community.

j. Increasing home ownership and housing standards, with more first-time buyers in all areas and the number of non-decent homes down by 50%.

k. Cutting crime with homicide, serious violence and neighbourhood offences falling, with a focus on the worst affected areas.

Empowering local leaders and communities

22 Giving every part of England that wants one a devolution deal, with powers at, or approaching, the highest level of devolution and a simplified long-term funding settlement.

23 The Act creates a statutory duty for the Government to set missions (through a 'levelling -up missions statement'). The levelling-up missions statement will be laid before Parliament and published; and will be accompanied by the methodology and metrics the Government intends to use to evaluate its progress towards their delivery. The Act also creates a statutory obligation for the Government to report annually (the 'annual report') on progress towards the delivery of each mission in the levelling-up missions statement. These reports are intended to use publicly available data to evaluate progress towards the delivery of missions. The object of this measure is to make sure this and future governments are held to account by Parliament; and that information on progress is transparently available to the public.

24 The legal framework in the Act provides the foundation for a broader programme of government work to level up the United Kingdom. To support this, the Government is setting up an external Levelling Up Advisory Council, which will support Ministers by advising on the design, delivery and impact of government policy on the levelling up aims. The programme of further work includes: the creation of 55 Education Investment Areas in England; using the £1.4bn Global Britain Investment Fund to attract more major investments to all parts of the UK, and a £1.5bn Levelling Up Home Building Fund, which will provide loans to SMEs.

Devolution

25 Since 2010, the Government has increasingly sought to grant greater powers to local areas– with the passage of the Localism Act, the introduction of Police and Crime Commissioners, City Deals and democratically elected mayors in metropolitan areas. The Levelling Up White Paper also notes that the UK is a highly-centralised country compared to the OECD average, with less spent by subnational governments than in other peer countries. The Levelling Up White Paper attributed the cause of geographic disparities in part to low levels of 'institutional capital' (defined as local leadership, capability and capacity), in particular local leaders lacking the powers and accountabilities to design and deliver effective policies for tackling local problems and supporting local people.

26 There are currently twelve areas which have enhanced devolution in England:

- Greater London
- Cornwall
- Greater Manchester
- Liverpool City Region
- West Midlands
- Tees Valley
- Cambridgeshire and Peterborough
- West of England
- South Yorkshire

- North East
- North of Tyne
- West Yorkshire

27 The majority of these areas have been created on the current model of a mayoral combined authority (whereby they have a directly elected Mayor, such as in Greater Manchester, Liverpool City Region and the West Midlands). Combined authorities were first created under the Local Democracy, Economic Development and Construction Act 2009; mayoral combined authorities were introduced outside of London by the Cities and Local Government Devolution Act 2016. The specific powers devolved to each of these areas through secondary legislation are bespoke and were subject to negotiations with central government, but can include greater powers over transport, skills, employment, public health and Police and Crime Commissioner functions.

28 The Levelling Up White Paper set a mission to ensure that all areas of England would be offered a devolution deal by the end of 2030 with powers at or approaching the highest level of devolution with a simplified, long-term funding settlement.

29 The White Paper also set out the Devolution Framework, indicating what level of powers the Government would devolve to the different types of local government structures, with the fullest extent of powers being granted to a single institution with a directly elected mayor across a functional economic area or whole county geography. The White Paper also announced negotiations on devolution deals with the 13 areas listed below:

- Cornwall;
- Derbyshire and Derby;
- Devon, Plymouth and Torbay;
- Durham;
- Greater Manchester;
- Hull and East Yorkshire;
- Leicestershire;
- Norfolk;
- North East
- North Yorkshire and York;
- Nottinghamshire and Nottingham;
- Suffolk; and
- West Midlands

30 The Government has concluded and announced devolution deals with 5 areas: York and North Yorkshire; that part of the East Midlands which includes Derby, Derbyshire, Nottingham, and Nottinghamshire; Cornwall; Norfolk; and Suffolk. The East Midlands deal is dependent on the enactment of provisions in the Act necessary for the establishment of the proposed East Midlands

Mayoral Combined County Authority and Norfolk and Suffolk are planning to use "mayoral title" provisions. All deals are now subject to the statutory processes, including secondary legislation to implement the deals.

Combined County Authorities

31 The Levelling Up, Housing and Communities Select Committee produced a report on their inquiry into the progress of devolution in England in October 2021[3]. The Government responded in March 2022[4].

32 The Act supports the delivery of the Local Leadership Mission, fundamental to deepening devolution across England, by including measures to create a new model of combined county authority, consisting of upper-tier local authorities only. At present, the available model for establishing a combined authority is primarily designed for urban areas. To address this, the Act creates a new model for a 'combined county authority', which is made up of upper-tier local authorities only. The main difference between combined county authorities and combined authorities is the membership: a combined county authority must include one two-tier county council and at least one other upper tier county council or upper tier unitary authority (i.e. district councils cannot be members and do not consent to the forming of a combined county authority), whereas a combined authority has to include all the local authorities within the area it is to cover (i.e. in a two-tier area, the county council and all district councils must be members, and consent to the forming of the combined authority). In all other matters, there is parity between the two types of authority.

33 The new model for a 'combined county authority' provides a model which is more appropriate for non-metropolitan areas, many of which have two-tier local government. The Act also streamlines the process for authorities to bring forward proposals for combined authorities. The Act reduces the consent requirements regarding changing the constitutions of combined authorities, which are required to extend or deepen devolution deals negotiated with central Government. The Act also includes measures to enable local authorities to move into directly elected leadership governance models more quickly to support devolution deals. Measures in the Act will also enhance the overview and scrutiny and audit of new and existing combined authorities by enabling remuneration for committee members to attend relevant meetings. Finally, the Act provides for authorities with directly elected mayors to give those mayors a title reflecting the character and preferences of that area.

Local Government Borrowing

34 The Act provides Government with means to investigate and remediate instances of local government borrowing. The Act grants powers to the Secretary of State to set a trigger point in relation to borrowing risk, after which central Government will have powers to: request information, request a review, set a borrowing cap or require a local authority to reduce its risk.

Council Tax

35 The Act introduces a discretionary council tax premium on second homes and changes the qualifying period for use of the long-term empty homes premium. Local authorities may levy a premium of up to an additional 100% on council tax bills for second homes and for empty homes after one year (as opposed to two years which is the current requirement). Neither of these are

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[3] https://publications.parliament.uk/pa/cm5802/cmselect/cmcomloc/36/3602.htm

[4] https://www.gov.uk/government/publications/progress-on-devolution-in-england-government-response-to-the-select-committee-report

mandatory requirements. The Act provides a power to vary the maximum percentage for the second homes premium. The Government consulted on exemptions to this policy during passage of the Act.

Street names

36 The current system for changing a street name relies upon three Acts which date from the early 20th century. This mix of provisions across the country, many of which are over a century old, has led to a lack of transparency on where each Act applies. Under the available legislation, many councils can change the name of a given street unilaterally, without consulting the residents on that street.

37 The Act grants a power to the Secretary of State to set out the process to secure consent on any proposed changes to a street's name. This will be supported by regulations (which may be supplemented by statutory guidance) on the process which local authorities will be required to have regard to. Together these changes will ensure all local authorities follow the same process for changing street names and that they cannot do so without the consent of those who live on the street. The Government published a technical consultation which ran from 11 April 2022 to 22 May 2022[5] on associated changes to regulations and statutory guidance in order to create a common requirement across England for votes on proposed changes of street names. The response was published on 5 July 2022[6].

Other provisions

38 The Act clarifies the existing law to confirm that there is no prohibition which prevents parish councils from providing funding for the upkeep of places of worship.

39 The Act also removes the specific restrictions upon voting upon housing matters which applied to the Common Council of the City of London, causing the law as it would apply to any other authority to apply.

Regeneration

40 The Act contains measures which enable local authorities and their leaders to regenerate their communities, in line with the mission to restore pride in place as set out in the Levelling Up White Paper. This also supports the mission that by 2030, people's satisfaction with their town centre, and engagement in local culture and community, will have risen in every area of the UK with the gap between top performing and other areas closing.

Compulsory purchase of land

41 Compulsory purchase is the power to acquire land and property without the consent of the owner. It is an important tool for assembling land needed to help deliver developments which regenerate areas to deliver social, environmental and economic change. The Government introduced a number of reforms through the Housing and Planning Act 2016 and the Neighbourhood Planning Act 2017 aimed at making the process clearer, faster and fairer. The Government's High Street Strategy7, published in July 2021, emphasised the role of compulsory purchase as a catalyst for regeneration in town centres and high streets which are seeing persistent long-term empty properties, and where there are complex and fragmented land ownership patterns.

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[5] https://www.gov.uk/government/consultations/technical-consultation-on-street-naming/technical-consultation-on-street-naming

[6] https://www.gov.uk/government/consultations/technical-consultation-on-street-naming/outcome/government-response-to-the-technical-consultation-on-street-naming

[7] https://www.gov.uk/government/publications/build-back-better-high-streets

42 The Act streamlines and modernises Compulsory Purchase Orders (CPO) and grants the power to local authorities to use CPO for regeneration purposes. These changes would empower local decision making and improve transparency regarding local authorities' power to acquire brownfield land compulsorily for regeneration in their area.

Development Corporations

43 Previously, there were four types of development corporation: the New Town Development Corporation, the Urban Development Corporation, the Mayoral Development Corporation and the locally-led New Town Development Corporation. Each model reflected the time and circumstances when they were introduced, and thus had varying powers and remits.

44 In October 2019, DLUHC launched a consultation on development corporation reform[8] to seek views on the legal framework for the operation of development corporations and to invite ideas on how it might be reformed. The responses to the consultation identified instances where the available models of development corporation do not provide the scope or powers required. For example, there is no model for the purposes of regeneration available to local authorities outside of Mayoral areas.

45 This Act makes provision for a new type of Locally-led Urban Development Corporation, with the objective of regenerating its area and accountable to local authorities in the area rather than the Secretary of State. It also updates the planning powers available to centrally and locally-led development corporations, so that they can become local planning authorities for the purposes of local plan-making, overseeing neighbourhood planning and development management. This is to bring them in line with the Mayoral Development Corporation model. The Act amends the process for establishing Locally-led New Town Development Corporations, removes the cap on the number of board members and removes the aggregate limits to borrowing.

High Street Rental Auctions

46 High levels of vacant commercial property are a challenge for many places across the country. In November 2021, 14.5% of all high street units in retail and leisure were vacant.[9] This continues a pre-pandemic trend, where vacancy rates gradually increased from 10.9% in 2017 to 12.2% at the start of 2020. While some level of vacancy can be a sign of natural business churn and will include units that will be filled relatively quickly or are in the process of being filled, around 30 Local Authorities in England have a vacancy rate of above 20%, with some up to 32%.[10]

47 These vacancies are not evenly distributed, with seven local authorities in the north west and north east having particularly high vacancy rates. This has implications for the Government's levelling up agenda. Persistently high levels of vacant property can fuel a spiral of decline in places which poses an obvious form of scarring and can undermine pride in place.

48 In accordance with the Government's priority to regenerate high streets, as set out in the Levelling Up White Paper, the Act gives local authorities powers to auction the rental rights for vacant commercial properties in town centres and on high streets, for leases from one to five years to attract new tenants. These powers can be exercised at the discretion of local authorities, based on their local context and need, but only on properties which have been vacant for over 12 months.

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[8] https://www.gov.uk/government/consultations/development-corporation-reform-technical-consultation

[9] https://www.localdatacompany.com/blog/q2-brc-retail-vacancy

[10] https://www.gov.uk/government/statistics/non-domestic-rating-stock-of-properties-2020

49 High Street Rental Auctions will seek to increase cooperation between landlords and local authorities to address vacant premises, and to make town centre tenancies more accessible and affordable for tenants, including SMEs and community groups.

Land Transparency

50 The Act includes measures that will facilitate a better understanding of who owns or controls land. It implements the 2017 Housing White Paper commitment to publish data on contractual arrangements used by developers and others to control land, short of ownership, to assist local communities in better understanding the likely path of development and identify anti-competitive behaviour. The Government consulted on the proposals in August 2020.

Planning

51 The planning measures in the Act have been informed by more than 40,000 responses to the Government's 2020 White Paper 'Planning for the Future'[11], and the subsequent inquiry into planning reform by the Commons Housing, Communities and Local Government Select Committee[12].

52 Planning is critical to the Government's ambition to level-up the country. The new system will be based on the principles of: beauty, infrastructure, democracy, environment and neighbourhood engagement. How the Act addresses each of these five principles is set out below.

Beauty

53 The Act will require all local planning authorities to have a design code in place covering their entire area. The area-wide codes will act as a framework, for which subsequent detailed design codes can come forward, prepared for specific areas or sites and led either by the local planning authority, by neighbourhood planning groups or by developers as part of planning applications. This will help ensure good design is considered at all spatial scales, down to development sites and individual plots.

Infrastructure

54 The Act replaces the current system of securing developer contributions (through section 106 agreements and the Community Infrastructure Levy) with a new Infrastructure Levy. The rates and thresholds will be contained in 'charging schedules' and set and raised by local planning authorities (rather than nationally), meaning that rates can be tailored to local circumstances and deliver at least as much onsite affordable housing. Charging schedules must have regard to previous levels of affordable housing funded by developer contributions such that they are kept at a level that will exceed or maintain previous levels. All schedules will be subject to public examination.

55 There will also be a process to require developers to deliver some forms of infrastructure that are integral to the design and delivery of a site. To make sure that infrastructure requirements and levy spending priorities are considered carefully, the Act places a new duty on local authorities to prepare infrastructure delivery strategies to outline how they intend to spend the levy.

56 In preparing their development plans, local authorities may consult infrastructure providers where changes to or investment in their infrastructure is required to support development, such as providing for transport, education, the environment, healthcare, or blue light services. Under the

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[11] https://www.gov.uk/government/consultations/planning-for-the-future

[12] https://committees.parliament.uk/work/634/the-future-of-the-planning-system-in-england/publications/

Act, those infrastructure providers will be obliged to respond and to assist as is reasonable in the preparation of the plan.

57 The Act enables Community Land Auctions to be piloted. These are an innovative approach to identifying land for allocation for development in a local planning authority's area, in a way which seeks to improve land value capture for the benefit of local communities.

Democracy

58 Local plans will be given more weight when decisions are made on applications so that there must be strong reasons to override the plan, providing communities more certainty. The same weight will be given to other types of plan, including neighbourhood plans prepared by local communities and spatial development strategies produced by Mayors or combined authorities.

59 The Act requires each local planning authority to prepare one local plan, with the content limited to locally specific matters such as allocating land for development, detailing required infrastructure and setting out principles of good design. General policies on issues that apply in most areas (such as general heritage protection) will be set out nationally and contained in a suite of National Development Management Policies, which will have the same weight as plans so that they are fully taken into account in decisions. Local plans will not be able to repeat these.

60 The Act makes several other changes to improve the process for preparing local plans: new powers will enable the introduction of 'Gateway' checks so that issues are identified earlier during plan preparation, and allow time periods to be prescribed for different parts of the plan preparation process, enabling delivery of a timebound end-to-end process; digital powers in the Act will allow use of more standardised and reusable data, there will be a new requirement for local planning authorities to produce a consolidated policies map of the full development plan for their area, improving the clarity and transparency of plans; and the 'duty to cooperate' contained in existing legislation is being repealed.

61 Local planning authorities will have a new power to prepare 'supplementary plans', where policies for specific sites or groups of sites need to be prepared quickly (e.g. in response to a new regeneration opportunity), or to set out design codes for a specific site or area or across their whole area.

62 The Act will also enable groups of authorities to collaborate to produce a voluntary spatial development strategy, where they wish to provide strategic planning policies for issues that cut across their areas (echoing the powers conferred on some Mayoral combined authorities already).

Environment

63 A new system of Environmental Outcomes Reports will replace the EU processes of Environmental Impact Assessment and Strategic Environmental Assessment whilst retaining the UK's obligations under the UN Aarhus and Espoo Conventions.

64 The Act introduces an outcomes-based approach that will allow the government to set clear and tangible environmental outcomes which a plan or project is assessed against. This will allow decision-makers and local communities to clearly see where a plan or project is meeting these outcomes and what steps are being taken to avoid and mitigate any harm to the environment. These outcomes will be set following consultation and parliamentary scrutiny and will, for the first time, allow the government to reflect its environmental priorities directly in the decision-making process.

65 By moving to an outcomes-based approach, and taking powers to address procedural issues with the current system, the Act provides the opportunity to go further for the environment and to turn passive assessment into a more active tool to support environmental regeneration.

66 The Act places a new statutory duty on water companies in England to upgrade wastewater treatment works to the highest technically achievable levels for nutrient removal in designated catchments by 1 April 2030. Treating the achievement of the nutrient pollution standards as certain in a Habitats Regulations Assessment will mean lower levels of mitigation will be required from developers, reducing costs and enabling sustainable development.

Neighbourhoods

67 The Act introduces a new neighbourhood planning tool called a "neighbourhood priorities statement". This will provide communities with a simpler and more accessible way to set out their key priorities and preferences for their local areas. Local authorities will need to take these into account, where relevant, when preparing their local plans for the areas concerned, enabling more communities to better engage in the local plan-making process. Alongside this, the Act will also prescribe in more detail what communities can address in their neighbourhood plans and amend the 'basic conditions' to ensure neighbourhood plans are aligned with wider changes to the planning system.

68 The Act introduces a new planning consent regime that enables residents to propose development on their street and, subject to the proposal meeting certain requirements, to vote on whether that development should be given planning permission. This is intended to encourage residents to consider the potential for additional development on their streets, and support a gentle increase in densities, in particular, in areas where additional new homes are needed.

69 The Act amends the Self-build and Custom Housebuilding Act 2015 to ensure that only planning permission made available explicitly for self-build and custom housebuilding qualifies towards the 'duty to grant planning permission etc' and is counted to meet the demand for self and custom build. This will enable relevant authorities to meet their statutory duties in a more consistent and focused manner.

The planning application process

70 The Act will increase certainty in planning decisions by imposing a new duty on decision makers to make planning decisions in accordance with the development plan and national development management policies unless material considerations strongly indicate otherwise.

71 The Act will enable improvements to the planning application process for all users with greater powers to regulate information requirements for planning applications (in particular in digital formats) to improve consistency and accessibility; improve community engagement by making permanent regulation-making powers to mandate consultation prior to planning applications being submitted; and introduce an improved process for making non-substantial changes to existing planning permissions. The Act will also enable temporary relief to be given for enforcement action against prescribed planning conditions, in certain circumstances, where it is necessary to lift constraints on operations (as occurred with construction and delivery hours during the recent pandemic).

72 The Act will take powers to speed up the process of dealing with applications for nationally important Crown developments in the planning system. This includes a new process for nationally important and urgent developments, and a new route which will allow the Crown to apply directly to the Secretary of State for determination of nationally important development.

Enforcement

73 The Act amends and strengthens the powers and sanctions available to local planning authorities to deal with individuals who fail to abide by the rules and process of the planning system. This includes facilitating enforcement action by closing existing loopholes which can be exploited to

prolong unauthorised development, allowing more time for the investigation of breaches, introducing enforcement warning notices, making the enforcement timescales that currently apply more consistent, and increasing fines.

Protecting heritage

74 Measures in the Act will also strengthen the critical role the planning system plays in protecting the historic environment.

75 The Act will make changes so that designated heritage assets, such as registered parks and gardens, World Heritage Sites, protected wreck sites, and registered battlefields, enjoy the same statutory protection in the planning system as listed buildings and conservation areas.

76 It will also put Historic Environment Records on a statutory basis, placing a new duty on local authorities to maintain one for their area. The enforcement powers available to protect historic buildings will be enhanced, by introducing temporary stop notices; strengthening the power to issue Urgent Works Notices by extending them to apply to occupied listed buildings; making the costs of carrying out works a local land charge to aid cost recovery by local planning authorities; and removing the compensation liability in relation to Building Preservation Notices.

Legal background

77 A list of legislation referenced or amended by the Act is as follows (alphabetised):

- Abusive Behaviour and Sexual Harm (Scotland) Act 2016
- Academies Act 2010
- Acquisition of Land Act 1981
- Agriculture Act 1967
- Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017
- Ancient Monuments and Archeological Areas Act 1979
- Anti-Social Behaviour, Crime and Policing Act 2014.
- Apprenticeships, Skills, Children and Learning Act 2009
- Automated and Electric Vehicles Act 2018
- Building Act 1984
- Building Safety Act 2022
- Business and Planning Act 2020
- Bus Services Act 2017
- Charities Act 2011
- Childcare Act 2006

- Children Act 2004
- Cities and Local Government Devolution Act 2016
- Civic Amenities Act 1967
- Commons Act 2006
- Companies Act 2006
- Compulsory Purchase Act 1965
- Compulsory Purchase (Vesting Declarations) Act 1981
- Conservation of Habitats and Species Regulations 2017
- Conservation (Natural Habitats etc) Regulations (Northern Ireland) Act 1995
- Conservation of Offshore Marine Habitats and Species Regulations 2017
- Concessionary Bus Travel Act 2007
- Co-operative and Community Benefits Societies Act 2014
- Countryside and Rights of Way Act 2000
- County Courts Act 1984
- Courts Act 2003
- Courts Act 2022
- Crime and Disorder Act 1998
- Criminal Justice Act 2001
- Criminal Justice Act 2003
- Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law 2013
- Criminal Procedure (Scotland) Act 1995
- Crown Private Estates Act 1862
- Data Protection Act 2018
- Deregulation and Contracting Out Act 1994
- Digital Economy Act 2017
- Education Act 1996
- Education and Inspections Act 2006
- Elections Act 2022

- Electoral Law Act (Northern Ireland) 1962
- Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017
- Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017)
- Employment Agencies Act 1973
- Employers' Liability (Compulsory Insurance) Act 1969
- Environment Act 1995
- Environment Act 2021
- Environment (Wales) Act 2016
- Environmental Assessment of Plans and Programmes Regulations 2004
- Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004
- Environmental Assessment of Plans and Programmes (Wales) Regulations 2004
- Environmental Assessment (Scotland) Act 2005
- Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006
- Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007
- Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017
- Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999
- Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006
- Environmental Impact Assessment (Land Drainage Improvements Works) Regulations 1999
- Environmental Permitting (England and Wales) Regulations 2016
- Equality Act 2010
- European Union (Withdrawal) Act 2018
- Fire and Rescue Services Act 2004
- Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017
- Freedom of Information Act 2000
- Further and Higher Education Act 1992
- Government of Wales Act 2006
- Greater London Authority Act 1999

- Harbours Act 1964
- Health and Care Act 2022
- Health and Safety at Work etc Act 1974
- Health and Social Care (Community Health and Standards) Act 2003
- Highways Act 1980
- Historic Buildings and Ancient Monuments Act 1953
- Historic Environment (Wales) Act 2023
- Housing Act 1985
- Housing Act 1988
- Housing Grants, Construction and Regeneration Act 1996
- Housing and Planning Act 2016
- Housing and Regeneration Act 2008
- Industrial and Provident Societies Act (Northern Ireland) 1969
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Inquiries Act 2005
- Insolvency Act 1986
- Interpretation Act (Northern Ireland) 1954
- Interpretation and Legislative Reform (Scotland) Act 2010
- Land Clauses Consolidation Act 1845
- Land Compensation Act 1961
- Land Compensation Act 1973
- Land Registration Act 2002
- Landlord and Tenant Act 1954
- Landlord and Tenant Act 1985
- Landlord and Tenant Act 1987
- Leasehold Reform Act 1967
- Leasehold Reform, Housing and Urban Development Act 1993
- Legislative and Regulatory Reform Act 2006

- Local Audit and Accountability Act 2014
- Local Authorities (Capital Finance and Accounting) (England) Regulations 2003
- Local Authorities (Functions and Responsibilities) (England) Regulations 2000
- Local Authorities (Goods and Services) Act 1970
- Local Democracy, Economic Development and Construction Act 2009
- Local Government Act 1894
- Local Government Act 1972
- Local Government Act 1974
- Local Government Act 1985
- Local Government Act 1986
- Local Government Act 1988
- Local Government Act 1999
- Local Government Act 2000
- Local Government Act 2003
- Local Government and Housing Act 1989
- Local Government and Public Involvement in Health Act 2007
- Local Government Finance Act 1992
- Local Government Finance Act 1988
- Local Government Grants (Social Need) Act 1969
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Local Government, Planning and Land Act 1980
- Local Government (Records) Act 1962
- Local Government (Overseas Assistance) Act 1993
- Localism Act 2011
- Local Transport Act 2008
- London Building Acts (Amendment) Act 1939
- Marine and Coastal Access Act 2009

- Marine Works (Environmental Impact Assessment) Regulations 2007
- Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017
- Ministers of the Crown Act 1975
- Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
- National Health Service Act 2006
- National Health Service (Wales) Act 2006
- National Parks and Access to the Countryside Act 1949
- Neighbourhood Planning Act 2017
- New Roads and Street Works Act 1991
- New Towns Act 1981
- Norfolk and Suffolk Broad Act 1968
- Northern Ireland Assembly (Elections) Regulations 2011
- Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999
- Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001
- Offshore Petroleum Production and Pipe-Lines (Assessment of Environmental Effects) Regulations 1999
- Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
- Pipe-line Works (Environmental Impact Assessment) Regulations 2000
- Planning Act 2008
- Planning Act (Northern Ireland) 2011
- Planning and Compulsory Purchase Act 2004
- Planning and Energy Act 2008
- Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999
- Planning (Hazardous Substances) Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Police, Crime Sentencing and Courts Act 2022
- Police Reform Act 2002
- Police Reform and Social Responsibility Act 2011

- Policing and Crime Act 2017
- Political Parties, Elections and Referendums Act 2000
- Procurement Act 2023
- Protection from Eviction Act 1977
- Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005
- Protection of Wrecks Act 1973
- Public Bodies (Marine Management Organisation) (Fees) Order 2014
- Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999
- Public Health Act 1925
- Public Health Acts Amendment Act 1907
- Public Health Service Act 1990
- Public Passenger Vehicles Act 1981
- Railways Act 1993
- Railways Act 2005
- Railway Clauses Consolidation Act 1845
- Regulatory Enforcement and Sanctions Act 2008
- Rent Act 1977
- Rent (Agriculture) Act 1976
- Representation of the People Act 1983
- Road Traffic Act 1988
- Road Traffic Regulation Act 1984
- Roads (Northern Ireland) Order 1993
- Roads (Scotland) Act 1984
- School Sites Act 1841
- School Standards and Framework Act 1998
- Self-build and Custom housebuilding Act 2015
- Sentencing Code
- Sexual Offences Act 2003

- Sex Offenders Act 2006
- Sex Offenders (Jersey) Law 2010Skills and Post-16 Education Act 2022
- Statutory Rules (Northern Ireland) Order 1979
- Stock Transfer Act 1982
- Technical and Further Education Act 2017
- Town and Country Planning Act 1990
- Town and Country Planning (Consultation)(England) Direction 2021
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017
- Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
- Town and Country Planning (environmental Impact Assessment) (Wales) Regulations 2016
- Town and Country Planning Act (Environmental Impact Assessment) (Wales) Regulations 2017
- Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Minerals Permissions) (Wales) Regulations 2009
- Trade (Australia and New Zealand) Act 2023
- Transfer of Undertakings (Protection of Employment) Regulations 2006
- Transport Act 1968
- Transport Act 1985
- Transport Act 2000
- Transport and Works Act 1992
- Transport and Works (Applications and Objections procedure) (England and Wales) Rules 2006
- Transport and Works (Scotland) Act 2007
- Transport and Works (Applications and Objections procedure) (England and Wales) Rules 2006
- Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007
- Tribunals and Inquiries Act 1992
- Tribunals, Courts and Enforcement Act 2007
- Trustee Investments Act 1961
- UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

- Urban Waste Water Treatment (England and Wales) Regulations 1994
- Vagrancy Act 1824
- Water Industry Act 1991
- Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003
- Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005
- Waste (England and Wales) Regulations 2011
- Welsh Development Agency Act 1975
- Wildlife and Countryside Act 1981

78 Otherwise, the relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

79 Section 254 (Extent) in Part 13 (General) sets out the territorial extent of the Act, that is the jurisdictions in which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.

80 The Act extends to England and Wales only, except for:

a. Part 1 (Levelling Up Missions) which extends UK-wide.

b. Part 3 (Planning) Chapter 1 (Planning Data) which extends UK-wide.

c. Part 3 (Planning) Chapters 2-6; an amendment or repeal in these chapters has the same extent as the provision amended or repealed.

d. Part 3 (Planning) Chapter 4 (Grant and implementation of planning permission) section 108 (Street votes: modifications of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017) which extends UK-wide.

e. Part 3 (Planning) Chapter 6 (Other Provision) section 132 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which extends UK-wide.

f. Part 3 (Planning) Chapter 6 section 133 (Participation in certain proceedings conducted by, or on behalf of, the Secretary of State) extends to England and Wales and Scotland.

g. Part 6 (Environmental Outcomes Reports) which extends UK-wide.

h. Part 8 (Development corporations): amendments or repeal in this Part have the same extent as the provision amended or repealed.

i. Part 11 (Information about interests and dealings in land) which extends UK wide.

j. Part 12 (Miscellaneous) section 231 (Review of governance etc of RICS) which extends UK-wide.

k. Part 12 section 232 (Marine Licensing) which extends UK-wide.

l. Part 12 section 239 (Amendments of Schedule 7B to the Government of Wales Act 2006) which extends UK-wide.

m. Part 12 section 242 (Report on enforcement of the Vagrancy Act 1824) which extends UK-wide.

n. Part 12 section 244 (road user charging schemes in London) which extends to England and Wales and Scotland.

o. Part 13 (General) which extends UK-wide.

p. Schedules 13, 14 and 24 extend UK wide.

81 The Act applies to England only, except for:

a. Part 1 (Levelling Up Missions) which applies UK-wide.

b. Part 3 (Planning) Chapter 1 (Planning Data) which applies UK-wide (except sections 87-88).

c. Part 3 (Planning) Chapter 4 (Grant and implementation of planning permission), section 107(2)(b) (street votes: community infrastructure levy) which applies to England and Wales.

d. Part 3 (Planning) Chapter 6 (Other Provision).

e. Sections 126, 127 and 128 (Nationally Significant Infrastructure Projects- NSIP related sections) which apply to England and Wales, and Scotland (the NSIP regime only applies to Scotland in the case of the construction of an oil or gas pipe-line, one end of which is in England or Wales and the other end of which is in Scotland).

f. Section 130 (Regulations and order under the Planning Acts) which applies to England and Wales.

g. Section 132 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which applies UK-wide.

h. Section 133 (Participation in certain proceedings) applies to England and Wales and Scotland.

i. Part 6 (Environmental Outcomes Reports) which applies UK-wide.

j. Part 9 (Compulsory Purchase) which applies to England and Wales (except section 180).

k. Part 11 (Information About Interests and Dealings in land) which applies UK Wide.

l. Part 12 (Miscellaneous) section 231 (Review of governance etc of RICS) which applies UK-wide.

m. Part 12 section 232 (Marine Licensing) which applies where the Secretary of State is the appropriate licensing authority in the inshore and offshore regions in England, and the offshore region only in Northern Ireland (and in the UK marine licensing area for certain reserved or excepted matters), and where the Scottish Ministers are the appropriate marine licensing authority in the Scottish offshore region.

n. Part 12 section 239 (Amendments of Schedule 7B to the Government of Wales Act 2006) applies to England and Wales.

o. Part 12 section 242 (Report on enforcement of the Vagrancy Act 1894) which applies to England and Wales and Northern Ireland.

p. Part 13 (General) which applies UK-wide.

q. Schedules 13, 14 and 24 apply UK-wide.

r. Schedules 18 and 19 (compulsory purchase) apply to England and Wales.

82 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Levelling-Up Missions

Setting missions

83 Part 1 gives statutory force to the new requirement to report upon the Government's statement of levelling-up missions.

Section 1: Statement of levelling-up missions

Background

84 This is a new provision and does not alter any existing legislation.

85 This section creates a duty on a Minister of the Crown to prepare and lay a statement of levelling-up missions before Parliament. This statement will set the missions for a period of no less than five years (mission period).

Effect

86 Section 1 establishes the concept of levelling-up missions, provides relevant definitions, and defines the 'statement of levelling-up missions'.

87 Subsections (1) to (2) establish the concept and obligation for a Minister of the Crown to prepare a statement of levelling-up missions. Subsection (2) specifies that the statement must set out the Government's objectives to reduce geographical inequalities and how the Government proposes to measure progress ("the "mission progress methodology and metrics"").

88 Subsection (3)(a) specifies that in the course of preparing a statement of levelling-up missions, the Minister of the Crown must have regard to the importance of the levelling-up missions in the statement addressing both economic and social disparities. Subsection (3)(b) specifies that in the course of preparing a statement of levelling-up missions, the Minister of the Crown must have regard to the needs of rural areas.

89 Subsections (4) to (6) define the period and target date of a mission.

90 Subsection (7) establishes that the first statement must be laid before each House of Parliament within a month of the section coming into force.

91 Subsection (8) establishes that levelling-up missions come into effect when the statement has been laid before each House of Parliament and is published, and when the missions period in the new statement begins.

92 Subsection (9) provides that there can be no period of interruption during which there is no statement of levelling-up missions in effect.

93 Subsection (10) provides for when a new statement of levelling-up missions must come into effect.

94 Subsection (11) provides that subsequent statements of levelling-up missions will replace earlier such statements.

95 Subsection (12) clarifies the status of the currently in effect statement of levelling-up missions.

Section 2: Statement of Levelling-Up Missions: Devolution

Background

96 This section creates a duty on the Minister of the Crown, in preparing statements of levelling-up missions, to have regard to any role of devolved legislatures and devolved authorities.

Effect

97 Subsection (1) establishes that a Minister of the Crown must have regard to any role of devolved legislatures and devolved authorities in connection with the levelling-up missions statement and carry out such consultation with the devolved authorities as the Minister considered appropriate.

98 Subjections (2) and (3) establish that a Minister of the Crown must prepare a document which sets out how the Minister has had regard to any role of devolved legislatures and authorities and that this must be laid before each House of Parliament and published as soon as is reasonably practicable after the statement of missions has been laid.

Reporting on missions

Section 3: Annual etc reports on delivery of levelling-up missions

Background

99 This section requires a Minister of the Crown to publish an annual report on the delivery of the levelling-up missions in the current statement of levelling-up missions under section 1. These missions are those contained in the statement of levelling-up missions. The report will contain an assessment by the Minister of progress made towards achieving each mission including the latest data reflecting the mission methodology and metrics in the current statement of levelling-up missions.

Effect

100 Subsections (1), (3) and (4) establish the obligation to produce the annual report and define its content requirements. Under subsection (3) the report must set out the Ministers' assessment of progress, what has been done in the mission period to deliver each mission and what the Government plans to do in the future. This includes the provision in subsection (4) that the assessment of progress must be completed with regard to the metrics and methodology included in the statement.

101 Subsection (2) sets out that in discharging functions under this section, a Minister of the Crown must have regard to the needs of rural areas.

102 Subsection (5) provides a Minister may use the report to state the Government's intention to no longer pursue a levelling-up mission, which disapplies the requirements in subsection (3). Subsection (6) requires the report to set out the Government's reasons for not pursuing a mission.

103 Subsection (7) sets out that in discharging functions under this section, a Minister of the Crown must carry out such consultation as the Minister considers appropriate with the devolved authorities.

104 Subsections (8) and (9) concern the timing of the annual reports.

Section 4: Reports: Parliamentary scrutiny and publication

Background

105 This section requires all reports to be laid before Parliament and sets out timings for doing so.

Effect

106 This section provides that the report on the delivery of levelling-up missions must be laid before each House of Parliament before the end of the period of 120 days beginning immediately after the last day of the period to which the report relates. That report should be published as soon as is reasonably practicable. Subsection (3) excludes from the 120 days as days when Parliament is dissolved, prorogued or in recess for more than four days.

> Example
>
> A Minister of the Crown will produce an annual report on the delivery of the levelling-up missions. The report will contain information assessing progress against the levelling-up missions judged using the missions methodology and metrics contained in the statement of levelling-up missions. The Minister of the Crown adds to the list of metrics contained in the original statement of levelling-up missions to include new data sources that have been made available by the Office for National Statistics (ONS) recently and includes the relevant data in the report accordingly. The report would be laid in each House of Parliament every year, no more than 120 sitting days following the end of the previous annual period.

Revision of methodology and metrics or target dates

Section 5: Changes to mission progress methodology and metrics or target dates

Background

107 Section 5 provides the ability to amend the methodology and metrics supporting the levelling-up missions or to amend the target dates for delivery in between the normal reporting cycle.

Effect

108 Subsection (1) states that this procedure applies if the Minister of the Crown decides to update the metrics or methodology in the mission statement or to amend the target date.

109 Under subsection (2), the Minister of the Crown must as soon as possible after the change is made, publish a statement setting out reasons for the change and lay the revised mission statement before Parliament and publish it.

110 Subsection (3) sets out that in discharging functions under this section, a Minister of the Crown must have regard to the needs of rural areas.

111 Subsection (4) makes clear that the revised statement of missions has effect on and after it is laid before Parliament and published.

112 Subsection (5) sets out that in discharging functions under this section, a Minister of the Crown must have regard to any role of devolved legislatures and devolved authorities, and carry out such consultation as the Minister considers appropriate with the devolved authorities.

Review of missions

Section 6: Reviews of statements of levelling-up missions

Background

113 Section 6 provides for the statement of levelling-up missions to be reviewed periodically and defines the terms for such reviews.

Effect

114 Subsections (1) to (4) establish the requirement to conduct reviews of the statement of levelling-up missions and that such reviews should be completed within a period of five years from the first day of the first mission period or within 5 years of the date of the date of publication of the report for subsequent mission periods.

115 Subsection (5) sets out the purpose and content of the reviews including whether the current statement is effectively contributing to the reduction of geographical inequality across the UK and considering whether additional missions should be added.

116 Subsection (6) sets out that in discharging functions under this section, a Minister of the Crown must have regard to any role devolved legislatures and devolved authorities, and carry out such consultation as the Minister considers appropriate with the devolved authorities.

117 Subsection (7) establishes that the review must be laid before each House of Parliament and published as soon as is reasonably practicable after the conclusion of the review.

118 Subsection (8) sets out what the report on the review should contain. The report must consider whether the Government judges the pursuit of the missions to be effectively contributing to the reduction of geographic inequality in the UK and whether they will continue to pursue those missions and, if they will not, which missions will replace the existing missions. The report must include the Government's reasons.

119 Subsection (9) disapplies the provisions of subsections (10) to (12), which relate to changes to the current statement of missions and the addition of new missions in consequence of the annual report, where the report is the last review upon that statement.

120 Subsection (10) provides the ability to make amendments to the current statement of levelling-up missions or to change the methodology and metrics in the event that the report has concluded it should not continue to pursue the levelling-up missions in the current statement. It requires the Government to lay the revised statement before both Houses of Parliament as soon as possible and to publish it.

121 Subsection (11) provides the ability to add missions in the current statement of levelling-up missions including the associated metrics and methodology needed to report on progress towards delivering the mission. The updated mission statement must be laid before both houses of Parliament and published.

122 Subsection (12) provides for the modification of the current statements as a result of subsections (10) and (11).

> Example: A review of the statement of levelling-up missions resulting in a continuation of missions
>
> Five years has elapsed since the previous review and a Minister of the Crown initiates a review of the statement of levelling-up missions. The Minister lays a statement that affirms the existing levelling-up missions. The statement also contains an assessment of how the missions have been contributing to the reduction in geographic inequality. The statement also adds new metrics to some of the existing missions, to take account of new data that has become available from the ONS since the previous annual report, but otherwise keeps them unchanged.

123 Subsection (13)(a) sets out that the Minister of the Crown must have regard to the importance of the levelling-up missions in the statement addressing both economic and social disparities in carrying out functions under this section.

124 Subjection (13)(b) sets out that the Minister of the Crown must have regard to the needs of rural areas in carrying out functions under this section.

Section 7: Levelling Up Fund: Round three

Background

125 This section places a duty on the government to lay a statement regarding Round 3 of the Levelling Up Fund before each House of Parliament within 3 months of Royal Assent.

Effect

126 Subsection (1) places a duty on a Minister of the Crown to lay a statement before each House of Parliament, within 3 months of Royal Assent on the Levelling Up Fund Round 3.

127 Subsection (2) defines a "statement on Levelling Up Fund Round 3" as a statement about the allocation of a third round of funding from the Levelling Up Fund.

128 Subsection (3) defines the "Levelling Up Fund" as the programme run by the Government which is known as the Levelling Up Fund and was announced on 25 November 2020.

General

Section 8: Interpretation of Part 1

Effect

129 Section 8 contains a list of relevant definitions that appear in the Chapter, including "geographical disparities" to which missions relate.

Part 2: Local Democracy and Devolution

Chapter 1: Combined County Authorities CCAs and their areas

Section 9: Combined county authorities and their areas

Background

130 This is a new provision establishing a new form of local government institution – a combined county authority (CCA) – which can be established in, and will enable devolution to, areas with two-tier local government. This type of institution is different to a combined authority, which can be established under Part 6 of the Local Democracy, Economic Development and Construction Act 2009, although has many similarities.

Effect

131 This section provides that the Secretary of State can make regulations establishing a CCA for an area which meets conditions specified in section 9(2) and (3). These conditions allow a CCA's membership to consist solely of upper-tier local authorities (county councils, unitary county councils and unitary district councils) and for the CCA to be established over an appropriate geography (e.g. a functional economic area or whole county geography), enabling functions to be effectively exercised and the economic, social and environmental wellbeing of those who live or work in the area to be improved.

132 Subsection (2) specifies that a CCA's area must consist of the whole area of a two-tier county council, plus a minimum of one or more whole area of a two-tier county council, unitary county council or unitary district council in England.

133 Subsection (3) requires that no part of a CCA's area may form part of another CCA's area, a combined authority's area or an integrated transport area.

134 Subsection (4) requires regulations under subsection (1) to specify the name that the CCA will be known by.

135 Subsection (5) provides definitions for terms used in this chapter, including "two-tier county council" and "unitary county council."

Constitution of CCAs

Section 10: Constitutional arrangements

Background

136 This is a new provision enabling the Secretary of State to make regulations about the constitutional arrangements of an individual CCA. These regulations will establish a CCA's essential working mechanisms – such as membership, voting arrangements and quorum, amongst others.

Effect

137 Subsection (1) allows the Secretary of State to make regulations about the constitutional arrangements of an individual CCA.

138 Subsection (2) enables the regulations on constitutional arrangements to include the membership of the CCA, the voting power of its members, the executive arrangements of the CCA (which are defined in subsection (3)), and the functions of any executive body of the CCA.

139 Subsection (4) states that regulations on constitutional arrangements must provide for members of the CCA other than the mayor, the non-constituent members and associate members, to be appointed by the CCA's constituent councils, and for the constituent councils to appoint at least one of their elected members as a member of the CCA.

140 Subsection (5) enables the regulations on constitutional arrangements to include provisions in relation to a CCA's executive body. In practice, this will concern the functions which the executive body may perform on behalf of the CCA and the procedures for doing so.

141 Subsection (6) states that these regulations cannot provide for a CCA's budget to be agreed by anyone other than the CCA itself.

142 Subsection (7) provides that regulations regarding the constitutional arrangements of the CCA may not make provision conflicting with the provisions relating to appointment of non-constituent or associate members by that CCA or procedure for CCA consents in accordance with the relevant regulations.

143 Subsection (8) – (10) provide that the Secretary of State can only make regulations about a CCA's constitutional arrangements if the area's constituent councils and the CCA (where one already exists) consent, apart from where the regulations relate to changing an existing CCA area's boundaries (as set out in subsection (9)) or to the direct conferral of general functions on a mayor (as set out in subsection (10)).

144 Subsection (11) defines the term "constituent council" as used in Chapter 1 as a county council, or a unitary district council, for an area within the CCA's area or proposed area.

Section 11: Non-constituent members of a CCA

Background

145 This is a new provision enabling a CCA to appoint "non-constituent members" to a CCA.

146 A non-constituent member of a CCA is a representative of a local organisation or body - such as a district council, Local Enterprise Partnership or university - that can attend CCA meetings to input their specific local knowledge into proceedings.

Effect

147 Subsections (1) and (2) provide that a CCA may designate an organisation or body (other than a constituent council) as a "nominating body" of a CCA if that organisation or body consents to the appointment. A nominating body would be a local organisation, such as a district council.

148 Subsection (3) provides that a nominating body may appoint a representative person to represent their organisation or body at the CCA – a "non-constituent member". For example, if the nominating body were a district council, they may select their leader to be their representative at CCA meetings.

149 Subsection (4) provides that non-constituent members will be non-voting members, unless the voting members of the CCA resolve otherwise;

150 Subsection (5) requires that voting rights conferred on non-constituent members do not extend to consenting to the Secretary of State making regulations about CCAs.

Section 12: Associate members of a CCA

Background

151 This provides for a CCA to appoint "associate members" to a CCA.

152 An associate member is an individual person - such as a local business leader or an expert in a local issue - that a CCA can appoint. This enables the associate member to be a representative at CCA meetings to input their specific local knowledge into proceedings.

Effect

153 Subsection (1) provides that a CCA may appoint an individual person as an "associate member" of the CCA.

154 Subsection (2) provides that an associate member will be a non-voting member.

Section 13: Regulations about members

Background

155 This provides for the Secretary of State to make regulations about members of an individual CCA, including constituent members, the mayor, nominating bodies, non-constituent members and associate members.

Effect

156 This section allows the Secretary of State to make regulations which will establish voting arrangements of a CCA and the role and working mechanisms – including the maximum number, and appointment and disqualification processes - of non-constituent and associate members.

157 Subsection (1) allows the Secretary of State to make regulations about the members of a CCA; i.e. the constituent members, the mayor if there is one, the nominating bodies, the non-constituent members and associate members of an individual CCA.

158 Subsection (2) sets out what these regulations may provide for in relation to an individual CCA's non-constituent members and associate members.

159 Subsection (4) defines "constituent member" as used in this section as a representative of a constituent council; for example, the leader of that council.

Section 14: Review of CCA's constitutional arrangements

Background

160 This provides for a review of a CCA's local constitutional arrangements.

Effect

161 This section allows the review of an individual CCA's locally agreed constitution where the regulations made for that CCA under s.10(1) enable that CCA to make provisions about its constitution.

162 Subsections (1) and (2) provides that a review of a CCA's constitutional provisions may be undertaken if regulations under section 10 creating the CCA's constitutional arrangements enable the CCA to make constitutional arrangements and if an appropriate person within the meaning of subsection (7) proposes the review and the CCA agrees to the review being undertaken. Subsection (4) states that this agreement needs to be reached at a meeting of the CCA by a simple majority of the voting members present at the meeting.

163 Subsection (3) provides that the person undertaking the review may propose changes to the CCA's constitutional provisions.

164 Subsections (5) provides that, for a mayoral CCA, a vote under subsection (2)(b) to carry out a review need not require the mayor to be in favour of it but a vote under subsection (3) on proposed changes must include the mayor in the majority.

165 Subsection (6) provides that a substitute member can vote in the place of a CCA's member where it is provided for in that CCA's regulations on constitutional arrangements or in any constitutional provision of that CCA, but non-constituent and associate members cannot vote on a review.

Section 15: Overview and scrutiny committees

Background

166 This requires CCAs to have overview and scrutiny committees and audit committees, ensuring appropriate accountability.

Effect

167 Subsection (1) introduces Schedule 1 which requires CCAs to have at least one overview and scrutiny committees and an audit committee.

168 Subsection (2) provides that any regulations the Secretary of State provides on the constitutional arrangements of a CCA must be subject to Schedule 1.

Section 16: Funding

Background

169 This provision allows the Secretary of State to make regulations that set out how a CCA will be funded.

Effect

170 Subsection (1) enables the Secretary of State to make provisions for how constituent councils will pay towards their CCA's costs, and how the amount to be paid by each constituent council is to be determined. Subsection (3) states these are subject to regulations under section 13(1) on combined authority membership.

171 Subsection (2) provides that regulations under subsection (1) must have the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Section 17: Change of name

Background

172 This provides that an existing CCA can pass a resolution to change its name.

Effect

173 Subsections (2) and (3) set out conditions which must be followed in a CCA passing a resolution to change its name. The change of name has to be considered at a meeting of the CCA specially called for this purpose; the particulars of the name change must be in the notice for the meeting; and the resolution to change the name is passed by no less than two-thirds of the CCA members who vote on it. The CCA must notify the Secretary of State that it has changed its name and must publish notice of the change. The Secretary of State can direct the CCA as to the manner of publication.

Functions of CCAs

Section 18: Local authority functions

Background

174 This allows the Secretary of State to make regulations to confer on a CCA local authority functions such as transport, skills or economic development functions – to enable the CCA to exercise those functions in their area.

Effect

175 Subsection (1) allows the Secretary of State to make regulations that provides for functions of a county council or district council to be exercisable by a CCA. The functions must be exercisable by the council in relation to an area within the CCA's area.

176 Subsection (2) provides that this power applies only if the Secretary of State considers the functions can be appropriately exercised by the CCA.

177 Subsection (3) provides that regulations may specify that the function be exercised generally, or subject to conditions or limitations.

178 Subsection (4) allows the regulations to make provision for functions of a county council or unitary district council (i.e. local authorities which can be constituent members of a CCA) to be exercisable by the CCA instead of the by the council.

179 Subsection (5) allows the regulations to make provision for functions of a county council or a district council (both unitary district councils and district councils which form part of the area of a county council) to be exercisable by the CCA concurrently with that county council or district council, jointly with the county council or district council, or jointly with the county council or district council and continued to be exercisable by the council on its own.

180 Subsections (6) provide that any such regulations must have the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Section 19: Other public authority functions

Background

181 This allows the Secretary of State to make regulations that confer on a CCA other public authority functions - such as functions held by the mayor of the Greater London Assembly or a Minister – to enable the CCA to exercise those functions in their area.

Effect

182 Subsection (1) enables the Secretary of State by regulations to confer on a CCA a function of a public authority that is exercisable in relation to the CCA's area; or confer on a CCA, in relation to its area, a function which corresponds to a function which another public authority has in relation to another area.

183 Subsections (2), (6), (7) and (8) provide that conditions or limitations may be specified together with any conferral of powers on CCAs.

184 Subsection (3) provides that any such regulations may make provision for the CCA to be able to exercise the function instead of the other public authority; for the public function to be exercisable concurrently with the other public authority; for the public function to be exercisable jointly by the CCA and the public authority; or for the function to be exercisable jointly by the CCA and public authority but also continue to be exercisable by the public authority alone.

185 Subsection (4) provides that any such regulations may make provision for abolishing the public authority if it will no longer have any functions.

186 Subsection (5) provides that, where there is an England-wide regulator of a function, a CCA cannot be conferred both the ability to perform that function and the ability to regulate the function.

187 Subsection (9) defines the terms "function", "Minister of the Crown", "public authority", "regulated function", and "regulatory function" as used in this section. "Function" does not include the power to make regulations or other instruments of a legislative nature.

Section 20: Section 19 regulations: procedure

Background

188 This provision specifies the procedure for the Secretary of State making regulations under section 19, which will give a CCA the functions held by a public authority to enable the CCA to exercise those functions in its area.

Effect

189 Subsection (1) provides that such regulations can only be made if (a) the appropriate authorities make a proposal for the making of regulations to the Secretary of State; or (b) the appropriate consent is given, and the Secretary of State considers that the making of the regulations is likely to improve the economic, social and environmental wellbeing of some or all of the people who live or work in the area.

190 Subsections (2), (3) and (4) define the consents process.

191 Subsection (5) defines a health service function of a CCA for the purposes of this section.

192 Subsections (6) and (7) provide that, when laying before Parliament regulations which confer public authority functions on a CCA, the Secretary of State must also place a report before Parliament which sets out the effect of the regulations and why the Secretary of State considers it appropriate to make them. The report must include any consultation and information which has been taken into account, as well as any other evidence or contextual information that the Secretary of State considers it appropriate to include.

193 Subsection (8) defines the term "the appropriate authorities" as used in this section.

Section 21: Integrated Transport Authority and Passenger Transport Executive functions

Background

194 This provision allows the Secretary of State to make regulations to transfer functions of an Integrated Transport Authority to and confer functions of a Passenger Transport Executive on a CCA to enable the CCA to run transport services in their area.

Effect

195 Subsections (1) and (2) enable the Secretary of State by regulations to transfer any function of an Integrated Transport Authority, which have responsibility for transport services across multiple local authority areas within the area of the CCA, to a CCA.

196 Subsection (3) enables the Secretary of State by regulations to provide for Public Transport Executive functions to be exercisable by a CCA, or the executive body of a CCA.

197 Subsection (4) enables regulations under subsection (3) to include any functions that have been conferred on an Integrated Transport Authority by any enactment and relate to the functions of a Passenger Transport Executive.

198 Subsection (5) provides that any such regulations have to have the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Section 22: Directions relating to highways and traffic functions

Background

199 This section enables the Secretary of State to make regulations which confer a power to direct on a CCA.

Effect

200 Subsections (1), (2), (3) and (4) allow, where the power to direct is conferred on it, a CCA to be able to issue a direction to a county council or unitary district council in the area of the CCA as to how they should exercise their functions as a local highway authority or local traffic authority.

201 Subsection (5) provides that the power to give such directions may only be conferred in relation to specific roads or descriptions of roads (for instance, major bus routes).

202 Subsection (6) makes it clear that directions cannot apply to roads covered by concession agreements under the New Roads and Street Works Act 1991.

203 Subsections (7) and (10) list the matters to which a direction can relate.

204 Subsection (8) provides that a such a power of direction can be conferred subject to conditions.

205 Subsection (9) provides that any such directions have to be given in writing; can be changed by a further direction in writing; and may differ for different areas.

206 Subsection (11) provides that any such regulations can be made only with the consent of the constituent councils and, where a CCA is already in existence, the CCA.

Section 23: Contravention of regulations under section 22

Effect

207 This section provides that, if a CCA to which the Secretary of State has granted the power to direct under section 22 issues a direction to a local highways authority or local traffic authority and the authority to which the direction is issued fails to comply with it, then the CCA can take the necessary steps to rectify the matter.

208 Subsections (2) and (3) provide that this includes the ability for the CCA to take over the relevant powers of the directed authority for the purposes of putting matters right and to recoup the costs of doing so from that directed authority.

Section 24: Designation of Key route network roads

Background

209 This section establishes the concept of key route network roads in CCAs and changes the consent requirements for conferring a power of direction in relation to the performance of highways and traffic functions in respect of such roads. Where such a power of direction is to be exercisable only by the mayor then, subject to the mayor consenting, it will be able to be conferred without the consent of the CCA and the constituent councils.

Effect

210 This section provides for the designation of roads as key route network roads and introduces alternative consent requirements for conferring on a CCA a power, that is to be exercised by the mayor, to give a direction in relation to highways and traffic functions in respect of such roads.

211 Subsection (1) enables a CCA to designate or remove roads as key route network roads with the consent of the council in whose area the road is and, in the case of a mayoral CCA, the mayor.

212 Subsection (2) enables the Secretary of State to designate or remove roads as key route network roads if requested to do so by the CCA, mayor or council within whose area the road is. This may be necessary where, for example, the CCA, mayor and council cannot all agree.

213 Subsection (3) requires that a designation or removal of a key route network road must be in writing and state when it comes into effect.

214 Subsection (4) requires that, where the Secretary of State designates or removes a key route network road, a copy of that designation or removal must be provided to the CCA at least 7 days before it comes into effect.

215 Subsection (5) requires a CCA to publish all designations and removals of key route network roads before they come into effect.

216 Subsection (6) requires a CCA to publish a list or map showing all key route network roads within the CCA's area.

217 Subsection (7) provides that a power of direction in relation to key route network roads may be conferred on a mayoral CCA with only the consent of the mayor where that power is to be exercisable exclusively by the mayor.

218 Subsection (8) requires that, when consenting under subsection (7), a mayor must make a statement that all the constituent councils agree to the granting of the power of direction or, if they do not all agree, give reasons why the power of direction should nevertheless be granted.

219 Subsection (9) provides definitions for the terms "eligible power", "key route network road", and "proposed highway" that are used in this section.

Changes to CCAs

Section 25: Changes to boundaries of a CCA's area

Background

220 This provision enables the Secretary of State to make regulations which change the boundary of the area of an existing CCA.

Effect

221 Subsections (1) and (2) provide that regulations may either add or take away from a CCA's area the whole of the area administered by a two-tier county council, a unitary county council or a unitary district council. This would enable a CCA's area to expand or to contract in size, and the CCA to add or remove a constituent member.

222 Subsection (3) provides that regulations to remove a local government area may transfer functions for that area to another public authority or for CCA functions no longer to be exercisable in that area. Subsection (4) defines "public authority", for the purposes of subsection (3) as including Ministers of the Crown, a government department, a county council, and a district council.

223 Subsection (5) provides that regulations may be made if the new area meets the conditions in section 9.

224 Subsection (6) provides that, where a CCA is already in existence and is mayoral, any such regulations must have the consent of the relevant council and the mayor of the CCA.

225 Subsections (7) provides that, where a CCA is already in existence and is not mayoral, any such regulations require the consent of relevant council and the CCA, which must be decided at a meeting of the CCA by a simple majority of voting members who are present at the meeting (subsection (9)).

226 Subsection (8) defines the term "relevant council" as used in this section.

227 Subsections (10) disapplies subsections (5), (6) and (7) where such regulations are made in as a result of the duty in section 28(3).

228 Subsections (11) and (12) provide that, where set out in a CCA's local constitution, a decision to change that provision must be decided at a meeting of the CCA by a simple majority of voting members who are present at the meeting.

229 Subsection (13) defines the term "voting member" as used in this section.

Section 26: Dissolution of a CCA's area

Background

230 This section enables the Secretary of State to make regulations which dissolve a CCA's area and abolish the CCA.

Effect

231 Subsection (1) enables the Secretary of State to make regulations to dissolve a CCA's area and abolish the CCA for that area.

232 Subsection (2) provides that any such regulations may transfer functions from the dissolved CCA to any other public authority (the definition of which includes the list at subsection (3)), or may provide for any function to no longer be exercised in the area.

233 Subsection (4) provides that any such regulations require the consent of a majority of a CCA's constituent councils and, where the CCA is mayoral, the consent of the mayor.

Mayors for CCA areas

Section 27: Power to provide for election of mayor

Background

234 This provision enables the Secretary of State to make regulations to provide for there to be an elected mayor of a CCA's area.

Effect

235 Subsection (1) enables the Secretary of State to make regulations to provide for there to be an elected mayor of a CCA area, who will be a member of, and chair, the CCA.

236 Subsection (2) provides that the electorate for the election of a mayor of a CCA is the local government electorate for the CCA area; subsection (3) states that "local government elector" has the same meaning as in section 270(1) of the Local Government Act 1972.

237 Subsection (4) introduces Schedule 2, which makes provision for a default term of office for a mayor; default dates on which elections for mayors are to take place; the voting system and franchise; and provisions for regulations to be made as to the dates on which and years in which elections for the return of an elected mayor will take place, the intervals between elections for the return of an elected mayor, the term of office of an elected mayor, and the filling of vacancies in the office of elected mayor.

238 Subsections (5) and (6) provide that the mayor of a CCA area can be titled "mayor" and will be a member of, and chair, the CCA.

239 Subsection (7) provides that regulations made under subsection (1) providing for there to be an elected mayor of a CCA area cannot be revoked to make a CCA non-mayoral via further regulations made under subsection (1); however, a mayoral CCA can be dissolved – including the office of mayor – by regulations made under section 26.

240 Subsection (8) defines "mayoral CCA" as used in this Chapter.

Section 28: Requirements in connection with regulations under section 27

Background

241 This section sets out requirements for regulations made under section 27(1), which provide for there to be an elected mayor of a CCA area.

Effect

242 Subsection (1) provides that a Secretary of State may make regulations under section 27(1) for there to be an elected mayor of a CCA area where the appropriate authorities have made a proposal for this to the Secretary of State, and that a proposal for a CCA to have a mayor may be included in a proposal for a new CCA or proposals for changes to an existing CCA.

243 Subsections (2) and (3) provide that such regulations can be made without a proposal being made by the appropriate authorities to the Secretary of State where the appropriate authorities consent or, where a CCA is already in existence, the CCA and at least two constituent councils consent; any non-consenting constituent authority must be removed from the area of the existing CCA.

244 Subsection (4) defines "appropriate authorities" as used in this section.

Section 29: Deputy mayors etc

Background

245 This provision requires the mayor of the area of a CCA to appoint a deputy mayor.

Effect

246 Subsection (1) requires the mayor of the area of a CCA to appoint a deputy mayor from the members of the CCA.

247 Subsections (2) and (3) provide that the deputy mayor must remain in office until the end of the mayor's term, unless the mayor removes the deputy mayor, the deputy mayor resigns, or the deputy mayor stops being a member of the CCA. Subsection (4) provides that the mayor must nominate another deputy mayor from the members of the CCA if there is a deputy mayor vacancy.

248 Subsection (5) provides that the deputy mayor would exercise the functions of the mayor in the event that the mayor is unable to act or if the office of the mayor is vacant (e.g. the mayor resigns).

249 Subsection (6) provides that, in the event both the mayor and the deputy mayor are unable to act, or both offices are vacant, the other members of the CCA must act together, taking decisions by simple majority.

250 Subsection (8) provides that references to members of the CCA in this section do not include non-constituent or associate members.

Section 30: Functions of mayors: general

Background

251 This section enables the Secretary of State to make regulations for any function of a CCA to be a function only exercisable by the mayor of that CCA area.

Effect

252 Subsection (1) allows the Secretary of State to provide by regulations that any function that is a function of the CCA is exercisable only by the mayor.

253 Subsection (2) defines the term "general functions" in relation to the mayor of a CCA area as used in this chapter as any functions exercisable by the mayor other than police and crime commissioner functions.

254 Subsections (3) and (4) provide that the mayor may arrange (a) for the deputy mayor to exercise any function exercisable by the mayor or (b) for any other member or officer of the CCA to exercise any such function, excluding any non-constituent or associate members. Subsection (3)(c) provides that the mayor may delegate a function to a committee appointed by the mayor, or to the deputy mayor for policing and crime appointed under paragraph 3(1) of Schedule 3, if authorised in regulations by the Secretary of State. Subsection (6) provides that such a committee cannot solely consist of non-constituent and associate members. Subsection (7) provides that the Secretary of State may by regulations place limitation on the authorisation of the exercise of functions under subsection (3).

255 Subsection (5) sets out what regulations may be made in relation to subsection (3)(c)(ii), where a function is being delegated to a committee appointed by the mayor.

256 Subsection (8) provides that any general function exercisable by a CCA's mayor by virtue of this Act is to be taken as a function of the CCA either exercisable by the mayor individually, or in line with arrangements made in this section, section 32 (joint exercise of general functions) or 34 (exercise of fire and rescue functions).

257 Subsection (9) provides that regulations made under this section may provide for members and officers of a CCA to assist the mayor in the exercise of their functions; confer ancillary powers on the mayor; authorise the mayor to appoint a political adviser; provide for the terms and conditions of any appointment of a political adviser; and provide for any arrangements for the discharge of functions under section 101(1)(b) of the Local Government Act 1972 to be treated as general functions to be exercisable by the mayor.

258 Regulations under this section may subject a function exercisable only by the mayor to conditions or limitations in certain circumstances - for instance, that a general function may only be exercisable by the mayor with the consent of appropriate authorities. Subsection (10) refers to the separate provisions which enables the mayor to be conferred a functional or general power of competence. This power of general competence does not include a power to borrow money.

259 Subsection (11) stipulates that such regulations may only be made with the consent of all appropriate authorities and, in the case of an existing mayoral CCA, the mayor; subsections (12) and (13) disapply subsection (11) in some circumstances.

Section 31: Procedure for direct conferral of general functions on mayor

Background

260 This provision enables the Secretary of State to make regulations providing for general functions to be exercisable personally by the mayor of a CCA. This provision applies where a new public authority function is being conferred on the CCA and, within the same regulations, is being specified as exercisable personally by the mayor.

Effect

261 Subsection (1) provides that this section applies to regulations made under sections 19(1) (other public authority functions) and 30(1) (functions of mayors: general) for an existing CCA providing for a function to be a function of the CCA and only exercisable by the mayor.

262 Subsection (2) provides that a mayor of a CCA may make a request to the Secretary of State to make regulations, without which the Secretary of State may not make those regulations. Subsection (3) requires the mayor to consult the constituent councils of a CCA before making the request.

263 Subsection (4) requires the mayor to include within such a request a statement that all the constituent councils agree that these to the regulations or, if this statement cannot be made, the mayor's rationale for proceeding.

Section 32: Joint exercise of general functions

Background

264 This provision enables the Secretary of State to make regulations providing for mayoral functions to be jointly exercised. This would, for example, enable a CCA to jointly exercise a function of the mayor with a neighbouring local authority.

Effect

265 Subsections (1), (2), (3) and (4) provide that regulations may be made for a mayor of a CCA to jointly discharge a general mayoral function and another authority's function, and that such regulations may provide for membership, chairing, appointment, voting powers and political balance requirements for a joint committee set up to discharge powers.

266 Subsection (5) defines the term "joint committees" as used in this section.

Police and crime and fire and rescue functions

Section 33: Functions of mayors: policing

Background

267 This section enables the Secretary of State to make regulations providing for the mayor of a CCA to exercise police and crime commissioner functions for that area.

Effect

268 Subsections (2) and (3) define the police and crime commissioner functions that can be exercised by a mayor of a CCA if such regulations are made under subsection (1).

269 Subsection (4) provides that, for an existing mayoral CCA, such regulations may only be made with the consent of the mayor of the CCA.

270 Subsections (5) and (6) require, where such regulations are made, the Secretary of State to provide that there will be no Police and Crime Commissioner for that area from a specified date (in practice this will be the date that the mayor takes office) and enables the Secretary of State to cancel any Police and Crime Commissioner ordinary election that would otherwise take place in the area (whether before the date that the mayor takes over or after). Such regulations can also extend the term of the existing Police and Crime Commissioner for the area and cancel any Police and Crime Commissioner by-election to fill a vacancy that arises in the six-month period before the date that the functions of a Police and Crime Commissioner pass to the mayor.

271 Subsection (7) introduces Schedule 3.

272 Subsection (8) provides that any police and crime commissioner function exercised by the mayor of a CCA is a function of the CCA exercisable by the mayor acting as an individual, or another individual under arrangement with the mayor under Schedule 3.

Section 34: Exercise of fire and rescue functions

Background

273 This provision enables the Secretary of State to make regulations providing for the mayor of a CCA who has been conferred the functions of the police and crime commissioner and the fire and rescue service, to delegate fire and rescue functions to the chief constable of the police force for their area and for the chief constable to further delegate these functions to both police and fire and rescue personnel; i.e. the single employer model.

Effect

274 Subsection (1) limits the application of this section to a mayor of a CCA who has been conferred both the fire and rescue authority functions and police and crime commissioner functions.

275 Subsections (2), (3) and (4) enable the Secretary of State to make provision, by regulations, that enables a CCA mayor to delegate fire and rescue functions to the chief constable of the police force for their area, and for the chief constable to further delegate these functions to both police and fire and rescue personnel; that is, to members of their police force, to the civilian staff of their police force, to members of fire and rescue staff appointed by the chief constable, or to any fire and rescue staff transferred to the chief constable under a transfer scheme made under this Act. Regulations made by the Secretary of State can determine which functions of the fire and rescue authority can or cannot be delegated by the mayor to the chief constable, and can or cannot be sub-delegated by the chief constable to their fire or police personnel.

276 Subsection (6) provides that this section is subject to section 35 of this Act (Section 35 regulations: procedures), and section 37 of the Fire and Rescue Services Act 2004 which restricts the employment of police in fire-fighting.

277 Subsection (7) defines "fire and rescue functions" as used in this section.

Section 35: Section 34 regulations: procedure

Background

278 This section specifies the procedure for the Secretary of State making regulations under section 34 to put in place the single employer model for fire and rescue services in an area of a CCA.

Effect

279 Subsection (1) provides that the Secretary of State can only make regulations under section 34(2) where a CCA mayor has made a request to the Secretary of State.

280 Subsections (2) and (3) provide that a report must be submitted with a such a request which sets out why it would be in the interests of a) economy, efficiency and effectiveness, or b) public safety for regulations establishing the single employer model to be made. The mayor is also required to submit a description of any local public consultation and a summary of any responses to such a consultation, and a summary of representations made by constituent members of the CCA when making their request. Where a mayor has undertaken public consultation, the mayor must publish a response to that consultation in the manner they deem appropriate.

281 Subsections (4), (5), (6) and (7) provide that, where there is not local agreement to the mayor's proposal (that is, where two-thirds or more of the constituent members of the combined county authority have indicated that they disagree), the mayor may still make a request to the Secretary of State but they would additionally be required to provide copies of any representations made by the constituent members of the combined county authority and include in the proposal their response to these representations and to the views expressed in any public consultation undertaken. The Secretary of State would then be required to secure an independent assessment of the mayor's proposal. Such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any such other independent person as the Secretary of State deems appropriate. In the interests of transparency, the Secretary of State must publish the independent assessment secured.

282 Subsections (8) and (9) provide that the Secretary of State may not make such regulations unless it appears to them that it is in the interests of economy, efficiency and effectiveness or public safety to do so (and they may not make such regulations on the grounds of economy, efficiency and effectiveness if they think that it would have an adverse effect on public safety).

283 Subsections (10) and (11) provide that the Secretary of State may give effect to the mayor's proposals with any modifications that they think appropriate. However, before doing so, the Secretary of State must consult the mayor and the CCA.

284 Subsection (12) defines "constituent member" as used in this section.

Section 36: Section 34 regulations: further provision

Background

285 This section makes further provisions in relation to the procedure for the Secretary of State making regulations under section 34 to put in place the single employer model.

Effect

286 Subsection (1) enables the Secretary of State to make a transfer scheme which transfers property, rights and liabilities from a fire and rescue authority (if the mayor is moving straight to the single employer model upon taking fire and rescue functions) or from the CCA (if the single employer model is implemented subsequently) to the chief constable for the corresponding police area if regulations have been made under section 34 delegating fire and rescue functions to that chief constable. It also provides that transfer schemes can be made transferring properties, rights and liabilities back to the CCA from the chief constable. Such transfer schemes could include personnel; the personnel that transfer will be dependent on the functions that are proposed to be delegated by the mayor to the chief constable.

287 Subsections (2), (3) and (4) provide that the chief constable of the mayor's police area can employ staff for the purposes of exercising their fire and rescue functions and may pay remuneration pensions and allowances to fire and rescue staff.

288 Subsection (5) provides that, subject to subsections (6), (7) and (8), a person cannot be jointly appointed by the chief constable as a member of fire and rescue staff and of the police force. This does not prevent a member of police personnel being delegated fire functions and vice versa, subject to existing legal restrictions.

289 Subsection (6) provides that where a chief constable is delegated fire and rescue functions by a mayor of a CCA under the single employer model, the police force's chief finance officer will be responsible for the proper administration of both police and fire and rescue financial affairs. Subsections (7) and (8) clarify that the subsection (5) – preventing a person from being appointed jointly in relation to both police and fire functions – does not apply to finance officers.

290 Subsections (9) and (10) provide that the CCA must pay any damages or costs awarded against, any costs incurred by, and any settlement sum required in relation to the chief constable and their fire and rescue staff in certain proceedings.

291 Subsection (11) defines the terms "fire and rescue functions" and "fire and rescue staff" as used in this section.

Section 37: Section 34 regulations: exercise of fire and rescue functions

Background

292 This section applies where fire and rescue functions have been delegated to the chief constable by the mayor of a CCA under the single employer model and makes provision for the respective accountabilities of the mayor and chief constables when discharging these functions.

Effect

293 Subsections (2) and (3) place a duty on the chief constable, to whom fire and rescue functions have been delegated, to ensure that they, and those to whom they have delegated fire and rescue functions, secure good value for money in the exercise of their functions.

294 Subsection (4) requires the mayor of a CCA to ensure that the fire and rescue functions that are delegated to the chief constable are exercised efficiently and effectively whether exercised by the chief constable, members of their police force, civilian police staff or fire staff.

295 Subsection (5) requires the mayor to hold the chief constable to account for the exercise of their functions.

Section 38: Section 34 regulations: complaints and conduct matters etc

Background

296 This provision relates to complaints and conduct matters where regulations have been made under section 34 to provide for the single employer model.

Effect

297 Subsection (1) confers a power on the Secretary of State to, by regulations, amend Part 2 of the Police Reform Act 2002 as a consequence of regulations being made under section 34 of this Act.

298 Subsections (2) and (3) enable the Secretary of State by regulations to make provision for the handling of complaints about fire and rescue service authority staff so that the approach broadly mirrors that of the complaints procedure for police officers and police staff under Part 2 of the Police Reform Act 2002. This applies to staff transferred to a chief constable under a scheme made under section 36(1) or members of staff appointed by a chief constable under section 36(2).

299 Subsection (4) enables the Secretary of State by regulations to make any necessary amendments to Part 2 of the Police Reform Act 2002 as a consequence of regulations made subsection (2). Subsection (5) states that, before exercising these powers, the Secretary of State must consult the Police Advisory Board, the Independent Office for Police Conduct, persons considered by the Secretary of State to represent the views of police and crime commissioners and fire and rescue authorities, and other persons considered appropriate.

Section 39: Section 34 regulations: application of fire and rescue provisions

Background

300 This section enables the Secretary of State to make regulations applying fire and rescue enactments in relation to a CCA.

Effect

301 Subsections (1), (2) and (3) enable the Secretary of State to make further provisions applying fire and rescue enactments (with or without modifications) or to make new provisions that are corresponding or similar to existing such legislation, in relation to chief constables to whom fire and rescue functions have been delegated and their staff.

302 Subsections (4), (5) and (6) ensure that any necessary consequential provisions may be made when the Secretary of State makes regulations under subsection (1).

Section 40: Section 34 regulations: application of local policing provisions

Background

303 This provision enables the Secretary of State to make regulations applying local policing provisions.

Effect

304 Subsections (1), (2) and (3) enable the Secretary of State to make further provisions applying local policing enactments (with or without modifications) or to make new provisions that are corresponding or similar to existing such legislation, in relation to mayors of CCAs who implement the single employer model, chief constables to whom fire and rescue functions have been delegated, and any panels established under Schedule 3.

305 Subsections (4), (5) and (6) ensure that any necessary consequential provisions can be made when the Secretary of State makes regulations under subsection (1).

Financial matters relating to mayors

Section 41: Mayors for CCA areas: financial matters

Background

306 This section enables the Secretary of State to make regulations for the costs of a mayor of the area of a CCA in relation to mayoral functions to be met by precepts.

Effect

307 Subsection (1) enables the Secretary of State to make regulations for the costs of a mayor for the area of a CCA that are incurred in, or in connection with, the exercise of mayoral functions to be met by precepts issued by the CCA under section 40 of the Local Government Finance Act 1992 ('the 1992 Act').

308 Subsection (2) provides that only the mayor, acting on behalf of the CCA, may issue precepts for mayoral functions within the meaning of subsection (8).

309 Subsection (3) allows the Secretary of State to make regulations to modify the application of Chapter 4 or 4ZA of Part 1 of the 1992 Act to apply where a mayoral CCA is a precepting authority.

310 Subsection (4) provides that, where a mayor has functions of a Police and Crime Commissioner, the precept is required to have two components: one for the mayor's PCC functions and one for their general functions. Calculating the PCC component of the precept will be a PCC function exercisable only by the mayor.

311 Subsection (5) provides that the Secretary of State may by regulations make provision (a) requiring the mayor to maintain a fund in relation to receipts arising and liabilities incurred, in the exercise of the mayor's general functions, and (b) about the preparation of an annual mayoral budget for general functions. Provisions relating to the mayor's police and crime commissioner functions are in Schedule 3 paragraph 7.

312 Subsection (6) provides that regulations about the preparation of a mayoral budget may in particular make provision for (a) the mayor to prepare a draft budget, (b) the scrutiny of the draft budget, (c) the making of changes to the budget following scrutiny, (d) the approval of the draft budget by the CCA, and (e) the basis on which such approval is to be given.

313 Subsection (7) provides that reference to a member of the CCA for the purposes of scrutinising the draft budget does not include non-constituent or associate members.

Alternative mayoral titles

Section 42: Alternative mayoral titles

Background

314 This provision allows a mayor of a new mayoral CCA to be known by an alternative title to mayor.

Effect

315 Subsection (1) provides that, at the first meeting of a mayoral CCA after regulations providing for a mayor for the area of a CCA come into force, the CCA must resolve for the mayor to be known by the title of mayor or an alternative title.

316 Subsection (2) sets out the alternative titles by which the mayor for the area of the CCA could be known. Subsection (2)€ gives CCAs the power to resolve to choose a title other than those listed in paragraphs (a) to (d), providing the CCA has had regard to the title of other public office holders in the area of the CCA.

317 Subsection (3) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known. The resolution must be included in the notice of the meeting; if proposing using an alternative title under subsection (2)(e), the resolution must say why it is more appropriate than other titles listed in subsection (2); and the resolution must be passed by a simple majority of the CCA's members who vote on it.

318 Subsection (4) applies subsections (5) and (6) when a mayoral CCA changes the title by which the mayor for the area of the CCA is to be known to an alternative title. If the CCA decides to retain the title of mayor, these subsections do not apply.

319 Subsection (5) requires the CCA to send notice of the change of title to the Secretary of State and to publish the notice in the area of the CCA. The Secretary of State can direct the CCA to publish the notice of the change of title in a set manner, and the CCA must comply with this direction.

320 Subsection (6) provides that where the title of mayor has been changed by resolution of the CCA, then the adopted alternative title is read in place of every legislative reference to mayor; references to mayoral (other than "mayoral CCA") and deputy mayor should be read in the same pattern.

321 Subsection (7) provides that, where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

322 Subsection (8) provides that non-constituent and associate members are not included in any reference to a member of the CCA in this section.

323 Subsection (9) defines the term 'enactment' as used in this section.

Section 43: Alternative mayoral titles: further changes

Background

324 This section allows a change to a mayor of a mayoral CCA's title where a previous resolution in relation to their title has been passed.

Effect

325 Subsection (1) applies this section where a resolution under section 42 or this section has been passed previously changing the title of the mayor of a CCA to an alternative title; a resolution under section 42 has been passed previously providing the mayor of a CCA to be known by the title of mayor; or where a resolution under this section has been passed previously providing that the mayor of a CCA is no longer be known by an alternative title.

326 Subsection (2) provides that a CCA may by resolution adopt the title of mayor again, or adopt an alternative title.

327 Subsection (3) sets out the alternative titles by which the mayor for the area of the CCA could be known. Subsection (3)(e) gives CCAs the power to resolve to choose a title other than those listed in paragraphs (a) to (d), providing the CCA has had regard to the title of other public office holders in the area of the CCA. Subsection (4) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known. The resolution must be considered at a relevant meeting of the CCA; the resolution must be included in the notice of the meeting; if proposing using an alternative title under subsection (3)(e), the resolution must say why it is more appropriate than other titles listed in subsection (3); and the resolution must be passed by a simple majority of the CCA's members who vote on it.

328 Subsection (5) defines the meaning of 'relevant meeting' in subsection (4)(a) and outlines when such a further resolution can be held – this has to be at the first meeting of the CCA held after a qualifying election for the return of mayor, provided that the election is at least the third ordinary election since the resolution mentioned in subsection (1) was passed.

329 Subsection (6) requires that, where a CCA has passed a resolution that the mayor of the CCA is no longer to be known by the alternative title but by the title of mayor, the CCA must send notice of the change of title to the Secretary of State and to publish the notice in the area of the CCA. The Secretary of State can direct the CCA to publish the notice of the change of title in a set manner, and the CCA must comply with this direction.

330 Subsection (7) applies subsections (8) and (9) where the CCA has resolved to change the title by which the mayor of the CCA is known to an alternative title than mayor.

331 Subsection (8) requires the CCA to send notice of the change of title to the Secretary of State and to publish the notice in the area of the CCA. The Secretary of State can direct the CCA to publish the notice of the change of title in a set manner, and the CCA must comply with this direction.

332 Subsection (9) provides that where the title of mayor has been changed by resolution of the CCA, then the adopted alternative title is read in place of every legislative reference to mayor; references to mayoral (other than "mayoral CCA") and deputy mayor should be read in the same pattern.

333 Subsection (10) provides that, where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not changed the mayor's title.

334 Subsection (11) provides that, where a mayoral CCA has not passed a resolution in relation to the mayoral title as required by section 42(1), the CCA should be treated for the purposes of this section as if it passed a resolution under s.42(1)(a) to retain the title of mayor.

335 Subsection (12) provides that non-constituent and associate members are not included in any reference to a member of the CCA in this section.

336 Subsection (13) defines the terms 'enactment' and 'qualifying election' as used in this section.

Section 44: Power to amend list of alternative titles

Background

337 This section enables the Secretary of State to add, modify or remove alternative titles to mayor from the lists in this Chapter.

Effect

338 Subsection (1) allows the Secretary of State by regulations to add, modify or remove an alternative title or description of an alternative title to mayor from the lists in section 42(2) and 43(3).

339 Subsection (2) cross-refers to section 252(1)(c), which gives the Secretary of State the power to make consequential amendments.

Requirements in connection with regulations about CCAs

Section 45: Proposal for new CCA

Background

340 This section enables one or more relevant authorities to prepare and submit a proposal for a CCA to the Secretary of State.

Effect

341 Subsections (1) provides that one or more relevant authorities (defined in subsection (2)) can prepare and submit a proposal to the Secretary of State for a CCA to be established over a proposed area (defined in subsection (3)).

342 Subsection (4) provides that, prior to submitting a proposal for a CCA to the Secretary of State, the authority or authorities must undertake a public consultation on the proposal in the proposed CCA area and consider the consultation responses in the proposal.

343 Subsection (5) provides that the requirements in subsection (4) – the public consultation on a proposal and the consideration of the responses in the proposal– can be undertaken prior to this section coming into force.

344 Subsection (6) states that, if the proposal is not being submitted by all of the authorities who would be consistent members of the CCA, those authorities must consent to the proposal being submitted to the Secretary of State. For example, one upper tier local authority within the proposed CCA area could draw up and submit the proposal on behalf of the other upper tier local authorities within the proposed CCA area if they consent to the proposal being submitted.

345 Subsection (7) provides that a proposal must specify what the establishment of a CCA would achieve.

346 Subsection (8) enables the Secretary of State to make regulations setting out what information and materials must be included in or submitted with a proposal for a CCA.

Section 46: Requirements in connection with establishment of CCA

Background

347 This provision sets out requirements in relation to the establishment of a CCA.

Effect

348 Subsections (1) and (2) specify that the Secretary of State may make regulations establishing a CCA for an area if, having regard to any submitted proposal, the Secretary of State considers that the establishment of a CCA is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area; has regard to the need to secure effective local government and to reflect the identities and interests of local communities; that the proposal will achieve its purpose; the constituent councils of the CCA consent; and public consultation on the proposal has been carried out.

349 Subsection (3) provides that the Secretary of State must undertake a public consultation on the establishment of a CCA unless they are satisfied that no further public consultation is necessary following a proposal having been prepared under s.45, a public consultation undertaken on it and the summary of responses provided to the Secretary of State. This is to ensure that there has been sufficient public involvement in the consideration of whether it is appropriate to establish the proposed CCA.

350 Subsections (4) and (5) provide that, when the Secretary of State is considering making regulations establishing a CCA for an area and part of the area is separated from the rest of it by one or more local government areas not within the area of the CCA or the middle of the CCA's area contains a local government area that is not part of the CCA, the Secretary of State must have regard to the likely effect of the establishment of the CCA on the exercise of functions proposed to be conferred on the CCA in those local government areas, and any other local government area next to the proposed CCA's area.

351 Subsection (6) defines "local government area" as used in this Chapter.

Section 47: Proposal for changes to existing arrangements relating to CCA

Background

352 This section allows allowing relevant authorities to change existing arrangements of a CCA.

Effect

353 Subsection (1) and (2) provide that one or more relevant authorities – an existing CCA, a county council whose area is within an existing or proposed area of a CCA, and a unitary district council whose area is within an existing or proposed area of a CCA – can prepare a proposal for the making of regulations under sections 10, 16, 18, 19, 21, 22, 25, 26, 27, 30, 33 for an existing CCA and submit the proposal to the Secretary of State. In the case of regulations under section 25, the authority seeking to join the CCA could prepare the proposal.

354 Subsection (3) provides that, prior to submitting a proposal under this section to the Secretary of State, the authority or authorities must undertake a public consultation on the proposal in the proposed CCA area – and the area which they are seeking to add to a CCA area in such an instance - and consider the consultation responses in the proposal.

355 Subsection (4) provides that the requirements in subsection (3) – the public consultation on a proposal and the consideration of the responses in the proposal– can be undertaken prior to this section coming into force.

356 Subsections (5), (6) and (7) provides that every party who would have to consent to the making of regulations being requested in the proposal has to consent to the proposals prior to it being submitted to the Secretary of State. An authority's submitting of a proposal to the Secretary of State is to be treated as them having consented to the proposal.

357 Subsection (8) provides that a proposal must specify what the establishment of a CCA would achieve.

358 Subsection (9) enables the Secretary of State to make regulations setting out what information and materials must be included in or submitted with a proposal under this section. For example, this could include a summary of consultation responses, how it will affect the delivery of public services in the area, and any required amends to the decision-making process, including voting rights.

Section 48: Requirements for changes to existing arrangements relating to CCA

Background

359 This section sets out requirements in relation to changes to the arrangements of an existing CCA.

Effect

360 Subsections (1) and (2) specify that the Secretary of State may make regulations under sections 10, 16, 18, 19, 21, 22, 25, 26, 27, 30, 33 for an existing CCA if, having regard to the submitted proposal, the Secretary of State considers that doing so is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area; has regard to the need to secure effective local government and to reflect the identities and interests of local communities; that the making of the regulations will achieve the proposal's purpose; and public consultation on the proposal has been carried out.

361 Subsection (3) provides that the Secretary of State must undertake a public consultation on the changes to the arrangements of the CCA unless they are satisfied that no further public consultation is necessary following a proposal having been prepared under section 47, a public consultation undertaken on it and the summary of responses provided to the Secretary of State.

362 Subsections (4) and (5) provide that, when the Secretary of State is considering making regulations under section 25 changing the boundaries of a CCA and part of the area to be created is separated from the rest of it by one or more local government areas not within the area of the CCA or the middle of the CCA's area to be created contains a local government area that is not part of the CCA, the Secretary of State must have regard to the likely effect of the change of the CCA's boundaries on the exercise of functions in those local government areas and any other local government area next to the proposed CCA's area to be created.

363 Subsection (6) provides that this section does not apply to regulations made section 25(1)(b) as a result of the duty to remove a non-consenting constituent council from a CCA where they have not consented to a CCA becoming mayoral.

General powers of CCAs

Section 49: General Power of CCA

Background

364 This section provides powers for combined county authorities.

Effect

365 Subsection (1) provides what a CCA may do in relation to carrying out its functions and functional purposes. This is anything it considers appropriate for the purposes of carrying out its functions, including anything incidental to that end.

366 Subsections (2) and (3) provide that, where a power is conferred on a CCA by subsection (1), it is United Kingdom-wide and not limited by other powers.

367 Subsection (4) states this section does not apply for a CCA where regulations conferring the wider general power of competence on a CCA has effect.

Section 50: Boundaries of power under section 49

Background

368 This section sets out boundaries to the powers for CCAs provided for in section 49.

Effect

369 This section imposes limitations on a CCA to be consistent with a combined authority's functional power of competence.

370 Subsections (1) and (2) set out boundaries in relation to a CCA's exercise of a power.

371 Subsection (3) provides that a CCA cannot exercise its functional power of competence to borrow money.

372 Subsections (4), (5) and (6) set out boundaries on the CCA's exercise of its functional power of competence in relation to charging persons commercial purposes.

Section 51: Power to make provision supplemental to section 49

Background

373 This provision gives the Secretary of State power by regulations to prevent CCAs from doing something under section 49, or to impose conditions on the exercise of those powers.

Effect

374 Subsections (1) and (2) provide that the Secretary of State may make regulations to prevent a CCA from doing something, or impose conditions on, the exercise of powers set out in regulations under section 49(1).

375 Subsection (3) provides that the Secretary of State can make such regulations in relation to all CCAs, certain CCAs, or a particular CCA.

376 Subsections (4) and (5) provide that, prior to making such regulations, the Secretary of State must consult representatives of CCAs and local government, and anyone else the Secretary of State considers relevant, unless such regulations are to extend or stop previous such regulations.

Section 52: General power of competence

Background

377 This section gives the Secretary of State power by regulations to confer a general power of competence on CCAs thereby aligning with the general power of competence available to its constituent councils. The general power of competence gives CCAs the same power to act that an individual authority generally has.

Effect

378 Subsection (1) enables the Secretary of State by regulations to confer the general power of competence, found in Chapter 1 of Part 1 of the Localism Act 2011, on a CCA. Subsections (2) and (3) require such regulations to have the consent of the appropriate authorities.

Supplementary

Section 53: Incidental etc provision

Effect

379 This section provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of regulations made under this Chapter, excluding amending or disapplying sections 15 to 17 of and Schedule 1 to the Local Government and Housing Act 1989.

Section 54: Transfer of property, rights and liabilities

Effect

380 This section specifies that the Secretary of State may make provision by regulations for the transfer of property, rights and liabilities for the purpose of, or in consequence of, regulations under this Chapter. This includes the transfer of rights and liabilities under a contract of employment, to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply.

Section 55: Guidance

Effect

381 Subsection (1) provides that the Secretary of State may issue guidance about anything which could be done under or by virtue of this Chapter by an authority referred to in subsection (5). For example, this could include how to exercise certain functions by a new CCA.

382 Subsection (2) stipulates that the authority must have regard to any guidance given in exercising any function conferred or imposed by virtue of this Chapter.

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

Section 56: Consequential amendments

Effect

384 This section introduces Schedule 4, which makes a number of amendments to apply provisions of local government and transport legislation to CCAs.

Section 57: Interpretation of this Chapter

Background

385 This section provides definitions for this Chapter.

Chapter 2: Other Provision

Combined authorities

386 This chapter (sections 58 to 83) makes various amendments to existing legislation to support the establishment of combined authorities (CAs) and conferral of powers on combined authorities and local authorities.

Section 58: Review of combined authority's constitutional arrangements

Background

387 Section 104 of the Local Democracy, Economic Development and Construction Act 2009 (the 2009 Act) enables the Secretary of State, by order, to make provision for constitutional arrangements for a combined authority; this includes provision for a combined authority to make arrangements locally for constitutional matters. It makes no provisions about the circumstances in which combined authorities can review their local constitutional arrangements.

388 This section inserts a new section 104D to the 2009 Act to enable combined authorities to instigate a review of their local constitutions and make changes where agreed.

New section 104D: Review of combined authority's constitutional arrangements

Background

389 Section 104 of the 2009 Act (constitution and functions: transport) makes provision for orders relating to the constitutional arrangements of a combined authority. Section 59 inserts a new section 104D which makes provisions for the review and changes to constitutional arrangements made by a combined authority.

Effect

390 Subsection (1) sets out that section 104D applies if the Secretary of State has made an order under section 104 for a combined authority to make provision about its constitution.

391 Subsection (2) provides for an appropriate person to carry out a review of the combined authority's local constitutions if this is proposed by an appropriate person, and the combined authority agrees to the review.

392 Subsection (3) sets out that the appropriate person undertaking the review may propose changes to the constitutional arrangements of a combined authority which must be agreed by the combined authority for them to come into effect.

393 Subsections (4) and (6) provide for the "consent" of the combined agreement to the proposal for a review and for adopting any changes proposed. A simple majority of combined authority voting members present at the meeting at which these matters are discussed must consent for a review to take place and for changes to be made to the local constitution.

394 Subsection (5) sets out the simple majority provisions in 104D(4) for mayoral combined authorities. The simple majority of the combined authority in favour of carrying out a review following its proposals by an appropriate person does not need to include the agreement of the mayor. For the changes proposed as a result of a review to be adopted, simple majority of the combined authority in favour of the changes must include the vote of the mayor.

395 Subsection (7) provides that the arrangements in this section take precedence over any arrangements made in any order made before this section came into force or anything in a combined authority's local constitution.

396 Subsection (8) defines an 'appropriate person' the purposes of this section.

Section 59: Consent to changes to combined authority's area

Background

397 Part 6 of the 2009 Act provides for the establishment of and changes to combined authorities by order, subject to various consent requirements.

398 Section 106 of the 2009 Act enables the area of a combined authority to be changed, by order, through the addition or removal of a whole local government area. Section 59 amends the consent requirements in section 106 before the Secretary of State can make an order changing a combined authority's boundary. It also makes changes to provisions in section 104 of the 2009 Act about the combined authority's constitutional arrangements which are a direct result of an order changing the area of a combined authority.

Effect

399 Section 59(2) amends section 104 of the 2009 Act to insert new subsection (11A) – this makes corresponding changes to replace the existing consent requirements to an order making constitutional changes to a combined authority (under section 104) as a direct result of an order changing the area of the combined authority (under section 106) to the new consent requirement in

(4) which replaces section 106 (3A) of the 2009 Act with subsections (3A) and (3AA). These new consent requirements for expanding or reducing the area of a mayoral combined authority or a non-mayoral combined authority provide that the Secretary of State may make an order changing a mayoral combined authority's area with consent of the mayor and council(s) whose area(s) is joining or leaving and the Secretary of State may make an order changing a non-mayoral combined authority's area with consent of the combined authority and council(s) whose area (s) is joining or leaving.

400 Subsection (7) inserts new subsections (3CA) and (3CB) into section 106 which provide that a non-mayoral combined authority decision on such consent is to be made by simple majority vote at a meeting of the combined authority, by its voting members, and this takes precedence over any provisions about such decision making in a combined authority's constitutional arrangements in an order or in the authority's own arrangements for its constitution made prior to commencement of this section.

401 Subsection (8) inserts new subsection (3D) into section 106 which makes exceptions to these consent arrangements where a local government area is being removed from the area of a combined authority by order under section 105A or 107D(4) of the 2009 Act.

402 Subsection (9) inserts new subsections 3E), (3F) and (3G) into section 106. These apply the same consent requirements as in (3CA) to constitutional changes made under section 104 where these constitutional changes relate to or are consequential on the change of the combined authority's area such that they override any relevant provisions and local constitutional arrangements even if they were made prior to coming into force of these provisions. It also adds into section 106 new subsection (3H) which confirms that voting members include substitute members but not non-constituent or associate members.

Section 60: Changes to mayoral combined authority's area: additional requirements

403 This section adds a number of requirements where an order to add a local government area to an existing area of a mayoral combined authority is made, under section 106 of the 2009 Act , within nine months of this Act being passed. These requirements are for the Secretary of State to consult the Local Government Boundary Commission for England, the mayor for the combined authority area to consult the residents of the local government area to be added to the combined authority area and the mayor to provide a report about that consultation to the Secretary of State, and for the Secretary of State to lay that report before Parliament.

Section 61: Consent to conferral of general functions on mayor

Background

404 Part 6 of the 2009 Act provides for public authority function to be conferred onto a combined authority subject to various requirements about authorities locally consenting. Such functions can be exercisable by the combined authority or by the mayor personally. This section changes the operation of this for a public authority function to be conferred on the combined authority and exercisable on the mayor.

Effect

405 Section 61 amends section 105B, section 107(D) and section 104 of the 2009 Act.

406 Subsection (2) inserts a new subsection (11B) into section 104 of the 2009 Act which disapplies the existing consents required under section 104(10) where an order is made under section 107 DA and specifies new consents required for orders made under section 107 DA.

407 Subsection (3) inserts into section 105B subsection (5A) which disapplies the existing consent needed in the case where the Secretary of State is making a single order (under sections 105A and 107D) to confer a new public authority function onto the combined authority to be exercisable by the mayor.

408 Subsection (4) inserts into section 107D a new subsection (11) which makes a corresponding change within section 107D.

409 Subsection (5) inserts a new section 107DA which provides a new procedure where the Secretary of State is making a single order to confer a public authority function on a combined authority, to be exercisable by the mayor, under sections 105A and 107D.

410 Section 107DA(2) provides that a mayor of a combined authority may make a request to the Secretary of State to make such an order.

411 Section 107DA(3) requires the mayor to consult the constituent councils of combined authority (defined in 107DA(5) before making the request and section 107DA(4) requires the mayor to include within such a request to the Secretary of State a statement that all the constituent councils agree to the making of this order or, if this statement cannot be made, the mayor's rationale for proceeding.

Section 62: Consent to conferral of police and crime commissioner functions on mayor

Background

412 Part 6 of the 2009 Act provides for a combined authority mayor to be given, by order, the functions of a police and crime commissioner for the area (section 107F). This section amends the consent needed before such an order can be made.

Effect

413 Section 107F of the 2009 Act (functions of mayors: policing) enables the Secretary of State by order to provide for the mayor for the area of a combined authority to exercise the functions of a police and crime commissioner in that area. The power is subject to the consent of the combined authority, constituent councils of the combined authority and, in the case of an existing mayoral combined authority, the mayor.

414 Section 62 amends section 107F of the 2009 Act to provide that only the mayor needs to consent to an order conferring police and crime commissioner functions on the mayor.

Section 63: Functions in respect of key route network roads

Background

415 This section makes amendments to the 2009 Act by inserting a new section that establishes the concept of key route network roads in CAs and changes the consent requirements for making orders that confer a power of direction in relation to highways and traffic functions in respect of such roads. Where such a power of direction is to be exercisable only by the mayor then, subject to the mayor consenting, it will be able to be conferred without the consent of the CA and the constituent councils.

Effect

416 Subsections (2) and (3) amend section 104 and section 107D of the 2009 Act to make clear that the consent requirements for making an order under those sections are subject to the new section 107ZA.

417 Subsection (4) inserts a new section 107ZA to the 2009 Act to provide for the designation of roads as key route network roads and introduce alternative consent requirements for conferring on a CA a power, that is to be exercised by the mayor, to give a direction in relation to highways and traffic functions in respect of such roads.

New section 107ZA: Designation of key route network roads

418 Subsection (1) enables a combined authority to designate or remove roads as key route network roads with the consent of the council in whose area the road is and, in the case of a mayoral CA, the mayor.

419 Subsection (2) enables the Secretary of State to designate or remove roads as key route network roads if requested to do so by the CA, mayor or council within whose area the road is. This may be necessary where, for example, the CA, mayor and council cannot all agree.

420 Subsection (3) requires that a designation or removal of a key route network road must be in writing and state when it comes into effect.

421 Subsection (4) requires that, where the Secretary of State designates or removes a key route network road, a copy of that designation or removal must be provided to a CA at least 7 days before it comes into effect.

422 Subsection (5) requires a CA to publish all designations and removals of key route network roads before they come into effect.

423 Subsection (6) requires a CA to publish a list or map showing all key route network roads within the CA's area.

424 Subsection (7) provides that a power of direction in relation to key route network roads may be conferred on a mayoral CA with only the consent of the mayor where that power is to be exercisable exclusively by the mayor.

425 Subsection (8) requires that, when consenting under subsection (7), a mayor must make a statement that all the constituent councils agree to the granting of the power of direction or, if they do not all agree, give reasons why the power of direction should nevertheless be granted.

426 Subsection (9) provides definitions for the terms "eligible power", "constituent authority", "key route network road", and "proposed highway" that are used in this section.

Section 64: Membership of combined authority

Effect

427 This section amends the 2009 Act by inserting three new sections that provide for combined authorities to appoint non-constituent and associate members. It also makes corresponding amendments to section 104 of the 2009 Act, relating to its application of section 84 and 85 of the Local Transport Act 2008.

Background

428 Subsection (8) inserts new section 104A (Non-constituent members of a combined authority) into the 2009 Act. This enables the appointment of non-constituent members to a combined authority.

New section 104A: Non-constituent members of a combined authority

429 Subsections (1) and (2) of new section 104A provide that a combined authority can designate a body other than an individual or a constituent council as a nominating body for the purposes of this section, subject to that body's consent to the designation.

430 Subsection (3) provides that the nominating body may appoint a representative of the organisation to be a member of the combined authority – to be known as a "non-constituent member".

431 Subsections (4) and (5) sets out the voting rights of non-constituent members.

432 Subsections (7) makes this section subject to regulations under 104C(4) to disapply this section in relation to a combined authority established by an order which came into force before the coming into force of this section.

433 Subsection (8) defines the meaning of constituent council.

434 Subsection (8) also inserts new section 104B (Associate members of a combined authority) into the 2009 Act which enables combined authorities to appoint individuals to be associate members of the combined authority.

New section 104B: Associate members of a combined authority

435 Subsection (1) provides for the appointment of an individual to the combined authority and define the term of 'associate member'.

436 Subsection (5) makes this section subject to regulations under 104C(4) to disapply this section in relation to a combined authority established by an order which came into force before the coming into force of this section.

437 Subsection (8) also inserts new section 104C (Regulations about members).

New section 104C: Regulations about members

438 This enables the Secretary of State to make regulations about the constituent members, nominating bodies, non-constituent members and associate members of combined authorities.

439 Subsection (2) lists specific provisions that could be included in these regulations such as the process of designation of a nominating body, the number of nominating bodies, non-constituent members and associate members that a combined authority can have, the making by the nominating body of a combined authority of payments towards the cost of the authority, the appointment, disqualification, resignation or removal of an associate member.

440 Subsection (4) allows the Secretary of State to make regulations about the application of this section to existing combined authorities.

441 Subsection (5) defines the meaning of 'relevant provisions about membership' in subsection (4).

442 Subsections (6) and (7) make provisions about regulations under subsection (1) and (4).

443 Subsection (7) defines constituent member of a combined authority in this section.

444 Subsections (9) to (13) make corresponding changes to sections 105, 107C, 107D, 107G and 120 of the 2009 Act.

Section 65: Proposal for establishment of combined authority

Background

445 This section makes amendments to the 2009 Act, to replace the governance review and scheme processes in sections 108 and 109 with a new procedure in section 109A and section 110 to allow one or more authorities in a local government area to prepare and submit a proposal to the Secretary of State for a new combined authority. This is in line with the procedures for local authorities wishing to establish a combined county authority.

Effect

446 Subsection (2) removes sections 108 and 109 from the 2009 Act which sets out the process an area currently undertakes when they wish to establish a combined authority in their area.

447 Subsection (3) inserts a new section 109A into the 2009 Act.

New section 109A: Proposal for new combined authority

448 Subsection (1) (2) and (3) provides that one or more authorities may prepare and submit a proposal to the Secretary of State for a combined authority to be established over a proposed area (defined in subsection 3) and defines which authorities can submit a proposal.

449 Subsection (4) provides that, prior to submitting a proposal for a CA to the Secretary of State, the authority or authorities must undertake a public consultation on the proposal in the proposed CA's area and consider the consultation responses in the proposal.

450 Subsections (5) and (6) sets out the consent arrangements if the proposal is not submitted by all of the authorities who will be constituent members of the combined authority to who this section applies.

451 Subsection (7) provides that the proposal must set out what will be achieved by the establishment of the combined authority.

452 Subsection (8) allows the Secretary of State to make regulations about information and materials must be included in or submitted with a proposal for a combined authority.

453 Subsections (4) to (8) amend section 110 (requirements in connection with establishment of combined authority) of the 2009 Act.

454 Subsection (5) amends the statutory requirements the Secretary of State must consider when assessing a proposal for a combined authority and (6), (7) and (8) amend section 110 of the 2009 Act to refer to this new process.

455 Subsections (9) and (10) disapply section 109A if authorities have commenced a governance review and scheme under sections 108 and 109 of the 2009 Act before this section comes into force, and the making of an order in relation to such an area.

Section 66: Proposal for changes to existing combined arrangements

Background

456 This section amends the 2009 Act, to replace the governance review and scheme processes in sections 111 and 112 with a new procedure in section 112A and amends section 113 to allow an existing combined authority to prepare and submit a proposal to the Secretary of State for changes to the combined authority. This is in line with the procedures that existing combined county authorities will undertake.

Effect

457 Subsection (2) removes sections 111 and 112 from the 2009 Act. These set out the process an existing combined authority currently undertakes when they wish to make a change to their arrangements via an order.

New section 112A: Proposal for changes to existing combined arrangements

458 Subsection (3) inserts new section 112A into the 2009 Act.

459 Subsection (1) provides that one or more authorities can prepare and submit a proposal to the Secretary of State.

460 Subsection (2) defines the authorities who can submit the proposal.

461 Subsection (3) sets out the process that the authority or authorities submitting the proposal must undertake before the proposal is submitted.

462 Subsections (4) (5), (6), (7) and (8) set out the consent arrangements in respect of the proposal.

463 Subsection (9) provides that the proposal must set out what will be achieved by the changes to the combined authority.

464 Subsection (10) allows the Secretary of State to make regulations setting out what information and materials must be included in or submitted with a proposal.

465 Subsection (11) allows regulations under this subsection to make incidental, supplementary, consequential, transitional or saving provision.

466 Subsections (4), (5) and (6) amend the statutory tests the Secretary of State must consider when assessing a proposal for a combined authority by amending section 113 of the 2009 Act.

467 Subsections (7), (8) and (9) make changes to section 113 of the 2009 Act that apply the new statutory tests to these sections.

468 Subsections (10) and (11) ensure that the new proposal process does not apply to or affect an area that had already commenced a governance review and scheme under sections 111 or 112 of the 2009 Act before this section comes into force, and the making of an order in relation to such an area.

469 Subsection (12) ensures that any consultation carried out before the Act is passed can satisfy the requirement to consult under section 113(2) of the 2009 Act.

Section 67: Consequential amendments relating to sections 65 and 66

Background

470 This section amends the 2009 Act to reflect the changes made by sections 61 and 63 in relation to the new processes for establishing or amending a combined authority. This is in line with the processes that combined county authorities will undertake.

Effect

471 Subsection (2) amends section 105B of the 2009 Act to change the procedure under which 105A orders are made. This is to reflect the new provisions in sections 109A and 112A as well as the new statutory requirements that the Secretary of State must consider are met before an order can be made.

472 Subsection (3) amends section 107B to provide for the amended procedure set out in sections 109A and 112A.

473 Subsection (4) disapplies the changes in section 67 in cases where a proposal under section 105B or 107B has already happened.

Section 68: Regulations applying to combined authorities

Background

474 Section 117 of the 2009 Act makes provisions for orders relating to combined authorities made under Part 6 of the 2009 Act. This section amends section 117 of the 2009 Act to provide that the Secretary of State may make regulations - as well as orders – in relation to combined authorities, in line with current parliamentary drafting practices, as well as provision for the parliamentary procedure to be followed for this legislation.

Effect

475 Subsection (5) inserts a new subsection (3A) to provide that statutory instruments containing the regulations under sections 104C(1), 104C(4) or 107K(1) are subject to the affirmative procedure for Parliamentary approval.

476 Subsection (3B) provides that regulations under section 109A(8) or 112A(10) are subject to Parliamentary approval through the negative resolution procedure.

Section 69: Combined authorities and combined county authorities: power to borrow

Background

477 Under section 23 of the Local Government Act 2003, combined authorities have a power to borrow money to fund transport activities; this can be extended, by regulations made by the Secretary of State to enable a combined authority to borrow for other functions.

Effect

478 This section makes provision that such regulations and equivalent regulations for combined county authorities are not to be treated as a hybrid instrument. This enables borrowing powers for combined authorities to be put on the same basis as the conferral of all other powers by order on a combined authority and makes equivalent provision for the new combined county authority.

Section 70: Payment of allowances to committee members

Background

479 Schedule 5A to the 2009 Act makes provisions about overview and scrutiny committees and audit committees of a combined authority. It enables orders to make provisions about the payment of allowances to members. This section makes amendments to these provisions and similar amendments to provisions in Schedule 5C to the 2009 Act in relation to police and crime panel for a combined authority whose mayor has been conferred the role of a police and crime commissioner.

480 The orders establishing combined authorities provide for remuneration for members of combined authorities. At present combined authorities may make provision for:

a. Combined authorities to be able to pay members a travel and subsistence allowance.

b. Combined authorities to be able to pay mayors and deputy mayors allowances on the recommendation of an independent remuneration panel.

c. Combined authorities to be able to pay members representing councils travel and subsistence allowance only with the local authorities being able to provide separately a special responsibility allowance.

d. Combined authorities are required to establish at least one overview and scrutiny committee as well as an audit committee. Combined authorities cannot make provision for the payment of allowances to local authority members who are members of these panels.

Effect

481 This section amends Schedules 5A and 5C to enable the Secretary of State to make provisions, by order, about the payment of allowances to members of overview and scrutiny, audit committees and, where the mayor exercises the police and crime commissioner functions, police and crime panels where the members of these committees are members of a combined authority's constituent authorities.

482 Subsection (1) amends Schedule 5A to the 2009 Act to give the Secretary of State power by order to make provision about the payment of allowances to members of a combined authority's constituent authorities who are members of overview and scrutiny committees and audit committees.

483 Subsection (2) amends Schedule 5C to the 2009 Act to give the Secretary of State power by order to make provision about the payment of allowances to members of a combined authority's constituent members who are members of police and crime panel where the mayor of the combined authority also holds police and crime commissioner powers.

Local authority governance

Section 71: Timings for changes in governance arrangements

Background

484 The Government's devolution framework in the Levelling Up White Paper sets out the powers available to institutions with different strengths of governance, which may be negotiated as part of a devolution deal. A local authority may wish to change its governance model in order to access deeper devolution (a local authority with a directly elected mayor could access a level 3 deal; a local authority with a leader and cabinet model can access level 2 deal). However, if the council has changed its governance arrangements, either by local authority resolution or following a referendum, a moratorium may apply that prevents a further change of governance model for a specified period of time as set out in sections 9KC and 9M of the Local Government Act 2000 (the '2000 Act'). This provision establishes a process for a local authority to apply to the Secretary of State to change its governance model before the expiry of a moratorium and access deeper devolution in shorter timescales than would otherwise be possible.

Effect

485 This section amends the 2000 Act. Subsection (2) amends section 9KC of the 2000 Act (which applies a moratorium on changing local authority governance arrangements by resolution where a resolution has been implemented less than 5 years previously). It inserts new provisions in 9KC to establish a process for a local authority which has adopted its current governance model following a resolution to apply to the Secretary of State for consent to change its governance model (again by resolution) before the expiry of the moratorium period of 5 years.

486 New section 9KC (4A) – (4C) inserted by section 71 (2)(b) provides for the circumstances under which the local authority can submit a proposal and the content of the proposal. New section 9KC(4D) provides that the Secretary of State may consent to proposal for a local authority to change its governance arrangements only if the Secretary of State considers that the proposed change in governance arrangements is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area. New section 9KC(4F) includes a power for the Secretary of State to make regulations setting out the matters to be addressed by a proposal and how the proposal is to be considered.

487 Subsection (3) amends section 9MF of the 2000 Act (which applies a moratorium on holding a referendum on changing local authority governance arrangements where a referendum has been held less than 10 years previously). It inserts new provisions in 9MF to establish a similar process to subsection (2) for a local authority to apply to the Secretary of State for consent to hold a referendum before the expiry of the moratorium period of 10 years.

488 New section 9MF (3A)-(3F), inserted by subsection (3)(b) provides for circumstances under which the local authority can submit a proposal and the content of that proposal. New section 9MF (3D) provides that the Secretary of State may consent to a proposal for a local authority to hold a referendum on its governance arrangements before the expiry of a moratorium only if the Secretary of State considers that the proposed change in governance arrangements is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area. New section 9MF (3F) includes a power for the Secretary of State to make regulations setting out the matters to be addressed by a proposal and how the proposal is to be considered.

Section 72: Transfer of functions: changes in governance arrangements

Background

489 This provision places conditions around an authority's ability to change governance arrangements once a devolution deal has been implemented and powers have been conferred on the local authority by regulations under section 16 of the Cities and Local Government Devolution Act 2016 ('the 2016 Act').

Effect

490 This section introduces new sections 9NC (Transfer of functions: changes in governance arrangements not subject to a referendum) and 9ND (Transfer of functions: changes in governance subject to a referendum) to the 2000 Act. These apply where the Secretary of State has made regulations under section 16 of the 2016 Act to confer onto the local authority some functions of a public authority; for example following agreement of a devolution deal between the government and local authority. It also amends sections 9KC, 9MB and 9MF accordingly.

491 New section 9NC, inserted by subsection (5) provides that where Secretary of State has made regulations under section 16 of the 2016 Act to confer public authority functions on a local authority, and where the local authority's governance model was adopted following a resolution, that local authority has to comply with certain requirement if it subsequently wishes to make one of the changes to its governance arrangements specified in section 9NC(8).

492 Section 9NC(3) requires the local authority to notify the Secretary of State of the local authority's proposed changes to governance arrangements. Subsection (4) requires the Secretary of State, on receiving a notification, to consider whether, as a result of the proposed change, the section 16 regulations should be amended or revoked. Subsection (6) provides that if the Secretary of State considers that the section 16 regulations should be amended or revoked, the local authority may not proceed with a resolution on changing governance arrangements until the regulations have been so amended or revoked.

493 Subsection (5) also inserts new section 9ND to the 2000 Act. This provides that where Secretary of State has made Section 16 regulations to confer public authority functions on a local authority, and where the local authority's governance model was adopted following a referendum, that local authority has to comply with certain requirements if it subsequently wishes make one of the changes to its governance arrangements specified in section 9NC(8). Section 9ND(4) requires the local authority to notify the Secretary of State its proposed changes to governance arrangements. Subsection (5) provides that if the Secretary of State receives a notification, they are required to consider whether, as a result of the proposed change, the section 16 regulations should be amended or revoked. Under subsection (7) if the Secretary of State considers that the section 16 regulations should be amended or revoked, the local authority may proceed with a referendum but if the referendum approved the proposal, the local authority may not proceed with a resolution on changing governance arrangements until the regulations have been so amended or revoked.

494 Subsections (2) – (4) make corresponding changes to sections 9KC, 9MB and 9MF of the 2000 Act.

495 Subsection (6) amends section 17 of the 2016 Act to amend the factors to which the Secretary of State has regard when considering whether to revoke or amend section 16 regulations following a notification under the new sections 9NC and 9ND of the 2000 Act of proposed changes to a local authority's governance arrangements.

Section 73: Power to transfer etc public authority function to certain local authorities

Background

496 This section amends section 17 of the 2016 Act to change one requirement for the Secretary of State to consider is met before conferring a public authority function on a local authority, by regulations.

Effect

497 This section amends section 17 to change the statutory requirements that the Secretary of State must consider is met before regulations can be made. The Secretary of State may make regulations under section 16 if the Secretary of State considers that doing so is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the relevant local authority's area. This should be read in conjunction with section 72 which makes further changes to section 17 of the 2016 Act.

Police and crime commissioners and the Mayor's Office for Policing and Crime

Section 74: Participation of police and crime commissioners at certain local authority committees

Background

498 Section 102 of the Local Government Act 1972 ('LGA 1972') sets out provisions about appointments to local authority committees, including the appointment of PCCs. Section 102 (9) LGA 1972 provides that a Police and Crime Commissioner is only to be represented on a committee discharging fire and rescue functions in so far as the business relates to those fire and rescue functions.

499 There is a risk that this legislation may be interpreted more widely than intended, potentially resulting in PCCs being excluded from local authority committee meetings where the business of that meeting does not relate to the functions of a fire and rescue authority.

Effect

500 This section amends section 102(9) to clarify that the restriction in subsection (9) only applies to meetings of committees discharging fire and rescue functions rather than other local authority committees to which section 102 applies. This makes it clear that PCCs can participate in local authority meetings where the business does not relate to fire and rescue.

Section 75: Disposal of Land

Background

501 Section 123 of the Local Government Act 1972 gives principal councils (local authorities and some other locally led public bodies) the power to dispose of land held by them in any manner they wish. The only requirement is for them to obtain Secretary of State consent should they wish to dispose of the land (otherwise than by a short tenancy) at less than best consideration (i.e. sold at lower than market price).

502 There is currently a general consent (made through a Secretary of State Direction) which allows local authorities to dispose of surplus land at an undervalue of up to £2 million where it will contribute to the promotion or improvement of the economic, social or environmental well-being of an area without having to submit a specific application for Secretary of State approval.

503 Prior to 2011 police authorities were covered by section 123 (and the associated general consent) but that is no longer the case following the creation of Police and Crime Commissioners (PCCs) under the Police Reform and Social Responsibility Act 2011. While PCCs now have broad powers to dispose of land as they see fit, there is no specific provision relating to disposal at less than best consideration.

504 This section amends section 123 of the Local Government Act 1972 to bring PCCs, including Mayors who exercise PCC functions, and the Mayor's Office for Policing and Crime (MOPAC) within scope of section 123.

Effect

505 This section inserts new subsection (2C) into section 123 of the Local Government Act 1972 and provides that PCCs, including Mayors who exercise PCC functions, and MOPAC are to be treated as principal councils for the purposes of section 123.

506 This section gives PCCs, including Mayors who exercise PCC functions, and MOPAC greater certainty that they can dispose of land at less than best consideration where doing so will deliver wider public benefits.

507 The associated consent framework with consent to be given by the Home Secretary in the case of PCCs, including Mayors who exercise PCC functions, and MOPAC will increase transparency and public accountability.

Alternative mayoral titles

Section 76: Combined authorities: alternative mayoral titles

Effect

508 This section inserts four new sections into the 2009 Act.

509 New section 107H (alternative mayoral titles: new mayoral combined authorities) enables new mayoral combined authorities, by resolution, to change the title by which the mayor of the new combined authority is known. Section 107H provides as set out below.

New section 107H: Alternative mayoral titles: new mayoral combined authorities

510 Section 107H(1) applies section 107H to MCAs where regulations to provide for an elected mayor for those MCAs come into force after section 107H comes into force.

511 Section 107H(2) provides that at the first meeting of an MCA that is held after the regulation to provide for the election of a mayor comes into force the authority must resolve either that the mayor is to be known as the mayor or that the mayor is to be known by an alternative title as provided for under subsection (3).

512 Section 107H(3) sets out the alternative titles by which the mayor for the area of the MCA may be known. Section 107H(3)(e) gives MCAs the power to resolve to choose a title other than those listed in subsections (a) to (d), providing the MCA has had regard to the title of other public office holders in the area of the MCA.

513 Section 107H(4) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known.

514 Section 107H(4)(a) provides that the details of the resolution must be included in the published details of the meeting. These are subject to the usual requirements on authorities for publishing details and papers of meetings so members of the public and others can consider the items that will be discussed.

515 Section 107H(4)(b) provides that where the resolution includes a title chosen by the MCA under section 107H(3)(e), the resolution must specify why the MCA considers this more appropriate than the other alternative titles mentioned in subsection (3).

516 Section 107H(4)(c) sets out the voting requirements needed to pass the resolution.

517 Section 107H(5) applies the requirements in subsections (6) and (7) to circumstances in which an MCA resolves that the mayor is to be known by an alternative title.

518 Section 107H(6) requires the MCA to send notice of the change of title to the Secretary of State who may decide to direct the MCA to publish the notice of title in such a manner; the MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

519 Section 107H(7) makes provision that where the title of mayor appears in an enactment and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

520 Section 107H(8) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

521 Section 107H(9) confirms the definition of "member of a combined authority" for this section.

522 Section 107H(10) defines the term 'enactment' for the purposes of section 107H, this definition excludes sections 107H, I and J of the 2009 Act.

523 Section 76 also inserts new section 107I (alternative mayoral titles: existing mayoral combined authorities) which enables existing mayoral combined authorities by resolution, to change the title by which the mayor of the combined authority is known. Section 107I provides as set out below.

New section 107I: (Alternative mayoral titles: existing mayoral combined authorities

524 Section 107I(1) applies section 107I to MCAs where regulations to provide for an elected mayor for those MCAs come into force before section 107I comes into force.

525 Section 107I(2) sets out the alternative titles by which the mayor for the area of the MCA could be known. Subsection (2)e gives MCAs the power to resolve to choose a title other than those listed in subsections (a) to (d) providing the MCA has had regard to the title of other public office holders in the area of the MCA.

526 Section 107I(3) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known, namely that a resolution must be considered at the first meeting of the MCA held after a qualifying mayoral election; the details of the resolution must be included in the published details of the meeting, subject to the usual requirements on authorities for publishing details and papers of meetings so members of the public and others can consider the items that will be discussed; where the resolution includes a title chosen by the MCA under section 107I(2)(e), the resolution must specify why the MCA considers this more appropriate than the other alternative titles mentioned in subsection (2); and the voting requirements needed to pass the resolution.

527 Section 107I(4) applies the power in subsections (5) and (6) when an MCA changes the title by which the mayor for the area of the MCA is to be known to an alternative title. If the MCA decides to retain the title of mayor, then these subsections will not apply.

528 Section 107I(5) requires the MCA to send notice of the change of title to the Secretary of State who may decide to direct the MCA to publish the notice of title in such a manner; the MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

529 Section 107I(6) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

530 Section 107I(7) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

531 Section 107I(8) defines a member of a combined authority for this section.

532 Section 107I(9) defines the meaning of 'enactment' and 'qualifying election' for the purposes of this section.

533 Section 107I(10) makes the section subject to section 107J.

534 Section 76 also inserts new section 107J (alternative mayoral titles: further changes) which makes provision for further changes to alternative mayoral titles where MCAs are already established. Section 107J provides as set out below.

New section 107J: Alternative mayoral titles: further changes

535 Section 107J(1) applies this section where a resolution has been passed to change the title by which the mayor for the area of an MCA is to be known or where a resolution has been passed that the mayor should no longer be known by the alternative title.

536 Subsection (2) provides that an MCA may by resolution adopt the title of mayor again or adopt a new alternative title mentioned in subsection (3).

537 Subsection (3) provides the list of titles which the mayor can be known by with (3)(e) giving MCAs the power to resolve to choose a title other than those listed in subsections (3) (a) to (d) providing they have regard to the title of other public office holders in the area of the MCA.

538 Subsection (4) sets out the requirements that must be met in relation to the resolution at subsection (2). These are that a resolution must be considered at a relevant meeting of the MCA; that the details of the resolution must be included in the published details of the meeting; that where the resolution includes a title chosen by the MCA under subsection (3)(e), the resolution must specify why the MCA considers this more appropriate than the other alternative titles mentioned in subsection (3), and sets out the voting requirements needed to pass the resolution.

539 Subsection (5) defines the meaning of 'relevant meeting' in subsection (4)(a) and imposes requirements as to when a further resolution can be held, namely at the first meeting of the MCA held after a qualifying election for the return of mayor, provided that the election is at least the third qualifying election since the resolution mentioned in subsection (1) was passed.

540 Subsection (6) requires that where an MCA has passed a resolution that the mayor of the MCA is no longer to be known by the alternative title but by the title of mayor, they must send notice of the change to the Secretary of State who may direct the MCA to publish a notice in such a manner. The MCA must comply with this direction. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

541 Subsection (7) applies to subsections (8) and (9) where the MCA has resolves to change the title by which the mayor of the MCA is to be known to an alternative title.

542 Subsection (8) requires the MCA to send notice of the change of title to the Secretary of State who may require the MCA to publish the notice in such a manner as they direct. It also places a requirement on the MCA to publish the notice in its area in a manner it considers appropriate.

543 Subsection (9) makes provision that where the title of mayor appears in an enactment and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every reference in that enactment to mayor.

544 Subsection (10) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

545 This section also inserts new Section 107K (power to amend list of alternative titles) which gives the Secretary of State the power to amend by regulations sections 107H(3), 107I(2) or 107J(3) by adding, modifying or removing a reference to an alternative title or a description of an alternative title.

Section 77: Local authorities in England: alternative mayoral titles

Effect

546 This section amends the 2000 Act by inserting new sections 9HF and 9HG into that Act.

New section 9HF: alternative mayoral titles

547 This new section introduces a new power to allow local authorities, by resolution, to change the title by which the elected mayor of the authority is to be known as outlined below.

548 Section 9HF(1) sets out the alternative titles by which the mayor for the authority could be known. Paragraph (1)e gives authorities the power to resolve to choose a title other than those listed in paragraphs (a) to (d) providing they have regard to the title of other public office holders in the area of the authority.

549 Subsection (2) sets out the requirements that must be met in relation to the resolution to change the title by which the mayor is to be known, namely that a resolution must be considered at a relevant meeting of the authority; the details of the resolution must be included in the published details of the meeting; where the resolution includes a title chosen by the local authority under (1)(e), the resolution must specify why the local authority considers this more appropriate than the other alternative titles mentioned in subsection (1); and the voting requirements needed to pass the resolution.

550 Section 9HF(3)(a) defines the meaning of 'relevant meeting' in the case of a local authority within subsection (8)(a) as the first meeting of the local authority held after a qualifying mayoral election. A qualifying election means an election that isn't the first mayoral election for the local authority or an election that has taken place due to the mayor being unable to act as mayor anymore.

551 Section 9HF (3)(b) defines the meaning of 'relevant meeting' in the case of a local authority within subsection (8)(b) as the meeting of the authority at which the resolution under section 9KC (resolution of local authority) is passed.

552 Section 9HF(3)(c) defines the meaning in the case of a local authority within subsection (8)(c), as the first meeting of the local authority held after the referendum mentioned in section 9N is held.

553 Subsection (4) applies the power in subsections (5) and (6) when a local authority changes the title by which the mayor for the local authority is to be known to an alternative title. If the local authority decides to retain the title of mayor, then these subsections will not apply.

554 Subsection (5) requires the local authority to send notice of the change of title to the Secretary of State who may then direct the local authority to publish the name change in a way of his choosing. It also places a requirement on the local authority to publish the notice in the area of the local authority in a manner it considers appropriate. Subsection (6) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed then the new title is read in the legislation instead of mayor.

555 Subsection (7) which has the effect that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed if there has been a name change.

556 Subsection (8) defines which local authorities fall within this subsection.

557 Subsection (9) gives the Secretary of State the power to amend by regulations subsection (1) by adding, modifying or removing a reference to an alternative title or a description of an alternative title.

558 Subsection (11) makes this section subject to section 9HG.

New section 9HG: Alternative mayoral titles: further changes

559 This section makes further changes in respect of alternative mayoral titles where a title change has already been made.

560 Subsection (1) states that this section applies where a resolution has been passed to change the title by which the mayor for the area of a local authority is to be known or where a resolution has been passed that the mayor should no longer be known by the alternative title.

561 Subsection (2)(a) provides that a local authority may by resolution adopt the title of mayor again or adopt a new alternative title mentioned in subsection (3).

562 Subsection (3) provides the list of titles which the mayor can be known by with (e) giving authorities the power to resolve to choose a title other than those listed in paragraphs (a) to (d) providing they have regard to the title of other public office holders in the area of the authority.

563 Subsection (4) sets out the requirements that must be met in relation to the resolution at subsection (2). These are that a resolution must be considered at a relevant meeting of the local authority; that the details of the resolution must be included in the published details of the meeting; that where the resolution includes a title chosen by the local authority under (3)(e), the resolution must specify why the local authority considers this more appropriate than the other alternative titles mentioned in subsection (3) and sets out the voting requirements needed to pass the resolution.

564 Subsection (5) defines the meaning of 'relevant meeting' in subsection (4)(a) and outlines when a further resolution can be held – this must be at the first meeting of the local authority held after a qualifying election for the return of mayor, provided that the election is at least the third qualifying election since the resolution mentioned in subsection (1) was passed.

565 Subsection (6) requires that where a local authority has passed a resolution that the mayor of the authority is no longer to be known by the alternative title but by the title of mayor, they must send notice of the change to the Secretary of State who may direct the authority to publish a notice in such a manner. The authority must comply with this direction. It also places a requirement on the authority to publish the notice in its area in a manner it considers appropriate.

566 Subsection (7) applies to subsections (8) and (9) where the authority has resolved to change the title by which the mayor of the authority is to be known to an alternative title.

567 Subsection (8) requires the authority to send notice of the change of title to the Secretary of State who may direct the authority to publish the notice in such a manner. The authority must comply with this direction. It also places a requirement on the authority to publish the notice in its area in a manner it considers appropriate.

568 Subsection (9) makes provision that where the title of mayor appears in legislation and the title of mayor has been changed by resolution of the authority, then the adopted title is read in place of every legislative reference to mayor.

569 Subsection (10) makes provision that where legal proceedings involving the mayor have begun, or where someone wishes to bring legal proceedings against the mayor, these can still proceed as if the authority has not adopted an alternative title to mayor.

570 Subsection (11) gives the Secretary of State the power to amend by regulations subsection (3) by adding, modifying or removing a reference to an alternative title or a description of an alternative title.

Local government capital finance

Section 78: Capital finance risk management

Background

571 These provisions amend the Local Government Act 2003 (the "LGA 2003"). Section 1 of LGA 2003 enables local authorities as defined in section 23 of the Act to raise finance for capital expenditure without Government consent where they can afford to service the debt without Government support. Section 12 of that act provides that a local authority may invest its money for reasons that align with its functions or to manage its financial affairs. Local authorities must determine whether their capital strategies at the local level are affordable, in line with the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, SI 2003/3146 and having regard to the code of practice entitled the Prudential Code for Capital Finance in Local Authorities (the "Prudential Code").

572 Borrowing limits can be set by the Government under section 4 of the LGA 2003. Under section 4(1) these general limits can be placed for "national economic reasons". Under section 4(2), limits can be set where the borrowing is unaffordable. Affordability cannot be demonstrated where local authorities have taken on debt to invest in assets that are currently providing the authority with an income which it can supplement its service delivery with, but which might be presents risk for future financial failure.

Effect

573 This section gives the power to the Secretary of State to intervene to address excessive risk by providing options for remediation, mitigation or even investigation.

574 Subsections (1) and (2) amend the 2003 Act by inserting insert sections 12A, 12B, 12C and 12D into the LGA 2003.

New section 12A: Risk-mitigation directions

575 Subsection (1) permits the Secretary of State to address financial risk to an authority by giving risk mitigation directions where a trigger event occurs and where such a direction would be appropriate and proportionate.

576 Subsection (2) defines a trigger event for the purposes of issuing a risk mitigation direction. These are where a risk threshold (see section 12B) is exceeded, where a local authority reports that its resources are unlikely to meet its financial obligations or the Secretary of State takes action to prevent that report having to be made.

577 Subsections (3), (4) and (5) provide a definition for 'risk-mitigation directions' and provide for what those directions may do. This includes setting limits on borrowing, which may vary according to the type of borrowing, and requiring property to be sold but may extend to requiring any appropriate and proportionate action by the authority to address financial risk. A risk mitigation direction is required to specify the time by which it must be complied with or for which it is to have effect.

578 Subsection (6) requires the Secretary of State to have regard to the impact on local service provision and the Best Value Duty in deciding whether to issue a direction.

579 Subsection (7) provides discretion to the Secretary of State to factor the impact upon central government objectives which might arise from a risk management direction in deciding whether to exercise the power to give that direction.

580 Subsection (9) defines 'financial risk' as the potential that a local authority will not be able to meet its current and planned spending within its resources amount exceeding the amount borrowed to facilitate the spending.

581 Subsection (8) provides for the limitations upon the issuing of risk mitigation directions under section 12C to apply for the purposes of this section, being that Secretary of State must provide notice to a local authority and have considered the written representation from that authority before a risk mitigation direction can be issued.

New section 12B: Risk thresholds

582 Subsection (1) establishes a process for assessing whether an authority's risk is excessive, by requiring Secretary of State to have regard to metrics in determining whether it is appropriate to the use the statutory powers. These capital risk metrics are how risk thresholds will be identified.

583 Subsection (2) defines capital risk metric' in reference to debt, capital and provision for repayment. It also provides a power to the Secretary of State to set further such metrics.

584 Subsection (3) allows the Secretary of State to make regulations regarding the thresholds for capital risk metrics and how the metrics should be calculated.

585 Subsection (4) imposes a duty to consult local authorities when setting additional metrics.

586 Subsection (5) provides definitions for 'capital asset', 'minimum revenue provision' and 'specified' as set out in this section.

587 Subsection (6) stipulates that particular thresholds might be set out in guidance.

New section 12C: Restriction of power to give risk-mitigation directions

588 Subsection (1) imposes a duty on the Secretary of State to provide a cessation notice to a local authority if a year has passed, they have followed the directions given and there appears to be no immediate financial risk.

589 Subsection (2) states that where the cessation notice has been given, risk mitigation directions may no longer be given in relation to risk that it was aware of at the time the notice was given.

590 Subsection (3) provides for consistency of definitions between 12A and 12C.

New section 12D: Duty to cooperate with independent expert

591 Subsection (1) outlines the circumstances in which this section applies, notably, when a trigger event has occurred, no cessation noticed has been issued and the Secretary of State has commenced a review into the local authority's finances.

592 Subsection (2) places a duty on a local authority to comply with an independent expert appointed by the Secretary of State to conduct a review, where it is reasonable for the local authority to do so.

593 Subsection (3) defines 'independent expert' as someone with expertise, who is neither working for the local authority nor is the Secretary of State. It also further provides consistency for the definition of a trigger event with the definition in 12A.

594 Subsections (3) to (8) make consequential changes to the 2003 Act as a result of sections 12A to D.

> #### Example
> Following the consideration of data on the total borrowing of a local authority, government decides to request further information from that authority. Government identifies that that authority not only has a borrowing that is 100 times its Service Expenditure but that it owns a number of investment assets. Government identifies that this could cause a significant risk to the local authority's ability to provide services in the future if there is an economic shock or consumer attitudes change, meaning demand for that commercial asset drastically reduces. Therefore, government engages with the local authority and seeks additional information to identify whether it has any further borrowing and its plans for its commercial assets. Government identifies that that local authority is due to substantially increase its supply of housing in its local area and that it is in an area with high demand and low supply of affordable housing. Government commissions an independent review and identifies that that local authority owns a range of commercial assets, including a cinema, three out-of-town shopping centres and a hotel. Government concludes that the borrowing cap would be inappropriate in this instance and, following advice from the independent reviewer, decides to request the local authority sell its cinema, out-of-town shopping centres and hotel within a time that allows it to meet its best value duty (as determined by the specialist advice on investment by the independent reviewer).

Council tax

Section 79: Long-term empty dwellings: England

Background

595 Currently, section 11B of the Local Government Finance Act 1992 ('the 1992 Act') provides for local authorities to apply extra council tax charge on properties defined as a long term empty dwelling. Subsection (8) defines long term empty dwellings as properties which are empty and substantially unfurnished for more than two years.

596 Section 11B(1C) provides that, from 1 April 2021 the maximum additional charges which may be applied are 100 percent of the standard council tax bill for long term empty dwellings which have remained empty for less than five years, up to 200 percent after five years and up to 300 percent after

10 years. Local authorities have the discretion on whether to apply a premium and at what level to apply the charge below these maximums.

Effect

597 The section changes the definition of "long- term empty dwelling" to reduce the minimum period for which a property must be empty in order to fall within the definition from two years to one.

598 Subsection (1)(a) provides that billing authorities must have regard to any guidance issued by the Secretary of State when applying the council tax charge on long term empty dwellings.

599 Subsection (1)(b) amends the duration in the definition of long-term empty dwelling in section 11B (8) from two years to one, allowing local authorities to charge the 100 percent premium a year earlier.

600 Subsection (2) provides that the amended definition of "long-term empty dwelling" has effect for financial years beginning on or after 1 April 2024. It also provides that it does not matter whether the amended period of 1 year mentioned in section 11B(8) of the 1992 Act begins before section 75 comes into force.

Section 80: Dwellings occupied periodically: England

Background

601 The section inserts new sections 11C and 11D into the 1992 Act.

New section 11C: Higher amount for dwellings occupied periodically: England

602 Subsections (1) and (2) have the effect of providing billing authorities in England with the discretion to increase the council tax payable on a dwelling where there is no resident, and which is substantially furnished (often referred to as a "second home"). The new section enables billing authorities to charge up to 100 percent extra of the standard council tax bill that would be payable if the property were occupied by two adults and no discounts were applicable.

603 Subsection 2(3) requires that, on the first occasion that a billing authority decides to apply a charge, it must make its determination to apply the charge at least one year before the beginning of the financial year in which the charge will be applied.

604 Subsection 2(4) provides that billing authorities must have regard to any guidance issued by the Secretary of State when applying the council tax charge on second homes.

605 Subsection 2(5) disapplies the discount available under section 11A(3), (4) or (4A) of the 1992 Act (a discount on the amount of council tax payable in respect of dwellings in which there are no residents) when a billing authority makes a determination under the new section 11C.

606 Subsection (6) provides that a determination can be varied or revoked, but only before the start of the financial year in which it will apply.

607 Subsections (7) and (8) stipulate that where a determination is made, the billing authority must publish a notice in at least one newspaper circulating in its area. The notice must be published within 21 days of the date of the determination.

New section 11D: Section 11C: regulations

608 Section 11D (1) and (2) gives the power to the Secretary of State to make regulations prescribing categories of dwelling in relation to which the billing authority will not be able to charge extra council tax on homes occupied periodically.

609 Section 11D (3) and (4) gives the power to the Secretary of State to make regulations to vary the maximum council tax charge which can be charged on second homes. No regulations can be made under these sections until draft regulations have been approved by the House of Commons.

Consequential Amendments

610 Subsection (3) makes provision for a number of consequential amendments to sections 11, 11A, 13, 66, 67, 113 and schedule 2 of the 1992 Act to take account of new sections 11C and 11D.

Commencement

611 Subsection 4 enables billing authorities to make a determination under section 11C for a financial year beginning on or after 1 April 2024, provided a determination was made at least one year before the start of the financial year in which it will apply.

Street names

Section 81: Alteration of street names: England

Background

612 At present, local authorities in Greater London, and many local authorities outside Greater London (through choice of procedure as explained below), can alter street names without the consent of those on the street.

613 In Greater London, section 6 of the London Buildings Acts (Amendment) Act 1939 ('the 1939 Act') allows a local authority to make a street name alteration if it thinks fit provided it has complied with certain notification requirements (one months' notice of the intended alteration being posted in the street or delivered to all buildings on that street) and it has had regard to any objections received in response to this notification.

614 Outside of Greater London, local authorities may adopt one of two alternative regimes for the alteration of street names by virtue of the Local Government Act 1972 ('The 1972 Act'). These are set out in section 21 of the Public Health Acts Amendment Act 1907 ('the 1907 Act') and section 18 of the Public Health Act 1925 Act ('the 1925 Act').

615 Where section 21 of the 1907 Act is adopted by a local authority, it requires two-thirds in number of the ratepayers and those liable to pay council tax in any street to have voted in favour of the street name alteration before it can be made.

616 Where section 18 of the 1925 Act is adopted by a local authority, it can alter the street name by order subject to certain notification requirements (the proposed order must be posted in the street not less than one month before the alteration is made). The order can be appealed by applying to the Magistrates' Court.

617 A local authority has a choice of whether to adopt the 1925 or the 1907 Act procedure by complying with certain notice requirements (advertisement in a local newspaper and notification to any affected parish or community council). This means local authorities can easily adopt the procedure which does not require the consent of those on the street to a street name alteration.

Effect

618 Regulations under this section will be used to set minimum requirements that a proposal for a street name change must meet, in order for a local authority to be able to make that change. The government will set a procedure which specifies whose consent must be sought, how to go about doing so and how consent may be given or withheld.

619 Section 81 requires local authorities in England to obtain necessary support before altering a street name. It provides power for the Secretary of State to set out in regulations how this necessary support can be established.

620 Subsection (1) defines the local authorities who are given replacement or modified powers in relation to street name alterations.

621 Subsections (2) and (5) introduce the requirement that a street name alteration can only be made by a local authority with necessary support. Subsection (2) does this by conferring a replacement power on local authorities outside of Greater London. Subsection (5) does this by modifying the existing power conferred on local authorities in Greater London by the 1939 Act.

622 Subsections (3) and (4) replicate the offence (with associated provision in relation to painting / marking) in section 21 of the 1907 Act and apply it to local authorities outside of Greater London. Level 1 on the standard scale is £200 as set by section 122 of the Sentencing Act 2020. The equivalent offence in section 10 of the 1939 Act, which applies to local authorities in Greater London, will continue to apply.

623 Subsection (6) establishes the requirement of sufficient local support, as well as other support for alterations of a specified kind, before a street name alteration can be made by a local authority.

624 Subsection (7) confers a power on the Secretary of State to make regulations providing for the ways in which sufficient local support, and other support for alterations of a specified kind, can be established before a street name alteration can be made by a local authority.

625 Subsection (8) provides a non-exhaustive list of those matters which the regulations may provide for in establishing sufficient local support. A referendum is specifically provided for as this may be one of the principal methods by which sufficient local support is established, but there may be alternative ways. For example, in the case of public squares there might be no, or only a negligible, "electorate" for the square, meaning a referendum might not be practical. The regulations are intended to deal with other procedural matters for establishing sufficient local support, like the timing and conduct of any referendum.

626 Subsection (9) requires local authorities to have regard to guidance published by the Secretary of State, which deals with the ways in which necessary support can be established and other associated functions of local authorities in relation to street name alterations.

627 Subsection (10) overrides any provision of a local Act which would conflict with section 81. An example of a local Act which is intended to be overridden is section 13 of the Oxfordshire Act 1985, which deals with street name alterations.

628 Subsection (11) defines 'street' by reference to the New Roads and Street Works Act 1991, so that a consistent definition applies to the powers of local authorities relating to street name alterations.

629 Subsection (12) and Schedule 5 make consequential amendments to existing legislation so that the new requirements in section 81 apply throughout England, and so that the provisions relation to street name alterations in the 1907 Act, 1925 Act and 1972 Act continue to apply to Wales. Currently, the legislation governing the changing of street names is spread out over four acts: the 1907 Act, the 1925 Act, the 1939 Act and the 1972 Act. The Act provides for a single legislative framework across England.

Other provision

Section 82: Powers of parish councils

Background

630 Parish Councils were first established in England and Wales by the Local Government Act 1894 ('the 1894 Act'). Amongst other things, that Act provided that certain powers, duties and liabilities of the vestries and churchwardens were transferred to parish councils (section 6), and that certain powers were conferred on parish councils (section 8) in order to establish a separation between the secular role of the parish council and the ecclesiastical role of the vestries and churchwardens. In particular, the powers which were transferred to and conferred on parish councils included powers to hold and

manage parish property (section 6(1)(c)(iii)) and the power to execute works in relation to parish property (section 8(1)(i)). In both cases the power transferred or conferred extended only to the secular property of the parish, which was described as "not being property relating to affairs of the church or held for an ecclesiastical purpose".

631 These secular and ecclesiastical roles are now carried out in England respectively by parish councils (by virtue of section 179(4)(a) of the Local Government Act 1972) and parochial church councils (by virtue of the Church of England Assembly (Powers) Act 1919 and the Parochial Church Councils (Powers) Measure 1921).

Effect

632 This section inserts new section 19A into the 1894 Act.

633 Subsection (1) of new section 19A clarifies that powers transferred to and conferred on parish councils under Part 1 of the 1894 Act do not affect any powers, duties or liabilities of parish councils conferred by or under any other enactment (whenever passed or made). In particular, this means that the extent of parish councils' powers in respect of parish property as described in sections 6 and 8 of the 1894 Act should not be taken as impliedly limiting their powers, duties or liabilities under any other enactment.

634 Subsection (2) of new section 19A specifies that this section does not apply in relation to community councils in Wales (to whom the powers of parish councils in Wales were transferred under section 179(4)(b) of the Local Government Act 1972).

Section 83: The Common Council of the City of London: removal of voting restrictions

Background

635 This section removes the restrictions on voting on housing issues placed on Members of the Common Council of the City of London when they are either tenants of the City of London Corporation or have a land interest in the matter to be decided.

636 This section omits section 618 subsections (3) and (4) of the Housing Act 1985 and section 224 subsections (3) and (4) of the Housing Act 1996 which prevents Members of the Common Council of the City of London from voting on matters arising out of those Acts and the Housing Association Act 1985 if they were tenants or had a land interest. It also makes it a criminal offence to do so.

Effect

637 The removal of the restrictions on voting that applied to the Common Councillors of the City of London means that the 'disclosable pecuniary interest' regime as set out in sections 31 to 34 of the Localism Act 2011 will apply. This allows for Members to apply and be granted a dispensation to discuss and vote on matters that relate to a declared interest, which includes a beneficial interest in land which is within the area of the relevant authority.

638 The effect of this is to bring the City of London into line with the disclosable interest regime that applies to all other local authorities.

Part 3: Planning

Chapter 1: Planning Data

Section 84: Power in relation to the processing of planning data

Background

639 This is a new provision. This section gives an appropriate authority the power to regulate the processing of planning data by planning authorities, to create binding "approved data standards" for that processing. It also provides planning authorities with the power to require planning data to be provided to them in accordance with the relevant approved data standards.

Effect

640 Subsection (1) allows an appropriate authority to make planning data regulations to specify which planning data can be made subject to approved data standards and requiring planning authorities to comply with those standards once created.

641 Subsection (2) defines "planning data" as information which is sent to or used by planning authorities under relevant enactments or for the purposes of planning or development.

642 Subsection (3) defines "approved data standards" as written standards with requirements regarding planning data, that may be published by an appropriate authority.

643 Subsection (4) stipulates that a devolved authority may only publish "approved data standards" in relation to purposes within their devolved competence.

Section 85: Power in relation to the provision of planning data

Effect

644 Subsection (1) allows planning authorities, by published notice, to require a person to provide them with planning data that complies with an approved data standard, that is applicable to that data.

645 Subsection (2) sets out exceptions for when planning authorities may not impose requirements under subsection (1), which include on the Crown and courts.

646 Subsection (3) stipulates that a person must comply with any approved data standards which are applicable that have been established through planning data regulations, in situations where discrepancies between planning enactments arise.

647 Subsection (4) allows planning authorities to reject all or any part of planning data from a person if they fail to comply with requirements under subsection (1).

648 Subsection (5) requires that planning authorities must serve the person with a notice by writing to inform them of this decision (under subsection (4)) and specify which aspects of planning data have been rejected, and, if any, what information or documents that accompany that planning data have been rejected.

649 Subsection (6) provides that where information is rejected as a result of a failure to comply with data standards, it must be treated as not having been submitted for the purposes set out in the notice rejecting that information.

650 Subsection (7) provides that if data is resubmitted and complies with the data standard, then the planning authority may treat it as having been submitted.

651 Subsection (8) allows regulations to make provision in support of planning authorities receiving or processing data in accordance with data standards set by the Secretary of State.

Example (1):

A planning authority creating their local plan: Currently planning authorities do not follow set standards in how they store or publish local plan information. Through these powers, contributions to the preparation of a local plan and the contents of a local plan will be required to be in accordance with approved data standards. This will render local plan information directly comparable, enabling cross-boundary matters to be dealt with more efficiently as well as the process of updating a local plan as planning authorities will benefit from having easily accessible standardised data.

Example (2):

Central government trying to identify all conservation areas nationally: In the existing system, planning authorities name their conservation areas using different terms (e.g., con area, cons area) making it hard for users of this data, such as central government to identify which areas are not suitable for development and what restrictions are in place. By setting a data standard which will govern the way in which planning authorities must name their conservation areas, and planning authorities publishing this machine-readable data, a national map of conservation areas can be developed which can be used to better safeguard areas of special importance.

Section 86: Power to require certain planning data to be made publicly available

Background

652 This is a new provision. This section gives appropriate authorities the power to make provisions to ensure that the standardised data created by planning authorities under section 84, will be made openly available.

Effect

653 Subsection (1) allows appropriate authorities to make regulations requiring a planning authority to publish specified data under an approved open licence.

654 Subsection (2) clarifies that a requirement to publish data under subsection (1) does not override any obligations of confidence or other relevant restrictions on making that data available.

655 Subsection (3) defines an "approved open licence" allowing the Secretary of State to determine the form and content of that licence. This subsection requires the licence to set out the terms and conditions for the use of planning data published under that licence, which must include use being free of charge to the public.

Example (1):

Planning authority publishing planning information online: Whilst the majority of planning authorities may publish their site allocations online, they do so in different ways. This includes publishing them on an online map, in their local plans or in a standalone document. These can be inaccessible to new digital services and are often not available to download by other users. The provisions of this power will mean that data will be made freely available in a standardised format.

Example (2):

Article 4 directions (which set out additional planning restrictions in particular locations) are not always published by planning authorities: There is currently no requirement for planning authorities to publish Article 4 directions that are issued in their local area. This has made it difficult for applicants to know what rules to follow when they submit a planning application. Through the new powers, the Secretary of State may require planning authorities to openly publish their Article 4 directions online, to a set data standard, enabling all interested parties to understand the rules for development in an area.

Section 87: Power to require use of approved planning data software in England

Background

656 This is a new provision. This section gives the Secretary of State the power to approve software, that is in accordance with data standards, to be used by planning authorities in England.

Effect

657 Subsection (1) gives the power to the Secretary of State to make regulations which may prohibit or limit the use of software by planning authorities where it has not been approved by the Secretary of State in writing.

658 Subsection (2) defines the term "planning data software" as software which can be used by a planning authority to process planning data.

Section 88: Disclosure of planning data does not infringe copyright in certain cases

Background

659 This section is to support the development of planning data software under section 87.

660 This section clarifies that in making planning data available which include copyright material for prescribed purposes, a planning authority does not infringe that copyright. In addition, it ensures that in using that planning data for those purposes a person does not infringe copyright.

Effect

661 Subsections (1) and (2) provide circumstances in which a planning authority or a person is not infringing on copyright when using copyrighted material. This is limited to the development, upgrading, modifying, maintaining or technical support of planning data software. Planning authorities are protected from copyright infringement when making copyrighted material available to a third party for use in these specified circumstances.

Section 89: Requirements to consult devolved administrations

Background

662 The provision provides that the Secretary of State must consult or obtain the consent of the relevant devolved administration where planning data regulations contain provision within devolved competence (see also Part 6 of the Act concerning environmental outcome reports).

Effect

663 Subsection (1) requires the Secretary of State to obtain consent from Scottish Ministers before making planning data regulations within Scottish devolved legislative competence or which Scottish Ministers could make themselves, unless the changes are consequential or incidental to provisions outside of their devolved legislative competence.

664 Subsection (2) requires the Secretary of State to consult Scottish Ministers before making planning data regulations where those regulations contain provision which confers, removes or modifies a function of the Scottish Ministers, unless that provision requires Scottish Ministers' consent under subsection (1) or the changes are consequential or incidental to provisions which would be outside Scottish Ministers' devolved legislative competence.

665 Subsection (3) defines Scottish devolved legislative competence as where the provisions could have been made by Scottish Ministers in an Act of the Scottish Parliament.

666 Subsection (4) requires the Secretary of State to obtain consent from Welsh Ministers before making planning data regulations within Welsh devolved legislative competence, unless the changes are consequential or incidental to provisions which would be outside of their devolved legislative competence.

667 Subsection (5) requires the Secretary of State to consult Welsh Ministers before making planning data regulations where those regulations contain provision which could be made by Welsh Ministers or which confers, removes or modifies a function of the Welsh Ministers or a devolved Welsh authority, unless that provision requires Welsh Ministers' consent under subsection (4) or the changes are consequential or incidental to provisions which would be outside of their devolved legislative competence.

668 Subsection (6) defines devolved Welsh authority by reference to the Government of Wales Act 2006. Subsection (7) defines Welsh devolved legislative competence as, where the provisions could have been made by Welsh Ministers in an Act of Senedd Cymru.

669 Subsection (8) requires the Secretary of State to obtain consent from the relevant Northern Ireland department before making planning data regulations within Northern Ireland devolved legislative competence, unless the changes are consequential or incidental to provisions which would be outside of their devolved legislative competence.

670 Subsection (9) requires the Secretary of State to consult a Northern Ireland department before making planning data regulations where those regulations contain provision which could be made by a Northern Ireland department or which confers, removes or modifies a function of a Northern Ireland department, unless that provision requires the consent of the relevant Northern Ireland department under subsection (8) or the changes are consequential or incidental to provisions which would be outside their devolved legislative competence.

671 Subsection (10) defines a Northern Ireland department. Subsection (11) defines Northern Ireland devolved legislative competence as where the provisions could have been made by the Northern Ireland Assembly in an Assembly Act without requiring the Secretary of State's consent.

672 Subsection (12) refers to the definition of "Minister of the Crown" used in this Part.

Section 90: Planning data regulations made by devolved authorities

673 This section introduces Schedule 13 which sets out restrictions that apply to devolved authorities when exercising the powers in Chapter 1.

Section 91: Interpretation of the Chapter

Effect

674 This section provides definitions of key terms that are used throughout Chapter 1 of Part 3.

675 Definitions of some of the terms cross refer to sections 84 and 87 as follows: planning data regulations (section 84(1)) ; planning data (section 84(2)); approved data standards (section 84 (3)); and planning data software (section 87(2)).

676 This section also defines other terms including "process", "provided", "public authority", "relevant planning authority" and "relevant planning enactment".

677 The definitions of "relevant planning authority" and "relevant planning enactment" set out the planning authorities which can be made subject to requirements under this chapter and the enactments which can give rise to a function for the purposes of the definition of planning data. The definition of relevant planning authorities provides a power for the Secretary of State to make regulations which specify additional relevant planning authorities, where those authorities either have functions relating to planning or development in England or relating to nationally significant infrastructure projects. The definition of relevant planning enactments provides a similar power to make regulations specifying further relevant planning enactments where they confer functions regarding planning or development in England or relating to nationally significant infrastructure projects.

Chapter 2: Development plans etc

Development plans and national policy

Section 92: Development plans: content

Background

678 The measures in this section are procedural in nature to create consistency. They are intended to update existing definitions and references to provisions in the Planning and Compulsory Purchase Act 2004, to reflect changes within this Act.

Effect

679 Subsection (1) gives effect to the amendments made by subsections (2) to (4) to section 38 of the Planning and Compulsory Purchase Act 2004.

680 Subsections (2) and (3) insert a new subsection (2A) into section 38 of the Planning and Compulsory Purchase Act 2004 which says what elements collectively constitute the development plan for any given area of land (whether that land is wholly within or cuts across local planning authority boundaries), replacing former section 38(2) and (3). It defines the development plan in terms of the commonly-used terms for its constituent documents, such as 'local plan'.

681 Subsection (4) substitutes a new subsection (9A) for former section 38(9) which cross—refers to the new provisions where the definitions of those elements are to be found.

Section 93: Role of development plan and national policy in England

Background

682 Where Planning Acts require that regard be had to the development plan in making any determination, section 38(6) of the Planning and Compulsory Purchase Act 2004 allowed departures from the development plan where material considerations indicated that the departure is warranted.

683 Section 93 replaces this formulation and provides that determinations must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.

Effect

684 Subsection (2) inserts subsections (5A)-(5C) into section 38 of the Planning and Compulsory Purchase Act 2004. Inserted subsection (5A) provides that subsections (5B) and (5C) apply in England where the planning Acts require that regard be had to a development plan and any national development management policies. Inserted subsection (5B) requires that those planning decisions must be made in accordance with that development plan and national development management policies unless material considerations strongly indicate otherwise. Subsection (5B) is subject to the existing provision regarding internal conflict between components of the development plan (subsection (5)) and to new subsection (5C), which provides that in the event of conflict between the development plan and national development management policy, national development management policy has primacy.

685 Subsection (3) disapplies in England the current formulation of the weight to be given to the development plan (leaving section 38(6) applying only to Wales).

686 Subsection (4) provides for the interpretation of national development management policy.

687 Subsection (5) introduces Schedule 6 which provides, where relevant, for regard to be had to the development plan and any national development management policies.

Section 94: National development management policies: meaning

Background

688 At present, the Planning and Compulsory Purchase Act 2004 does not give statutory weight to development management policies set out by the Secretary of State.

689 This section inserts new section 38ZA to provide a statutory basis for those policies.

690 This section places a duty on the Secretary of State to have regard to climate change mitigation and adaptation when preparing National Development Management Policies.

New section 38ZA: Meaning of "national development management policy

Effect

691 New section 38ZA(1) defines national development management policy. This provides that it is a policy of the Secretary of State which the Secretary of State, by direction, designates should be a national development management policy, and which concerns the development or use of land in England or any part of England.

692 New section 38ZA(2) allows the Secretary of State to modify or revoke national development management policies.

693 New section 38ZA(3) sets out that the Secretary of State must have regard to the need to mitigate, and adapt to, climate change when preparing or modifying policies which are to be designated as a national development management policies.

694 New section 38ZA(4) requires the Secretary of State to consult the public or others as the Secretary of State thinks appropriate before making, modifying or revoking a national development management policy.

695 New section 38ZA(5) sets out that the only cases in which no consultation need take place are those where the Secretary of State thinks that none is appropriate because either a proposed modification of a national development management policy does not materially affect a policy or only corrects an obvious error or omission; or, separately, that it is necessary or expedient for the Secretary of State to act urgently.

Spatial development strategy for London

Section 95: Contents of the spatial development strategy

Background

696 Existing legislation (section 334 of the Greater London Authority Act 1999) provides for the matters that may be included in the Mayor's spatial development strategy. This section updates and amends that provision.

697 The powers within the Greater London Authority Act 1999 Act 1999 ('the GLAA')regarding SDSs have been and potentially will be conferred on some combined authorities, and as such will affect areas other than just London.

Effect

698 This section updates and amends section 334 of the GLAA. It provides for greater clarity in the matters that can and cannot be covered by a spatial development strategy.

699 Subsection (1) sets out that this section will have the effect of amending section 334 of the GLAA.

700 Subsection (2) inserts (2A) to (2C) to set out what an SDS either must or may include. Subsection (2D) provides that any matter can only be considered a strategic matter for London if it is of strategic importance to more than one London borough. Subsection (2E) enables the Secretary of State to set out in regulations any further matters that the spatial development strategy may or must include.

701 Subsection (3) sets out a duty that the spatial development strategy must be designed to secure that the use and development of land contribute to the mitigation of, and adaptation to, climate change; and provides that the strategy should not include matters that extend beyond those prescribed, be site specific or be inconsistent with or repeat national development management policies.

Section 96: Adjustment of terminology

Background

702 This is a change from the previous position where the London Spatial Development Strategy, once prepared in its final form, was "published".

Effect

703 Section 96 sets out that the London Spatial Development Strategy, once prepared in its final form, is to be "Adopted" and that the Mayor must issue a statement of adoption. This change will also apply to any SDS prepared by a mayoral combined authority using the powers set out in the GLAAand conferred to them via regulations. This change mirrors the situation for the new Joint SDS provided for under new sections 15A to 15AI of the PCPA 2004 (as inserted by Schedule 7 to this Act). This change means that there is consistent terminology between Local Plans and SDSs and avoids differing contexts to the use of the term "published".

704 Subsections (1) to (4) set out the various sections in the GLAA and the Town and Country Planning Act 1990 where the terminology will be changed from publish, publishes, published, publication etc. to adopt, adopts, adopted, adoption etc.

Local planning

Section 97: Plan making

Effect

705 This section introduces Schedule 7. Schedule 7 replaces Part 2 of the Planning and Compulsory Purchase Act 2004, sections 15 to 37.

Neighbourhood planning

Section 98: Contents of a neighbourhood development plan

Background

706 The existing neighbourhood planning powers, which were introduced through the Localism Act 2011, allow a 'qualifying body' (i.e. a parish council or a neighbourhood forum in an unparished area) to prepare a neighbourhood development plan, through which they can set plan policies and, where they wish, allocate land for development, for their designated neighbourhood plan area.

Effect

707 Subsection (1) amends section 38B of PCPA 2004 (provisions that may be made by neighbourhood development plans) as detailed in subsections (2) to (4).

708 Subsection (2) provides that subsection (A1) will be inserted before subsection (1) and provides detail as to what can be included within a neighbourhood plan.

709 Subsection (A1)(a) sets out that a neighbourhood plan can allocate land for development in the neighbourhood area, setting out the amount, type and location, and timeframe for delivery of that development.

710 Subsection (A1)(b) sets out that a neighbourhood plan can include other land use or development related policies in relation to particular characteristics or circumstances of the neighbourhood area.

711 Subsection (A1)(c) sets out that a neighbourhood plan can detail any infrastructure and affordable housing requirements arising from development that complies with policies that relate to matters set out in paragraphs (a) to (b).

712 Subsection (A1)(d) sets out that a neighborhood plan can set specific design requirements that would need to be met (across the neighbourhood area or in particular locations) in order for planning permission for development to be granted.

713 Subsection (3) inserts subsection (2B) and (2C) after subsection (2A) of section 38B. Subsection (2B)(a) provides that so far as considered appropriate, the plan must be designed to secure that the development and use of land in the neighbourhood area contribute to the mitigation of, and adaptation to, climate change. Subsection (2B)(b) provides that so far as considered appropriate, the plan must be designed to take account of any local nature recovery strategy, under section 104 of the Environment Act 2021 that relates to all or part of the neighbourhood plan area. Subsection (2C) provides that a neighbourhood development plan must not include matters that are not permitted or required under subsections (A1) to (2A) or under regulations under subsection (4) and cannot be inconsistent with or repeat policy that already exists within national development management policy.

714 Subsection (4) inserts 'or permitting' into subsection (4)(b) after the 'requiring'.

Section 99: Neighbourhood development plans and orders: basic conditions

Background

715 Neighbourhood development plans and neighbourhood development orders must meet a set of basic conditions set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 before they can be put to referendum and ultimately 'made'.

Effect

716 This section sets out what should be included in neighbourhood development plans and orders, in regard to basic conditions.

717 Subsection 1(a) removes the historic inclusion of paragraph (e) under paragraph 8(2) of Schedule 4B to TCPA 1990 (basic conditions for making neighbourhood development order or neighbourhood plan) and replaces it with paragraph (ea) which sets out that a neighbourhood development order must not prevent housing development from taking place which is proposed in the development plan for the local area.

718 Subsection 1(b) inserts paragraph (fa) into paragraph 8(2) of Schedule 4B to TCPA 1990 (basic conditions for making neighbourhood development orders or neighbourhood plans) to require that neighbourhood development orders and neighbourhood plans must comply with requirements resulting from the new environmental assessment framework.

719 Subsection (2) introduces a new basic condition for neighbourhood plans only which sets out that they must not result in the development plan for the area proposing less housing development than would have been the case if the plan were not to be made.

720 Subsection (3) amends Schedule A2 to PCPA 2004 to make it consistent with changes to basic conditions, set out in Schedule 4B to TCPA 1990.

Requirement to assist with plan making

Section 100: Requirement to assist with certain plan making

Background

721 The section will support more effective gathering of the information required for authorities producing:

- Local Plans, minerals and waste plans, supplementary plans and policies map
- Spatial development strategies, Joint Spatial Development Strategies
- Infrastructure Delivery strategies
- Marine plans.

722 Schedule 7, which substitutes sections 15 to 37 of the PCPA 2004, abolishes the Duty to Co-operate, currently section 33A of the PCPA 2004. The Duty to Co-operate currently requires various bodies to co-operate on particular matters when performing certain activities, such as the production of a local plan.

723 Despite the abolition, there is a continued need for engagement between the plan-making authorities and prescribed public bodies when planning development to enable delivery of infrastructure at a local or strategic level.

724 Without such provision, there is a risk that those who need to be involved in the plan-making process will not be. This provision therefore ensures key stakeholders (the prescribed public bodies) who influence the delivery and planning of infrastructure are required to be involved in the plan-making process.

Effect

725 This section amends the PCPA 2004, inserting a new section 39A.

726 The new section 39A as a whole places a requirement on specific bodies ('prescribed public bodies') to assist in the plan-making process, if requested by a plan-making authority. The section requires 'prescribed public bodies' to do everything asked by the plan-making authorities (defined in subsection (4)), so long as it is within reason in relation to plan preparation and revision.

727 Subsection (3) contains a power enabling the Secretary of State to make regulations to further specify what a plan-making authority may or may not require 'prescribed public bodies' to do and to specify the form and content of any information requested.

728 Subsection (6) allows the Secretary of State to prescribe which persons or bodies are on the list of 'prescribed public bodies', for example a rail infrastructure operator. As per section 122(3) of the PCPA 2004, the Secretary of State may specify different provision for different prescribed public bodies.

> ### Example
>
> A local planning authority is doing preliminary scenario testing for their new local plan and they are considering an urban extension that requires new access roads and a train station expansion. The local planning authority contacts the relevant bodies to seek their views on the deliverability of these proposals.
>
> The relevant bodies are then required to engage once contacted by the authority. They then must do everything that the local authority 'reasonably requires' of it to engage in relation to the preparation of the local plan.
>
> The relevant bodies may need to provide the necessary evidence/information an authority requires to inform their strategic policy decision-making, or a relevant body may be consulted on the deliverability of a proposed scenario.

Minor and consequential amendments

Section 101: Minor and consequential amendments in connection with Chapter 2

Effect

729 This section introduces Schedule 8. Schedule 8 makes amendments to a number of pieces of relevant legislation. All these amendments are consequential upon the provisions of the Act.

Chapter 3: Heritage

Section 102: Regard to certain heritage assets in exercise of planning functions

Background

730 Local planning authorities are under a statutory duty to have special regard to the preservation of Listed Buildings and Conservation Areas in the exercising of their planning functions. This section

extends this duty to Scheduled Monuments, Protected Wreck Sites, Registered Parks and Gardens, Registered Battlefields or World Heritage Sites.

Effect

731 Subsection (1) amends the TCPA to insert section 58B.

Section 58B Duty of regard to certain heritage assets in granting planning permission or permission in principle

732 Subsection (1) specifies that a local planning authority or (as the case may be) the Secretary of State must have special regard to the desirability of preserving or enhancing a heritage asset or its setting when considering whether to grant planning permission or permission in principle for the development of land in England.

733 Subsection (2) specifies that for the purpose of subsection (1), preserving or enhancing a relevant asset or its setting includes, in particular, preserving or enhancing any feature, quality or characteristics of the asset or setting that contributes to the significance of the asset.

734 Subsection (3) inserts a table setting out a list of relevant assets. The table also sets out their significance, in relation to the relevant asset.

735 Subsection (4) specifies that the reference in subsection (1) to local planning authorities also includes the Mayor of London in relation to the granting of planning permission by Mayoral development order.

736 Subsection (5) specifies that nothing in 58B applies in relation to neighbourhood development orders (except as provided in Schedule 4B).

737 Subsection (2) specifies how the duty of regard should be applied to the process for making of neighbourhood development orders and its independent examination. Subsection (2)(a)(i) allows for consideration of preservation or enhancement, rather than just preservation. Subsection (2)(a)(ii) inserts a requirement to have special regard to the desirability of preserving or enhancing anything that is a relevant asset for the purposes of section 58B or its setting, in if it is appropriate to make the order (subparagraph (2)(ca)). Subsection (2)(b) inserts (4A) and (4B) which applies subparagraph (2)(ca) in relation to something that is a relevant asset for the purposes of section 58B only in so far as the order grants planning permission for development that affects that asset or its setting; and subsections (2) and (3)(b) of section 58B apply for the purposes of subparagraphs (2)(ca) and (4A) as they apply for the purposes of that section.

738 Subsection (3) amends section 16 of the Listed Building Act to allow for consideration of preservation or enhancement, rather than just preservation, when considering whether to grant listed building consent.

739 Subsection (4) amends sections 66 of the Listed Buildings Act to include the Mayor of London within subsection (1) and allow for consideration of preservation or enhancement, rather than just preservation, in subsections (1) and (2).

Section 103: Temporary stop notices in relation to listed buildings

Background

740 This section amends the Listed Buildings Act, enabling a local planning authority which suspects unauthorised works were being carried out on a listed building, to issue a temporary stop notice requiring the works to stop for up to 56 days, to allow the local authority to investigate the suspected breach and establish the facts of the case. This section also creates an offence for contravention of such a notice.

Effect

741 Subsection (1) amends the Listed Buildings Act.

742 Subsection (2) inserts a new section 44AA, 44AB and 44AC into the Listed Buildings Act.

Section 44AA: Temporary stop notices In England

743 Subsection (1) applies where it appears to a local planning authority in England that works have been or are being executed to listed buildings and where works involve a contravention of section 9(1) or (2).

744 Subsection (2) provides that the authority may issue a temporary stop notice if, having regard to the effect of the works, they consider it is expedient that either part, or full works be stopped immediately.

745 Subsection (3) outlines that a temporary stop notice must be in writing and must specify; the works in question, prohibit execution of the works specified in the notice, set out the authorities' reasons for the notice and include a statement of the effect of section 44AB.

746 Subsection (4) states that a temporary stop notice may be served on a person who appears to the authority that they are executing the works or causing their execution, to have an interest in the building or be an occupier of the building in which the notice has been served.

747 Subsection (5) requires the authority to display a copy of the notice including the date it was first displayed on the building.

748 Subsection (6) specifies that a temporary stop notice takes effect when the copy of it is displayed in accordance with subsection (5).

749 Subsection (7) states that a temporary stop notice ceases to have effect at the end of a period of 56 days beginning in accordance with the date specified in subsection (5) or if the notice specifies a shorter period at the end of that period.

750 Subsection (8) specifies that if the authority withdraws the notice before the time specified in subsection (7), the notice ceases to have effect on its withdrawal.

751 Subsection (9) outlines that a local planning authority may not issue a subsequent temporary stop notice in relation to the same works unless the authority has taken other enforcement action in relation to the contravention referred to in subsection (1)(b) since issuing the previous notice.

752 Subsection (10) specifies that the reference to other enforcement action in subsection (9) includes a reference to obtaining an injunction under section 44A.

753 Subsection (11) states that a temporary stop notice does not prohibit the execution of works of such description or in such circumstances as the Secretary of State may by regulations prescribe.

Section 44AB Temporary stop notices in England: Offence

754 Subsection (1) outlines that a person is guilty of an offence if the person contravenes or permits a contravention of a temporary stop notice which has been served on the person under section 44AA(4) or a copy of which has been displayed in accordance with section 44AA(5).

755 Subsection (2) states that an offence under this section may be charged by reference to a day or to a longer period and accordingly, a person may, in relation to the same temporary stop notice, be convicted of more than one offence under this section by reference to different periods.

756 Subsection (3) specifies that in proceedings against a person for an offence under this section, it is a defence for the person to show that the person did not know and could not reasonably have been expected to know of the existence of the temporary stop notice.

757 Subsection (4) outlines other defences for a person in proceedings for an offence under this section. This includes them being able to show that works to the building were urgently necessary and that it was not practical to secure safety or health in the preservation of the works, that the work carried out was to the limited to the minimum immediately necessary and that notice was given in writing to the local planning authority justifying in detail the works as soon as reasonably practical.

758 Subsection (5) states that a person guilty of an offence under this section is liable on summary conviction, or on conviction on indictment, to a fine.

759 Subsection (6) sets out the regard a court must have when imposing a fine on a person convicted under this section. The court must particularly have regard to any financial benefit which has accrued or appears likely to accrue to the person as a consequence of the offence.

Section 44AC Temporary stop notices in England: Compensation

760 Subsection (1) states that a person who has an interest in the building, on the day when a temporary stop notice is first displayed and makes a claim to the local planning authority within the prescribed time and manner, entitled to be paid compensation by the authority in respect of any loss or damage directly attributable to the effect of the notice.

761 Subsection (2) states that subsection (1) only applies if the works specified in the notice are not in contravention of section 9(1) or (2) or if the authority withdraws the notice (but only if the local planning authority withdraws the notice other than following the grant listed building consent after the date specified in the notice).

762 Subsection (3) states that loss or damages in respect of which compensation is payable includes a sum payable in respect of a breach of contract caused by taking necessary action to comply with the notice.

763 Subsection (4) states that no compensation is payable in the case of loss or damaged suffered if (a) the claimant was required to provide information under a relevant provision and (b) the loss or damaged could have been avoided if the claimant had provided the information, or otherwise co-operated with the planning authority, when responding to the notice.

764 Subsection (5) defines the relevant provisions in subsection (4)(a).

765 Subsection (3) inserts a reference to section 44AC into section 31 (general provisions as to the compensation for depreciation under this Part) of the Listed Buildings Act.

766 Subsection (4) amends the heading of section 44B (temporary stop notices) to refer to Wales only.

767 Subsection (5) amends the heading of section 44C (temporary stop notices: offences) to refer to Wales only and to cross-refer to section 44B.

768 Subsection (6) amends the heading of section 44D (compensation in relation to temporary stop notice) to refer to Wales only.

769 Subsection (7) applies sections 44AA, 44AB and 44AC to section 45 (concurrent enforcement functions in London of the Historic Buildings and Monuments Commission).

770 Subsection (8) provides for the ability for the Secretary of State to issue a temporary stop notice under section 46 (concurrent enforcement functions of the Secretary of State) in respect of any land in England.

771 Subsection (9) creates an exception for the application of 44AB to Crown land.

772 Subsection (10) allows for rights of entry under section 88 to a person duly authorized in writing by the Secretary of State, a local planning authority in England or, where the authorisation relates to a building situated in Greater London, the Commission, to secure the display of a temporary stop notices under section 44AA, ascertain whether a temporary stop notice is being complied with, or consider any claim for compensation under section 44AC.

773 Subsection (11) creates an exception for the application of section 88B subsection (1), requiring twenty-four hours notice be given prior to entry, to those people intending to enter land for either the purposes of displaying a temporary stop notice or ascertaining whether a temporary stop notice is being complied with.

774 Subsection (12) sets out how a temporary stop notice interacts with building preservation notices.

Section 104: Urgent works to listed buildings: occupied buildings and recovery of costs

Background

775 Subsections 54(4A), (5A) and 55(5A)-(5G) in the Planning (Listed Buildings and Conservation Areas) Act 1990 (the '1990 Act') were inserted by the Welsh Government in 2016 into the Listed Buildings Act to extend the scope and options for the recovery of costs in relation to urgent works on listed buildings.

776 Urgent works are generally restricted to urgent repairs to keep a building weather-proof and safe from collapse, or action to prevent vandalism or theft.

777 The changes in Wales also enabled that where the whole or part of the building is in residential use, works may be carried out only where they would not interfere unreasonably with that use. This is subject to giving the occupier and owner seven days' notice.

778 This section extends similar provisions to listed buildings in England.

779 The existing legislation allows for the recovery of costs for undertaking urgent works to a listed building through the serving of a notice on the owner. The owner may contest the recovery of expenses by making representations to the Secretary of State who will then determine the amount that is recoverable.

Effect

780 The effect of this section, by omitting subsection (4) of section 54B, extends the scope of existing provisions so that urgent works can be carried out to buildings that are both occupied and in use in England. Section 54(5A) sets out the relevant notice period that must be given in writing of the intention to carry out the works.

781 Sections 55(5A)-(5G) sets out the procedure for the recovery of costs associated with the works, including for decisions made by the Secretary of State.

782 Subsections (3)(c) and (d) amend the existing provisions to allow the Secretary of State in England to prescribe the interest rate that applies bringing the approach in line the existing Welsh measures Welsh measures.

Section 105: Removal of compensation for building preservation notice

Background

783 Having first consulted Historic England, Local planning authorities may serve a Building Preservation Notice ('BPN') on the owner and occupier of a building which is not listed, but which they consider is of special architectural or historic interest and is in danger of demolition or alteration in such a way as to affect its character as a building of such interest.

784 If a BPN is served, an application to list the building must be made at the same time to the Secretary of State (via Historic England). A BPN takes effect when it is served on the owner and occupier and is in force for a maximum of six months until either the Secretary of State for Culture, Media and Sport lists the building or informs the authority that they do not intend to do so. If no decision (either to list or not to list) is taken in the six-month period, the BPN will lapse.

785 Whilst the BPN is in force, the building is subject to the same protection as a listed building and any works to the building will require listed building consent. If works are carried out without listed building consent the local planning authority can take enforcement action, potentially resulting in the institution of criminal proceedings.

786 Previously, under the terms of section 29 of the Listed Buildings and Conservation 1990 Act ("the 1990 Act"), where a BPN ceases to have effect without the building being listed any person who at the time when the BPN was served has an interest in the building may make a claim to the local planning authority for compensation for any loss or damage directly attributable to the effect of the BPN. Section 105 removes the right to compensation.

Effect

787 Subsection (3) amends section 29 of the Listed Building Act to omit subsections (1) and (1A), thereby removing the right to claim compensation in England. Subsection (4) states that the change does not apply to any BPN issued before subsection (3) comes into force.

Chapter 4: Grant and Implementation of Planning Permission

Section 106: Street Votes

Background

788 This section introduces a new planning consent regime that enables residents to propose development on their street and, subject to the proposal meeting certain requirements, to vote on whether that development should be given planning permission. This is intended to encourage residents to consider the potential for additional development on their streets, and support a gentle increase in densities, in particular, in areas where additional new homes are needed.

Effect

789 Section 106 makes provision for street vote development orders. The orders will grant planning permission in relation to street areas in England. The provisions confer regulation-making powers relating to the preparation and making of an order, including provision for independent examination and a referendum.

790 Subsection (1) amends the TCPA 1990 in accordance with subsection (2) by inserting new sections 61QA to 61QM.

Section 61QA Street vote development orders

791 Subsection (1) specifies that a qualifying group or someone acting on the group's behalf can submit a proposal for a street vote development order.

792 Subsection (2) specifies that a street vote development order grants planning permission for development specified in that order.

Section 61QB Qualifying groups

793 Subsection (1) specifies that a group of individuals meets the criteria for a "qualifying group" if the members of the group meet the conditions specified in subsection (2) and the group is made of up of a minimum number or proportion of people prescribed in regulations.

794 Subsection (2) specifies that individuals must be registered to vote at an address in the street area and be on the register of local government electors of a relevant council on a prescribed date.

795 Subsections (3) and (4) provide definitions of terms used in this section.

Section 61QC Meaning of "street area"

796 Subsection (1) specifies that an area meets the criteria for a street area if it is in England, meets the definition prescribed in regulations and is not within an excluded area.

797 Subsection (2) specifies the list of excluded areas and grants the Secretary of State the power to add additional excluded areas in regulations.

798 Subsection (3) defines a "world heritage property" which is on the list of excluded areas.

Section 61QD Process for making street vote development orders

799 Subsection (1) specifies that the Secretary of State must set out the process for preparing and making a street vote development order in regulations (known as SVDO regulations).

800 Subsection (2) specifies that the regulations made under subsection (1) must make provision for the appointment by the Secretary of State of a person or persons to handle and examine proposals and make street vote development orders on behalf of the Secretary of State and must set out the circumstances when an order may be made, which must include a requirement to hold a referendum.

801 Subsection (3) specifies other provision, in particular, that the Secretary of State can make in SVDO regulations in respect of the process for making street vote development orders, such as the functions of the qualifying group, the independent examiner and the local planning authority, submission requirements for proposals, the examination procedure, publicity and consultation requirements and the making and consideration of representations on proposals.

Section 61QE Referendums

802 Subsection (1) specifies that the Secretary of State can make SVDO regulations setting out the process and requirements for holding a referendum on a street vote development order, including in particular, provision for the functions of local councils and the conduct of a referendum, voter eligibility, publicity requirements, limits on expenditure and the threshold for approval.

803 Subsection (2) specifies that for the purpose of making provision for holding a referendum, regulations can apply or incorporate provision made by existing electoral enactments, but subsection (3) specifies that any provision applying offences cannot specify harsher penalties for committing those offences.

804 Subsection (4) requires the Secretary of State to consult the Electoral Commission before making regulations on referendums.

805 Subsection (5) specifies that reference to enactments mean enactments whenever they are passed or made.

Section 61QF Regulations: general provisions

806 This section specifies that SVDO regulations may (a) provide for exemptions including exemptions which are subject to conditions and (b) confer a function on a person including functions involving the exercise of discretion.

Section 61QG Provision that may be made by a street vote development order

807 Subsection (1) specifies that a street vote development order can relate to all the land, some of the land or a particular site specified in the order.

808 Subsection (2) specifies that street vote development orders can only grant planning permission for development of a prescribed type, which is not excluded development and meets other prescribed conditions.

809 Subsection (3) specifies that a street vote development order can make different provision for different purposes.

Section 61QH Meaning of "excluded development"

810 This section lists development for which permission cannot be granted by a street vote development order and gives the Secretary of State the power to add additional categories of excluded development in regulations.

Section 61QI Permission granted by street vote development orders

811 Subsection (1)(a) specifies that the Secretary of State can, by regulations impose conditions or limitations on planning permission granted by a street vote development order including, by virtue of subsection (6), conditions that confer a function on any person including a function involving the exercise of discretion.

812 Subsection (1)(b) sets out that planning permission is also subject to conditions or limitations specified in the order itself (but see subsections (4) and (5)).

813 Subsection (2) specifies that conditions specified in the order can have the effect that:

a. development (or part of the development) may not be commenced; or

b. anything created in the course of the development may not be occupied or used,

c. unless a relevant obligation (i.e. a section 106 obligation or section 278 agreement – see subsection (9)) has been entered into. Subsection (3) specifies that such obligations can involve the payment of money or rights over land.

814 Subsection (4) specifies that a condition can only require a person to enter into a s.106 obligation if the obligation would meet the tests listed in (4)(a)-(c). Subsection 4(d) grants the Secretary of State a power to set out in regulations additional requirements that must be met.

815 Subsection (5) enables the Secretary of State to prescribe planning conditions and limitations that cannot be imposed, or can only be imposed in prescribed circumstances, or prescribe circumstances where no conditions or limitations at all can be imposed.

816 Subsection (7) specifies that if a grant of planning permission through a street vote development order is withdrawn by revocation the development can be completed if it is already underway, but subsection (8) allows for the revoking order to disapply subsection (7).

817 Subsection (9) defines a relevant obligation.

Section 61QJ Revocation or modification of street vote development orders

818 Subsection (1) specifies that the Secretary of State can revoke or modify planning permission granted by a street vote development order and subsection (2) specifies that a local planning authority can revoke an order but only with the consent of the Secretary of State.

819 Subsection (3) specifies that if a street vote development order is revoked, the Secretary of State or local planning authority must provide reasons for the decision.

820 Subsection (4) specifies that a person appointed by the Secretary of State can modify a street vote development order to correct errors.

821 Subsection (5) specifies that when a street vote development order is modified it must be done by an order replacing the original order.

822 Subsection (6) specifies that the Secretary of State can set out the process for modifying or revoking a street vote development order in regulations and subsection (7) sets out what provision regulations may, in particular, include.

Section 61QK Financial assistance in relation to street votes

823 Subsection (1) specifies that the Secretary of State may do anything considered appropriate for the purpose of promoting street vote development orders and provide advice and assistance in relation to street vote development orders.

824 Subsection (2) specifies that assistance provided by the Secretary of State can include financial assistance or the provision of support through a contractor.

825 Subsection (3) clarifies that the advice and support can include training or education and that financial assistance can take any form including a loan.

Section 61QL Street votes: connected modifications

826 This provision grants a power for the Secretary of State to make regulations modifying the application of Schedule 7A of the TCPA (biodiversity net gain) in respect of street vote development orders.

Section 61QM Interpretation

827 This provision defines terms used in sections 61A to 61QL.

828 Subsection (3) introduces Schedule 9 which makes minor and consequential amendments in connection with section 106.

Section 107: Street votes: community infrastructure levy

Background

829 This section amends the community infrastructure levy (CIL) provisions in the Planning Act 2008 to facilitate the levying of CIL on development consented through street vote development orders ("street vote development") by:

a. allowing CIL regulations to provide for the procedure – which may be an expedited procedure – applicable where a CIL charging authority proposes to introduce or revise CIL rates applicable (only) to street vote development, subject to a power for the Secretary of State to direct a review if they consider that the rates set via that procedure significantly impair, or risk significantly impairing, the viability of street vote development; and

b. expressly providing that CIL regulations may allow CIL received in respect of street vote development to be spent on affordable housing.

Effect

830 The introduction or revision of a CIL charging schedule by a CIL charging authority is ordinarily governed by sections 212-213 and 214(1) and (2) of the Planning Act 2008, together with provisions of CIL regulations made under those sections. Subsection (3) provides for an exception to that, where a CIL charging authority is:

a. proposing to introduce CIL rates in its area only to charge CIL on street vote development; or

b. proposing to revise the CIL rates chargeable in its area, but only those rates applicable to street vote development.

831 Specifically, subsection (3) amends section 211 of the Planning Act 2008 so as to disapply sections 212-213 and 214(1) and (2) in those cases, and instead provides a power for CIL regulations to include provision for the procedure in those cases. This could be used to allow for an expedited procedure for setting CIL rates for street vote development that can be used in cases where charging authorities have no immediate plans to make wider updates to their charging schedules, or where they do not have a CIL charging schedule in place.

832 Subsections (2)(a), (4), (5), (6) and (7) make amendments to Part 11 of the Planning Act 2008 consequential on the amendment made by subsection (3). Subsection (2)(b) makes a correcting and clarifying amendment to section 211(10) of the Planning Act 2008 which is not directly related to street vote development, but it is expedient to make that amendment here.

833 Subsection (8) inserts a new section 214A into the Planning Act 2008, which provides the Secretary of State with new intervention powers to direct a charging authority to review its CIL charging schedule in cases where the CIL rates applicable to street vote development set by the authority via provision made under new section 211(11) (inserted by subsection (3)) substantially impair, or risk substantially impairing, the viability of street vote development. Under new section 214A(3), where the Secretary of State chooses to use this power, the charging authority must consider revising its CIL rates and notify the Secretary of State of its decision with reasons; if the decision is to revise its CIL rates, it must do so within a reasonable time. If the charging authority does not comply with the Secretary of State's direction (i.e. it fails to reach a decision in a reasonable time to a standard which the Secretary of State considers adequate), new section 214A(5) allows the Secretary of State to appoint another person to review the charging schedule instead. If that person decides that the CIL rates should be revised, subsection (6) requires the charging authority to revise its rates within a reasonable time. In any case where the charging authority is required to revise its CIL rates following a review under new section 214A, but the charging authority fails to do so, the Secretary of State may appoint a person to revise the CIL rates on behalf of the charging authority. New section 214A(8) provides powers to set out the procedure and other requirements in this regard in CIL regulations.

834 Existing section 216(1) of the Planning Act 2008 provides that, with limited exceptions, CIL regulations must require a CIL charging authority to apply CIL receipts to 'infrastructure'. Existing section 216(2) sets out a non-exhaustive list of what 'infrastructure' includes. This list does not currently include 'affordable housing'.

835 Subsection (9) amends section .216(2) of the Planning Act 2008 to provide that, where CIL is received in respect of street vote development, the infrastructure that CIL regulations may require it to be spent on includes 'affordable housing'. For these purposes, affordable housing is defined as social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008, and any other description of housing that CIL regulations may specify (see new section 216(8) inserted by subsection (10)).

Section 108: Street votes: modifications of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Effect

836 This provision provides a power to modify the application of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 in relation to the grant of planning permission by a street vote development order.

Section 109: Crown development

Background

837 This section inserts new sections 293B to 293J into the Town and Country Planning Act ('the Act') to provide for two new routes to apply for planning permission for the development of Crown land in England; where the development is considered to be of national importance, and where it is necessary that the development be carried out as a matter of urgency (293B to 293C), and where development is of national importance but not considered to be urgent (293D to 293J). The provisions allow the appropriate authority (as defined in section 293 of the Act, such as Government Departments and others with a Crown or Duchy Interest) to apply to the Secretary of State for planning permission in these two circumstances instead of the Local Planning Authority.

838 These apply to England only and replace the existing Crown Land provisions in 293A, which remain in place for Wales only.

293B Urgent Crown development: applications to the Secretary of State

Effect

839 Section 293B(1) and (2) enables appropriate authorities to apply directly to the Secretary of State for planning permission for Crown development where the appropriate authority considers the development is of national importance and necessary that the development is carried out urgently.

840 Subsection (3) has the effect of defining the types of applications which are within scope of this provision ("relevant applications"). Applications under section 73 (applications to develop land without compliance with conditions previously attached) are excluded. The Secretary of State also has a power to make regulations to further exclude other types of application from the scope of these provisions. This also allows for decisions for reserved matters applications.

841 Subsection (4) requires that applications under this route must contain such information which may be set out in a development order, and a statement setting out the grounds for the application.

842 Subsection (5) requires that Secretary of State must give notice, as soon as possible, to the appropriate authority as to his decision to agree or refuse to determine the application on the basis that the proposed development meets the criteria of being of national importance and required urgently ('initial assessment'). Subsection (6) requires that the Secretary of State may only determine the application if the Secretary of State considers it meets these criteria. Subsection (7) requires that the Secretary of State must send a copy of a notice given under (5) to the local planning authority to whom the application could otherwise have been made.

843 Subsection (8) allows Secretary of State to require further information from the appropriate authority in order to assist in making the initial assessment, or determining the application.

844 Subsection (9) provides that further provisions may be made through a development order regarding certain aspects of the application, such as the form and manner of the application, notices and their form and content and publicity and a development order may make different provision for different cases or different classes of development (subsection (12)). Subsection (10) allows a development order to make provision restricting the public disclosure of information where it is deemed 'sensitive', as defined in subsection (11).

845 Subsection (13) allows the Secretary of State to give directions requiring a local planning authority to do things in relation to an application made under section 293B. Subsection (14) sets out that directions under (13) may be given either in relation to a particular application or in relation to applications more generally, and to a particular authority or authorities more generally.

293C Urgent Crown development: determination of applications by the Secretary of State

Effect

846 Subsections 293C(1) and (4) have the effect of enabling the Secretary of State to grant planning permission either conditionally or unconditionally or refuse planning permission where an application has been submitted to the Secretary of State under section 293B and where they have given notice that the Secretary of State considers the proposed development is of national importance and is required urgently.

847 Subsection (2) has the effect of requiring the Secretary of State to consult the local planning authority, to which an application could have otherwise been made, and any other persons the Secretary of State considered appropriate before determining the application under section 293B. Subsection (3) has the effect of allowing the Secretary of State to make a further provision about consultation in a development order, including specifying other persons to be consulted, the manner in which they may be consulted, and may apply different provision for different cases or classes of development.

848 Subsection (5) has the effect of requiring the Secretary of State to notify the local planning authority, whom an application could have otherwise been made, when a decision is made on applications submitted under section 293B.

849 Subsection (6) sets out that decisions of the Secretary of State on applications under section 293B are final, meaning there is no right to appeal other than to question the validity of the decision under section 288.

850 Subsection (7) enables the Secretary of State to determine applications where development has already carried out: without planning permission, where planning permission has been granted for a limited period, or without complying with some condition subject to which permission was granted. It also enables Secretary of State to grant planning permission to have effect from the date on which the development was carried out, or if it was carried out in accordance with planning permission granted for a limited period - the end of that period.

851 Subsection (8) has the effect of exempting the Secretary of State from certain duties when considering whether to grant planning permission for development submitted under section 293B. These are: the new duty of regard to certain heritage assets in granting permissions, set out in section 58B; and duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

293D Crown development: applications to the Secretary of State

Effect

852 Section 293D(1) and (2) enables appropriate authorities to apply directly to the Secretary of State for planning permission for Crown development where the appropriate authority considers the development is of national importance. Subsection (3) has the effect of defining the types of applications which are within scope of this provision "relevant applications". Applications under section 73 (applications to develop land without compliance with conditions previously attached) are excluded. The Secretary of State also has a power to make regulations to further exclude other types of application from the scope of these provisions.

853 Subsection (4) requires that Secretary of State must give notice to the appropriate authority as to whether the Secretary of State considers that the proposed development is of national importance. Subsection (5) requires the Secretary of State to determine the application if the Secretary of State considers that the proposed development meets this criterion. Subsections (6) to (9) provides that if the Secretary of State does not consider the proposed development meets this criterion they may

refer the application either: to the local planning authority whom it would have been otherwise made for them to determine (subsection (7)); or direct that the application to be determined by the Secretary of State, subject to agreement with the applicant, under section 62A of the Act where the application could otherwise have been made under that section (subsections (8) and (9)).

293E Crown development: connected applications to the Secretary of State

Effect

854 Section 293E enables appropriate authorities to also submit 'connected applications' directly to the Secretary of State where they have made a relevant application under section 293D, and Secretary of State considers the proposed development is of national importance. These include applications for Listed Building Consent, Hazardous Substance consent, or where they meet a prescribed description set out in a development order – this is so the various connected consents can be considered by the same decision-maker. If the Secretary of State does not consider these applications are 'connected' to the relevant application the Secretary of State may refer the application to the authority to whom it would have been otherwise been made for them to determine.

293F Applications under section 293D or 293E: supplementary matters

Effect

855 Section 293F(1) sets out that decisions made by the Secretary of State under sections 293D and 293E are final, so there is no right of appeal, other than to question the validity of the decision under section 288. Subsections (2) and (3) allows the Secretary of State to give directions requiring a local planning authority or hazardous substances authority to do things in relation to an application made under sections 293D or 293E. Directions may be given either in relation to a particular application or in relation to applications more generally, and to a particular authority or authorities more generally.

293G Notifying parish councils of applications under section 293D(2)

Effect

856 Section 293G requires that if a parish council would be entitled to be notified of applications (under paragraph 8 of Schedule 1 of the Act) if the application were made to the local planning authority, the Secretary of State must notify the council of the application and any alterations accepted to the proposed development by the Secretary of State if it is to be determined under section 293D(2). This has the effect of ensuring that parish councils are notified of applications when determined by the Secretary of State in the same way under the Crown development route as if it was submitted to the local planning authority.

293 H Provisions applying to applications made under section 293D or 293E

Effect

857 Section 293H has the effect that applications made under 293D and 293E are to be subject to the same procedures and to be determined in accordance with the same criteria, with appropriate modifications, that apply to such applications made to the local planning authority or hazardous substances authority, as applicable. Subsection (6) allows a development order which makes provision under this section (applying development orders which apply to applications made to the local planning authority, to applications under sections 293D and 293B with or without modifications) to prevent the public disclosure of sensitive information (as defined in subsection (7)).

293I Deciding applications made under section 293D and 293E

Effect

858 Section 293I, subject to section 293J, has the effect of enabling the Secretary of State to appoint a person to determine applications under sections 293D and 293E, instead of the Secretary of State, and they in effect have the same powers and subject to the same duties that the Secretary of State has under section 293H. This appointment can be revoked at any time before the person has determined the application and another person can be appointed in their place.

293J Applications under section 293D or 293E: determination by the Secretary of State

Effect

859 Section 293J has the effect of enabling the Secretary of State to direct that an application under section 293D or 293E can be determined by the Secretary of State, instead of a person appointed to determine the application on their behalf, before a decision is made. The Secretary of State may also make a further direction to revoke such directions at any time before a decision is issued. In these instances, the Secretary of State is required to serve a copy of the direction (or further direction) to the person appointed (or previously appointed) under section 293I, the applicant, and the local planning authority where such a direction is issued.

860 Subsection (3) introduces Schedule 10 which makes consequential amendments in connection with section 109.

Section 110: Material variations in planning permission

Background

861 Sections 73 and 96A of the TCPA 1990 provide powers to vary or remove planning conditions attached to grants of planning permission and make non-material amendments to a planning permission, respectively.

862 However, the existing framework for varying planning permissions is often seen as confusing, burdensome, and overly restrictive by applicants and local planning authorities. Recent case law has compounded these issues.

863 This section introduces a new route to vary an existing planning permission to allow greater flexibility for making non-substantial changes to planning permissions (including to the descriptor of development and imposed conditions) and will help address the complexities described above. Planning permission under the new power will only be permitted where the local planning authority is satisfied that its effect will not be substantially different from that of the existing permission.

864 This will enable sensible and practical changes to be made to planning permissions which are not possible under the existing framework without the submission of multiple applications under different routes. For example, if an applicant wanted to make a material variation to a planning condition and consequently needed to amend the descriptor of development to accommodate, this would necessitate applications under both sections 73 (to vary the condition) and 96A (to amend the descriptor).

Effect

865 This section amends the TCPA 1990 (subsection (1)) to insert a new section 73B (Applications for permission not substantially different from existing permission) into Part 3 of the 1990 Act (subsection (2)). The effect of this new section is set out below.

73B Applications for permission not substantially different from existing permission

866 Subsection (1) of the new section 73B sets out that an application for planning permission should be determined in accordance with this section if the applicant requests that it be determined under the new route, proposes the conditions (if any) subject to which permission should be granted, and identifies an existing permission that the applicant seeks to amend.

867 Subsection (2) sets out that the existing permission (under subsection (1)(c)) must not have been granted under section 73, section 73A or this section of the TCPA 1990, or other than on application.

868 Subsection (3) sets out that the applicant may also identify for the purposes of an application to be determined in accordance with this section a planning permission (a) that was granted under section 73 or this section by reference to the existing permission, or (b) that forms part of a sequence of planning permissions granted under section 73 or this section, the first of which was granted by reference to the existing permission.

869 Subsection (4) provides a development order must set out how an applicant is to do as mentioned in subsections (1) and (3).

870 Subsection (5) requires that planning permission may be granted only if the local planning authority is satisfied that the effect of permission applied for will not be substantially different from that of the existing permission.

871 Subsection (6) provides that planning permission may not be granted in a way such that the time by which development must be begun or the time by which an application for approval of reserved matters is to be made differs from the existing permission.

872 Subsection (7) requires that when determining an application made under the new route, a local planning authority must limit its considerations to those respects in which the permission being applied for (if granted in the terms of any proposal under subsection 1(b)) would differ in effect from (a) the existing permission, and (b) each planning permission (if any) identified in accordance with subsection (3). Section 70(2) of the TCPA 1990 is subject to the constraints in this subsection.

873 Subsection (8) states if that the local planning authority decides not to grant planning permission under this section, it must refuse the application (i.e. the application cannot instead be considered under another route to planning permission. Rather, the application must be refused (or withdrawn by the applicant), and a new application made under the relevant route must be submitted to the local planning authority for consideration).

874 Subsection (9) requires that for the purposes of this section, the effect of a planning permission is to be assessed with respect to both the development authorised and any conditions to which it is subject.

875 Subsection (10) provides that when determining the effect of an existing planning permission under subsection (5), any changes made under section 96A should be disregarded (although any such changes do fall for consideration when the local planning authority determines an application under subsection (7)).

876 Subsection (11) relates to the interactions of the new route to planning permission with the mandatory biodiversity net gain condition under paragraph 13 of Schedule 7A (biodiversity gain condition) of the TCPA 1990. Subsection (11)(a) sets out the new route to planning permission cannot be used to disapply that mandatory biodiversity net gain condition, while subsection (11)(b) requires that the mandatory condition is disregarded for the purposes of subsection (1)(b), (5) and (7). Subsection (11)(c) sets out a biodiversity gain plan is to be regarded as approved where it attaches to a permission granted under the new route where: (i) the existing permission is subject to the

mandatory condition; (ii) the biodiversity gain plan was approved for the purposes of the existing permission; (iii) planning permission is granted under this new route; and (iv) the development permitted under the new route is consistent with the post-development biodiversity value of the on-site habitat as detailed in the biodiversity gain plan approved for the purposes of the existing permission.

877 Subsection (12) ensures that new section 73B cannot be used to disapply the condition relating to development progress reports (new section 90B TCPA 1990).

878 Subsection (13) requires that for the purposes of applications for planning permission made to or to be determined by the Secretary of State, any references to local planning authority in this section is to be read as a reference to the Secretary of State.

879 Subsection (14)(a) states each reference to planning permission for the purposes of applications for permission in principle should also be read as a reference to permission in principle. For the purposes of applications made under the new route in relation to applications for permission in principle, subsection (14)(b) sets out that the provisions of this section relating to conditions should be omitted.

880 Subsection (15) sets out that any permission in principle, granted in accordance with the new route, for the purposes of section 70(2ZZC), is to be taken as having come into force when the existing permission in principle identified under subsection (1)(c) came into force.

881 Subsection (3) amends section 62A(2) of the TCPA 1990 to provide that, where a local planning authority is designated by the Secretary of State under section 62B of the Act, applications for planning permission made under the new route do not constitute a "relevant application" for the purposes of section 62A(1).

882 Subsection (4) amends subsection (8) of, and inserts new subsections (10) and (11) into, section 70A (Power to decline to determine subsequent application) of the TCPA 1990. This provides that an application made under the new route is not to be considered similar to an earlier application determined under a different route to planning permission, and that an application made under the new route should be considered similar to an earlier application under the new route only if the local planning authority think that the difference of effect under subsection 73B(7) is the same or substantially the same in the case of both applications.

883 Subsection (5) amends subsection (5) of, and inserts new subsections (5A) and (5B) into, section 70B (Power to decline to determine overlapping application) of the TCPA 1990. The effect is the same as under subsection (4), however with respect to section 70B of the TCPA 1990.

Section 111: Development commencement notices

Background

884 This section inserts new section 93G into the TCPA 1990.

885 New section 93G imposes a duty on the person intending to carry out a development to give a commencement notice ('CN') before any development has begun on a site. It requires the date on which a person expects a development to begin, and other relevant information set out in the example below.

886 In the event of failure to comply, the local planning authority has a power to require the information requested in the commencement notice by serving notice under section 93G(5).

887 Section 69(1) of the TCPA 1990 is also amended and requires that commencement notices are put on a local planning authority's public register in order to allow public scrutiny of them. New section 69(2)(c) sets out the information the public register must contain.

Effect

93G Commencement notices

888 Subsection (1) establishes that commencement notices apply where a planning permission has been granted for the development of any land in England and where the development is of a prescribed description as set out in regulations.

889 Before a development has begun, the person proposing to carry out the development must give a notice in the form of a commencement notice to the local planning authority specifying the expected start date of development (subsection (2)).

890 Subsection (3) provides that, once a person has submitted a commencement notice, they may submit a further one if a new start date is proposed and must do so if the development is not commenced on the date given in the initial commencement notice.

891 Subsection (4) requires a commencement notice to be in a form and manner that may be prescribed in regulations.

892 Subsection (5) provides that, where a person has failed to give notice of a development's commencement, a local planning authority may serve a notice on any relevant person as described in subsection (6) and require that they give information about the time of commencement and any other information specified in the notice.

893 Subsection (6) defines a relevant person as including the person proposing to carry out the development, or the person responsible for informing the local planning authority if the development is not commencing on the date previously given. It also applies to any person who is the owner or occupier of the land to which the planning permission relates, or who has any other interest in that land.

894 Subsection (7) sets out that any person who fails to provide the information required by the notice served on them under subsection (5) within 21 days beginning with the date of service, is guilty of an offence.

895 Subsection (8) states that it is a defence for a person who is charged with an offence, having failed to provide the information required by the subsection (5) notice, to prove that they had a reasonable excuse for failing to do so.

896 Under subsection (9) a person guilty of the offence under subsection (7) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale (£1,000).

897 Subsection (10) states, when granting planning permission for the development of any land, a local planning authority must by notice inform the applicant of the need to provide a commencement notice before development starts, and a further commencement notice if the development is not commenced on the date initially given, as well as the consequences of non-compliance with those requirements.

898 Guidance will be issued to support local planning authorities in exercising these powers and in order to comply with their obligation under subsection (10).

899 Subsection (3) is consequential upon the insertion of this new section and subsection (4) amends section 69 of the TCPA to include commencement notices on the public register of applications etc.

Example 1: Serving a CN before development has commenced

A developer is about to start work on a site that has a residential planning permission on 4th January 2023. On 1st January 2023, in advance of carrying out the work, they serve the required CN outlining:

- The details of the planning permission which authorises the development which is about to be commenced.
- That the permission is not an alternative or variation to a previously granted permission.
- The 4th January 2023 intended commencement date of the development.
- The proposed delivery rate of the scheme (i.e., the numbers of dwellings per financial year that will be built out over xx years and any phases of development).
- The date on which development is expected to be substantially completed.
- The name and contact details of the person sending the notice.
- The name and contact details of the person carrying out the development.
- The name and contact details of the owner(s) of the land.
- A signed declaration confirming the contents of the notice and liability for any work or non-work taking place on the site.

On receipt of the CN, the LPA ensures the correct information has been included. On accepting the CN, it places the notice on the statutory register, as required in section 69 (1) of the TCPA 1990. The document is now publicly accessible.

Section 112: Completion notices

Background

900 Sections 94 to 96 of the TCPA 1990 relate to completion notices. Local planning authorities can serve completion notices on unfinished developments where they are of the opinion that the development will not be completed in a reasonable period specifying that planning permission for any incomplete parts of the development will cease unless it is completed within the period specified in the notice.

901 Under existing law, a served completion notice can only take effect once it has been confirmed by the Secretary of State – in effect, requiring the local planning authority to seek approval of the Secretary of State. A completion notice can also only be served after the deadline for commencement for a planning permission (typically introduced under section 91 and 92 TCPA 1990) has passed.

902 This section removes the requirement in relation to completion notices served on land in England for Secretary of State confirmation before a completion notice can take effect. A procedure for appeals against the service of a completion notice is also introduced. This section also allows for a completion notice to be served before the deadline for commencement of a planning permission has passed, providing development has begun.

Effect

903 Subsection (2) inserts the new sections 93H, 93I and 93J into the TCPA 1990.

904 Subsection (3) introduces Schedule 11 which contains consequential amendments.

905 Subsection (4) provides that the provisions in new sections 93H, 93I and 93J apply retrospectively to planning permission granted before the measures come into force.

906 Subsection (5) provides that any completion notices already served before these measures come into force (including those before the Secretary of State for confirmation) remain subject to the procedures under sections 94 and 95 of the TCPA 1990.

93H Completion notices

907 As set out in subsection (1), new section 93H gives a power to local planning authorities to serve a completion notice on grants of planning permission for development which have commenced, but which in their opinion will not be completed in a reasonable period as set out in subsection (2). A completion notice will set out a time limit ("completion notice deadline") after which planning permission will cease to have effect for any unfinished parts of the development.

908 Subsection (3) provides that the completion notice deadline must be at least 12 months after the notice was served and, where planning permission was granted subject to a condition requiring development to have begun by a particular period, at least 12 months after the end of that period.

909 Subsection (4) sets out what must be included in a completion notice, while subsection (5) sets out who must be served a completion notice by a local planning authority where the authority chooses to serve a notice.

910 Subsections (6) and (7) establish that a completion notice can be withdrawn by a local planning authority and that, when doing so, the authority must immediately notify all those who were served the notice.

911 Under subsection (8), the Secretary of State may serve a completion notice where it appears expedient to do so, after having consulted the relevant local planning authority.

93I Appeals against completion notices

912 New section 93I introduces a process for appeals against the serving of a completion notice. Subsection (1) specifies that an appeal may be made to the Secretary of State by any of the following whether or not the notice was served on them, (a) the owner of the land, (b) a person not within paragraph (a) with an interest in the land and (c) a person who occupies the land by virtue of a licence. Subsections (2) and (5) set out the grounds for appeal and how the Secretary of State may decide any appeals before them, respectively.

913 The precise details of the appeals procedure are to be set out in regulations under subsection (3), and, as in subsection (4), these regulations may include, among other matters, the period within which an appeal must be brought and how an appeal is made.

914 Subsection (6) allows the Secretary of State to correct any defect, error or misdescription in the completion notice if that correction will not cause injustice to the appellant or the local planning authority.

915 Subsection (7) sets out that the completion notice need not be quashed if the Secretary of State determines that while it was not served on a person on whom it should have been served, neither the person nor the appellant was substantially prejudiced by that fact.

916 Subsection (8) allows for costs orders to be made with respect to completion notice appeals.

93J Effect of completion notices

917 Subsection (1) of new section 93J sets out that the planning permission to which a completion notice relates will cease to have effect at the completion notice deadline. Subsection (3) also provides that any development which was completed before the commencement notice deadline would still benefit from the grant of planning permission.

918 Subsection (2) sets out that in the event that an appeal is brought under section 93I, the notice is of no effect pending the final determination or withdrawal of the appeal.

Section 113: Power to decline to determine applications in cases of earlier non-implementation etc

Background

919 Sections 70A, 70B and 70C of the Town and Country Planning Act 1990 grant powers to local planning authorities to decline to determine planning applications in certain circumstances. For example, section 70A enables a local planning authority to decline to determine applications if they have previously refused permission for two or more substantially similar applications on the same site, or if a substantially similar application has been refused by the Secretary of State on appeal or following call-in, within the past two years.

920 This section introduces new section 70D which grants local planning authorities a new discretionary power to decline to determine planning applications where the carrying out of development authorised by an earlier planning permission anywhere in that local planning authority's area has not taken place at a satisfactory pace. This includes where development authorised by an earlier planning permission was not begun or has been carried out at an unreasonably slow rate.

921 The power can only be used to decline to determine an application where the applicant is a person who applied for or is connected to the earlier planning permission.

Effect

922 Subsection (2) inserts new section 70D into the TCPA 1990.

923 Subsections (3) to (6) make consequential amendments to other parts of the TCPA 1990.

70D Power to decline to determine applications in cases of earlier non-implementation etc.

924 Subsection (1) provides that a local planning authority in England may decline to determine a planning application where the application is made by a person who applied for or is connected to an earlier planning permission on land all or any part of which is in the local planning authority's area where development was not begun (subsection (2)) or where development has begun but, in the opinion of the local planning authority, the carrying out of that development has been unreasonably slow (subsection (3)). The development subject to the new application and the earlier planning permission must be of a prescribed description, to be set out in regulations.

925 To help the local planning authority establish whether development authorised by an earlier planning permission has been carried out at an unreasonably slow rate, subsection (4) requires that the local planning authority must have regard to information provided in a development commencement notice (such as the expected start date and timescales for development), whether a completion notice has been served against the development resulting in the earlier planning permission being invalidated, or any other prescribed circumstances.

926 Subsection (5) provides a power for local planning authorities where it is necessary to request by notice certain information from a person applying for a new planning permission to determine

whether that person applied for or is connected to an earlier planning permission in the local planning authority's area which has not been begun or which has been built out unreasonably slowly.

927 Subsections (6) to (8) set out matters relating to instances of non-compliance with the notice under subsection (5). Where requested, if the person who applied for planning permission does not comply within 21 days the local planning authority may decline to determine the application (subsection (6)). Where a request is made under subsection (5) and that person knowingly or recklessly provides false or misleading information to the local planning authority that person is guilty of an offence (subsection (7)) and is liable on conviction to an unlimited fine (subsection (8)).

928 Subsection (9) prohibits a local planning authority from declining to determine an application under new section 70D where the application is made under section 73 (applications to vary or remove planning conditions), 73A (applications for retrospective planning permission) or 73B (applications to make minor variations to planning permission) of the TCPA 1990.

Section 114: Condition relating to development progress reports

Background

929 New section 90B of the TCPA 1990 introduces a new requirement for developers to provide local planning authorities with information about the actual and projected delivery of new homes for each reporting period, on sites with residential planning permission.

930 New section 90B, provides that certain planning permissions for residential development are subject to a condition which requires development progress reports to be provided to the local planning authority in whose area the development is to be carried out.

Effect

931 The introduction of the development progress report will make it more transparent to all how a scheme is being built out and; clearer when unacceptable delays to a scheme's build out programme occur; as well as providing the evidence that will inform any potential local planning authority sanctions.

932 Subsection (1) sets out that the TCPA 1990 will be amended as follows.

933 Subsection (2) makes an amendment to section 56(3) (time when development begun) of the TCPA 1990, and is required to ensure that new section 90B is included in the list of provisions to which the definition of when development has "begun" applies.

934 Subsection (3) inserts section 90B into the TPCA 1990.

90B: Condition relating to development progress reports in England

935 Subsection (1) sets out that new section 90B applies where relevant planning permission is granted for relevant residential development in England.

936 Subsection (2) sets out that, where a relevant planning permission is granted, it will be subject to a condition that a development progress report must be provided to the local planning authority in whose area the development is to be carried out for each reporting period.

937 Subsections (3) to (6) set out the reporting periods for a development progress report. The start of the first reporting period will be specified in regulations. The length of the first and subsequent reporting periods is 12 months, and the last reporting period ends on the day on which the development is completed.

938 Subsection (7) defines a "development progress report" as a report that sets out: the progress that has been made, and that remains to be made, towards completing the dwellings at the end of the reporting period; the progress which is predicted to be made towards completing the dwellings over each subsequent reporting period up to and including the last reporting period; and any other information that may be prescribed in regulations.

939 Subsection (8) states that if relevant planning permission is granted without the condition required by subsection (2), it will be treated as having been granted subject to that condition.

940 Subsection (9) outlines what the Secretary of State may, by regulations, make provision for in respect of development progress reports, such as the form and content of development progress reports; when and how development progress reports are to be provided to local planning authorities; and who should provide development progress reports to local planning authorities.

941 Subsection (10) sets out the definitions of "relevant planning permission" and "relevant residential development."

942 Subsection (4) of section 114 amends section 69 of the TCPA 1990 (register of applications etc), and adds development progress reports to the list of information a local planning authority must keep on their planning register, and adds that prescribed information in respect of development progress reports will be contained in the register. Both elements are required to ensure the information contained in development progress reports is publicly accessible.

943 Subsection (5) is an amendment to section 70(1)(a) of the TCPA 1990 (determination of applications: general considerations) and ensures that, where an application is made to a local planning authority for planning permission, if the authority decides to grant planning permission it may do so either unconditionally or conditionally, but this is subject to the condition under section 90B applying where relevant.

944 Subsection (6) amends section 73 of the TCPA 1990 (determination of applications to develop land without compliance with conditions previously attached) and ensures that the condition under section 90B cannot be disapplied if planning permission is granted under section 73.

945 Subsection (7) amends section 96A of the TCPA 1990 (power to make non-material changes to planning permission) and ensures that the power to remove or alter existing conditions cannot be used to remove or alter the condition under section 90B.

946 Subsection (8) amends section 97 of the TCPA 1990 (revocation or modification of planning permission) and ensures that the power to revoke or modify a permission cannot be used to disapply the condition under section 90B.

947 Subsection (9) amends section 100ZA(13)(c) of the TCPA 1990 (restrictions on power to impose planning conditions in England), as amended by paragraph 3(12) of Schedule 14 to the Environment Act 2021, and ensures that the imposition of the condition under section 90B cannot be restricted by this section.

948 Subsection (10) outlines that, until paragraph 3(12) of Schedule 14 to the Environment Act 2021 comes into force, section 100ZA(13)(c) of the TCPA 1990 has effect so that the imposition of the condition under section 90B cannot be limited by this section.

Example: What happens when a developer does not provide a development progress report once a development has commenced?

Where new section 90B of the TCPA 1990 applies to a developer's residential planning permission, a local planning authority can expect from a developer a development progress report if its sits within a local planning authority's area.

Should the condition not be adhered to at any time during the build out of the development, a local planning authority can use the existing enforcement regime for a breach of a planning condition to enforce the matter.

Specifically, if a condition is not complied with (i.e., a development progress report is not provided), a breach of condition notice can be served on the responsible party which sets out the time that the developer must comply with the breach of condition notice by submitting a development progress report (minimum of 28 days). If they fail to comply with such a notice, then they are guilty of an offence.

Currently, the maximum penalty on summary conviction is a fine not exceeding level 4 on the standard scale (currently £2,500).

Taken as a whole, the measure is creating a new national planning condition that the existing enforcement regime will apply to. This has criminal sanctions applied.

Once the development progress report is received by the local planning authority it is placed on their statutory planning register to ensure that the information it contains is accessible to the public and interested parties.

Chapter 5: Enforcement of Planning Controls

Section 115: Time limits for enforcement

Background

949 Section 171B(1) of the Town and Country Planning Act 1990 imposes a four year time limit on local planning authorities taking enforcement action against unauthorised development consisting of building, engineering, mining or other operations.

950 Section 171B(2) of the Town and Country Planning Act 1990 imposes a four year time limit on local planning authorities taking enforcement action against unauthorised development consisting of a change of use of any building to use as a single dwelling house.

951 This section amends section 171B(1) and (2) to extend the time period in which local planning authorities can take enforcement action against unauthorised developments in England from four years to ten years. This brings the period for bringing enforcement action for the breaches specified in section 171B(1) and (2) in line with section 171B(3), which specifies that enforcement action in respect of other breaches of planning control have a ten year time limit in which to begin taking enforcement action.

952 The section maintains the current time limits for Wales.

Effect

953 Subsection (1) inserts new subsection (1)(a) into section 171B of the Town and Country Planning Act 1990 to substitute the four year time limit with ten years, in England. It also inserts subsection (1)(b) to retain the four year time limit in Wales. This allows local planning authorities in England to take enforcement action against unauthorised development consisting of building, engineering, mining or other operations in, on, over or under land up to ten years after the date on which the operations were substantially completed.

954 Subsection (2) inserts new subsection (2)(a) into section 171B of the Town and Country Planning Act 1990 to substitute the four year time limit with ten years, in England. It also inserts subsection (2)(b) to retain the four year time limit in Wales. This allows local planning authorities in England to take enforcement action against unauthorised development consisting of a change of use of any building to use as a single dwelling house up to ten years after the date of the breach.

Section 116: Duration of temporary stop notices

Background

955 Section 171E of the Town and Country Planning Act 1990 concerns temporary stop notices. These are used by local planning authorities if a planning breach is suspected in order to pause development whilst the facts of the case are established and to allow them to decide what, if any, further action to take. Under section 171E, temporary stop notices cease to have effect a maximum of 28 days after the notice was first displayed.

956 This section allows local planning authorities in England to issue a temporary stop notice that has effect for up to 56 days, providing more time for a local authority to investigate a suspected breach of planning control. The section maintains the current time periods in Wales.

Effect

957 Subsections (1) and (2) amend section 171E (7)(a) of the Town and Country Planning Act 1990 to replace "period of 28 days" with "relevant period".

958 Subsection (3) also inserts new subsections (8)(a) and (b) in section 171E, defining the "relevant period". Paragraph (a) defines the "relevant period" (the maximum period for which a temporary stop notice can have effect) as 56 days in England, while paragraph (b) defines the "relevant period" as 28 days in Wales.

Section 117: Enforcement warning notices

Background

959 This section creates a new power for a local planning authority in England to issue an enforcement warning notice. It inserts a new section (section 172ZA) into the Town and Country Planning Act 1990, with amendments to existing sections 188 and 171A facilitating its inclusion within the wider enforcement process. This provides a new power for local planning authorities in England to use where they become aware of an unauthorised development that has a reasonable prospect of being acceptable in planning terms. The new power enables them to issue an enforcement warning notice asking the person concerned to submit a retrospective planning application within a specified period. The notice must state that if the application is not received within the specified period the local planning authority may take further enforcement action.

Effect

960 Subsections (1) and (2) amend section 171A of the Town and Country Planning Act 1990 as a consequence of inserting the new section 172ZA. Subsection (3) inserts the following new section before section 172.

Section 172ZA: Enforcement Warning Notice: England

961 Subsection (1) provides that a local planning authority can issue an enforcement warning notice on any land in England where it appears to the local planning authority that there has been a breach of planning control and that there is a reasonable prospect that if an application for planning permission were made for that development, planning permission would be granted.

962 Subsection (2) specifies the content of the notice. The notice must state the matters that appear to the local planning authority to constitute the breach of planning control and that unless an application for planning permission is made within the period specified in the notice by the local planning authority, further enforcement action may be taken. Subsection (3) states that the notice must be served on the owner of the land and any other person having interest in the land that would be materially affected by the taking of any further enforcement action.

963 Subsection (4) states that an enforcement warning notice has no bearing on the ability of a local planning authority to take another form of enforcement action.

964 Subsections (4) and (5) amend section 188 of the Town and Country Planning Act 1990 as a consequence of inserting the new section 172ZA. This requires local planning authorities to include Enforcement Warning Notices on their enforcement registers.

Section 118: Restriction on appeals against enforcement notices

Background

965 Section 174 of the Town and Country Planning Act 1990 deals with appeals against enforcement notices.

966 Subsection (2) of section 174 sets out the grounds on which an appeal can be made. This includes ground "(a)" - that planning permission ought to be granted or that the condition or limitation imposed on the grant of permission ought to be discharged. Ground "(a)" is therefore, a way of obtaining planning permission retrospectively.

967 Subsection (2A) of section 174 removes the ability for a person to lodge a ground "(a)" appeal against an enforcement notice issued in England in certain circumstances. These circumstances are that an enforcement notice was issued after a related application for planning permission had been made but before the statutory time for making a decision on the application has expired.

968 Subsection (2B) provides that an application for planning permission is related to the enforcement notice if it would involve granting permission for matters included in the enforcement notice.

969 This section amends section 174 to extend the circumstances in which the ability to lodge a ground "(a)" appeal against an enforcement notice issued in England is removed so that there is only one opportunity to obtain planning permission retrospectively after unauthorised development has taken place.

Effect

970 This section reduces the ability to lodge an appeal against an enforcement notice issued in England on ground "(a)".

971 This section replaces subsections (2A) and (2B) of section 174 of the Town and Country Planning Act 1990 with subsections (2A), (2AA), (2AB), (2AC) and (2B).

972 New subsection (2A) provides that an enforcement notice appeal may not be brought on ground "(a)" if the land to which the enforcement notice relates is in England and the notice was issued after a 'related application for planning permission' was submitted.

973 New subsection (2AA) sets out that a 'related application for planning permission' is one that covers the same development as is the subject of the enforcement notice. It includes both applications where local planning authorities or the Secretary of State are the decision maker. It does not include applications where the local planning authority or the Secretary of State have exercised their powers to decline to determine the application, for example, because it is similar to or overlaps with another application for planning permission.

974 New subsection (2AB) provides that the restriction on ground "(a)" appeals only applies to enforcement notices which are issued within two years of the date the related application ceased to be under consideration.

975 New subsection (2AC) explains the different circumstances in which a related application ceases to be under consideration. New subsection (2B) clarifies the day on which the application ceases to be under consideration for the purposes of calculating the two year period in which an enforcement notice must be issued if a ground "(a)" appeal is to be prohibited. This is summarised in the following table:

An application has ceased to be under consideration if:	**Day on which consideration ceased**
Related application was refused or granted subject to conditions and there was no appeal against that decision (where an appeal route is available)	Day on which the right to appeal arose (ie the day on which the decision on the related application was made)
Related application was not determined and there was no appeal against that non-determination	Day after the end of the statutory determination period for the related application
An appeal against the decision on the related application was made	Day on which the appeal was dismissed
An appeal against non-determination of the related application was made	Day on which the appeal was dismissed
An application was on appeal granted subject to conditions, or subject to different conditions	Day on which the appeal was determined
The Secretary of State declined to determine an appeal using his powers in section 79(6) of the TCPA in respect of a related application which was refused or granted subject to conditions	Day on which the right to appeal arose (i.e the day on which the decision on the related application was made)
The Secretary of State declined to determine an appeal using his powers in section 79(6) of the TCPA in respect of a related application which had not been determined	Day after the end of the statutory determination period for the related application

Section 119: Undue delays in appeals

Background

976 This section gives the Secretary of State a new power which allows them to dismiss an appeal in relation to an enforcement notice or an appeal relating to a lawful development certificate in England, should it appear to them that the appellant is causing undue delay to the appeals process. In such circumstances, the Secretary of State may issue a notice explaining that the appeal may be dismissed if the appellant does not take the steps specified in the notice to expedite the appeal within the specified time.

Effect

977 Subsection (2) amends section 176 of the Town and Country Planning Act 1990 to insert a new subsection (6). This grants a power, in relation to an enforcement notice appeal, for the Secretary of State to give notice to the appellant in such an appeal that the appeal may be dismissed unless the appellant takes the action specified in the notice within the specified period.

978 Subsection (3) amends section 195 of the Town and Country Planning Act 1990 to provide an equivalent power in relation to an appeal relating to an application for a lawful development certificate.

979 Subsection (4) makes consequential changes to Schedule 6 of the Town and Country Planning Act 1990 to reflect the new power.

Section 120: Penalties for non-compliance

Background

980 Sections 187A and 216 of the Town and Country Planning Act 1990 deal with the enforcement of planning conditions and penalties for failing to comply with a section 215 notice (maintenance of land), respectively. Failing to comply with a breach of condition notice issued in England attracts a fine of no more than level 4 on the standard scale, currently £2,500. Failing to comply with a section 215 notice issued in either England or Wales attracts a fine of no more than level 3 on the standard scale, currently £1,000. Section 216(6) provides for a further daily fine which is payable for each day during which any of the requirements of the section 215 notice remain unfulfilled following conviction. The maximum daily fine payable is up to one-tenth of a level 3 fine on the standard scale (currently £1,000).

981 This section amends sections 187A and 216 in relation to England to increase the maximum level of fines. The section maintains the current fine levels for Wales.

Effect

982 Subsection (1) amends section 187A of the Town and Country Planning Act 1990 to increase the maximum fine for failure to comply with a breach of condition notice to level 5 on the standard scale, (an unlimited fine), in England.

983 Subsection (2) amends section 216 to increase the maximum fine for non-compliance with a section 215 notice to a level 5 fine on the standard scale (an unlimited fine) in England. It also increases the maximum daily fine in England to the greater of either one tenth of a level 4 fine (currently £2,500) or £5,000.

Section 121: Power to provide relief from enforcement of planning conditions

Background

984 Part 7 of the TCPA 1990 sets out the enforcement measures which can be used by local planning authorities and the Secretary of State when breaches of planning control occur. Whether to take enforcement action in response to breaches of planning control is at the discretion of the local planning authority.

985 Since March 2020, local planning authorities have been encouraged to be flexible in terms of enforcement action of non-compliance with conditions imposed on grants of planning permission which govern construction working hours and delivery hours in response to the COVID-19 pandemic and then later to address the acute shortage of Heavy Goods Vehicles. Measures to support this were introduced through section 16 of the Business and Planning Act 2020 (modification of conditions relating to construction working hours) and then through a series of Written Ministerial Statements.

986 This section inserts a new section into the TCPA 1990 which grants a new power (that can only be exercised for certain purposes) for the Secretary of State to provide, by regulations, that a local planning authorities in England, may not take, or is subject to specific restrictions in how it may take, relevant enforcement measures against a developer or individual for non-compliance with specified planning conditions or limitations for a specified period of relief of not more than one year.

Effect

987 This section inserts a new section 196E into Part 7 of the TCPA 1990.

196E Power to provide relief from enforcement of planning conditions

988 Subsection (1) gives the Secretary of State a power to provide by secondary legislation that a local planning authority in England may not take, or is subject to specified restrictions in how it may take, relevant enforcement measures in relation to any actual or apparent non-compliance with specified planning conditions or limitations.

989 Subsection (2) provides a restriction on the power at subsection (1) to make regulations, so that the power can only be exercised for the purposes of national defence or preventing or responding to civil emergency or significant disruption to the economy of the United Kingdom or any part of the United Kingdom.

990 Subsection (3) requires that the power may only be exercised with respect to an actual or apparent failure to comply with specified planning conditions or limitations which occur during a period specified in regulations of not more than one year (the "relief period"), or which are apprehended during the relief period to so occur. Subsections (7) and (8) however, permit regulations to make further provision for the treatment of non-compliances that overlap the relief period and non-compliances that occur wholly during the relief period but are not remedied by a specified time, respectively. Subsection (4) defines a "relevant enforcement measure" as anything a local planning authority can do for the purposes of investigating, preventing, remedying, or penalising an actual or apparent failure to comply with a relevant planning condition.

991 Subsection (5) provides for a non-exhaustive list of measures that would constitute "a relevant enforcement measure", including powers available to local planning authorities under sections 171BA, 187B, 196A, and 196B of the TCPA 1990 and the issuing of notices under sections 171C, 171E, 172 and 172ZA, 183 and 187A of the TCPA 1990.

992 Subsection (6) defines a "relevant planning condition" as a condition or limitation subject to which planning permission for development of land in England is granted. Subsection (6) sets out that the power under subsection (1) cannot be exercised in relation to certain existing statutory planning conditions or limitations including the condition limiting duration of planning permission (section 91 TCPA 1990), conditions for outline permission (section 92 TCPA 1990), the condition relating to development progress reports (new section 90B TCPA 1990) and the condition relating to biodiversity gain (section 90A and Schedule 7A TCPA 1990).

993 Subsection (7) provides that regulations can be made to set out how non-compliance with a relevant planning condition will be treated where the failure to comply (a) starts before, but continues after, the start of a relief period; or (b) starts during, but continues after, a relief period.

994 Subsection (8) provides that regulations can be made to set out how non-compliance with a relevant planning condition is not to be treated as occurring during a relief period if the failure to comply: (a) wholly occurs during the relief period; and (b) is not remedied by a specified time after the relief period ceases.

995 Subsection (9) allows for regulations to be made to set out that where anything relating to the taking of a relevant enforcement measure is to be or may be done by a time during a relief period, it is to be

or may be instead done by a specified time after that period. For example, this could include deadlines for local planning authorities to pursue enforcement where the statutory limit would otherwise expire during the relief period.

996 Subsection (10) allows for regulations made under subsection (1) to: (a) apply in relation to all or only specified local planning authorities in England; (b) apply in relation to all or only specified relevant planning conditions; (c) apply in relation to all or only specified relevant enforcement measures; or (d) prevent the taking of relevant enforcement measures indefinitely or only for a specified period of time.

997 Subsection (11) sets out for the purposes of this section that "specified" means specified of described in regulations under subsection (1).

Chapter 6: Other Provision

Section 122: Consultation before applying for planning permission

Background

998 This section amends section 122 of the Localism Act 2011 to make permanent the powers to make provision for pre-application consultation in sections 61W to 61Y of the TCPA. These expire seven years after coming into force unless extended by order. The provisions were extended by the Town and Country Planning (Pre-Application Consultation) Order 2020 (S.I. 2020/1051) until 15 December 2025. These powers have been used to require pre-application consultation on proposals for on-shore wind turbines.

Effect

999 This section will make permanent the powers to enable pre-application consultation, set out in sections 61W to 61Y of the TCPA. This will allow regulations to come forward requiring applicants (on certain applications) to consult with local communities, and specified persons prior to submitting a planning application. It may also require them to have regard to comments made as part of this pre-application consultation.

Section 123 Duty to grant sufficient planning permission for self-build and custom housebuilding

Background

1000 This section amends section 2A (duty to grant planning permission etc) and section 4 (regulations) of the Self-Build and Custom Housebuilding Act 2015 ('the 2015 Act'). The 2015 Act places a statutory duty on relevant authorities to hold a register of people who want to acquire land to self or custom build in their area and to grant planning permission for enough plots of land to satisfy that demand. Further regulations, the Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 ('the 2016 Regulations'), set out that authorities must meet this demand (i.e. grant sufficient planning permission) within 3 years.

1001 Section 2A of the 2015 Act states that a relevant authority 'must give suitable development permission in respect of enough serviced plots of land to meet demand… ', and that a 'development permission is "suitable" if it is permission in respect of development that could include self-build and custom housebuilding.' This wording has created some ambiguity regarding what planning permission can be counted by a relevant authority towards meeting demand for plots (demand as defined in section 2A(6)(a) of the 2015 Act). This has led to planning permissions that are not necessarily for self and custom build housing being counted towards meeting local authority targets.

1002 Additionally, the 2016 Regulations set out that authorities have 3 years to grant sufficient permissions to meet demand on their register in any 'base period'. The 2015 Act and 2016 Regulations were silent on what happened to any demand that was not met (i.e. sufficient planning permissions granted) within that period. This meant the obligation to meet this demand may not be discharged.

1003 This section makes the legal position clear and explicit regarding what planning permissions should be counted to satisfy the demand for self–build and custom housebuilding by a relevant authority. It gives the Secretary of State the power to define, in regulations, the types of development permission that may be counted, to ensure that only planning permissions that are specifically to be built out for self or custom build (for example via a planning condition or obligation) qualify towards meeting demand.

1004 This section also creates a requirement that any demand that has not been met by an authority within the 3-year compliance period will be rolled over and will remain an obligation for the authority to meet after the compliance period has elapsed.

Effect

1005 Subsections (1)(a)(i) and (ii) amend subsection (2) of section 2A of the 2015 Act to specify that only planning permission that is specifically for self-build and custom housebuilding will count towards meeting a relevant authority's statutory duty. Subsection (1)(a)(iii) is a technical amendment consequential to subsection (1)(c).

1006 Subsection (1)(b) inserts new subsection 5A into the 2015 Act which introduces a new power to allow the Secretary of State to specify in Regulations types of development permissions that can be counted by a relevant authority to comply with its duty to meet demand as defined under section 2A(2) of the 2015 Act.

1007 Subsection (1)(c) substitutes an amended definition of "demand" into section 2A(6)(a) of the 2015 Act to add that any demand that has not been met by a relevant authority, within the compliance period, will be rolled over to be counted as demand in the next compliance period.

1008 Subsection (1)(d) removes section 2A(6)(c) of the 2015 Act which defines a 'suitable' development permission and is consequential to subsection (1)(a)(i) as 'suitable' is now omitted from the 2015 Act.

1009 Subsection (1)(e) is consequential to subsection (1)(c) to ensure that it achieves its intended effect and will apply to any regulations that may be made in future under section 2A(9)(b) of the 2015 Act.

1010 Subsection (2) inserts a new subsection (zza) to section 4 of the 2015 Act, and specifies that the negative resolution procedure applies to regulations made under new section 2A(5A).

Section 124: Powers as to form and content of planning applications

Background

1011 The TCPA contains powers as to the content and form of planning applications. This section inserts new section 327ZA to provide greater control over the form and manner of planning applications and their associated documents.

1012 The provision enables the Secretary of State to make provision to require or allow planning applications be made and associated documents be provided by electronic means (e.g. using an online form) or in accordance with particular technical standards in respect of those electronic means.

1013 This also includes a power to make provision requiring the application or associated document, be prepared or endorsed by a person with particular qualifications or experience. The power applies to

any existing relevant power to make provision by secondary legislation about the form and manner in which applications are to be made and an associated document be provided.

1014 Subsections (2) to (7) inserts various amendments into the TCPA, the Listed Building Act, and the Hazardous Substances Act to bring certain provisions within the scope of the new section 327ZA.

Effect

1015 Subsection (1) introduces section 327ZA into the TCPA.

Section 327ZA: Planning applications in England: powers as to form and content

1016 The effect of subsections (1) to (2) of new section 327ZA is to enable provision requiring or permitting applicants applying for planning permission (or permission in principle) to submit planning applications and supporting documents by particular electronic means or in accordance with any prescribed data standard in respect of those electronic means. The power applies to any existing relevant power to make provision by secondary legislation about the form and manner in which applications are to be made and an associated document be provided (subsection (1)).

1017 Subsection (3) enables the Secretary of State to make provision in secondary legislation setting out the circumstances when a planning authority may or must accept an application which does not comply with the electronic submission requirements, including applicable data standards.

1018 Subsections (4) and (5) make provision for secondary legislation that requires a planning application or any associated documents (or any part of those documents) to be prepared or endorsed by a person who has a particular qualification or experience (for example, ecological information may have to be prepared by a fully qualified ecologist).

1019 Subsections (6) to (8) have the effect of allowing the Secretary of State to make provision to impose submission requirements by reference to material published on a government website, which may change from time to time. This may include provision requiring planning applications (and associated documents) to be made using a specified form which accords with prescribed specifications (such as data standards).

1020 Subsections (9) to (10) provide that the new power applies to existing relevant powers in respect of manner and form regardless of the terms in which the existing power is conferred.

1021 Subsection (11) provides definitions of key terms to be used in this section including "associated document" and "planning application".

1022 Subsections (2) to (7) enable the Secretary of State to make provision under section 327ZA for: approval of biodiversity gain plans within paragraph 14 of Schedule 7A to the TCPA; applications for listed building consent under the Listed Building Act; hazardous substance consent under the Planning Hazardous Substances Act; and applications made pursuant to conditions attached to such consent.

Section 125: Additional powers in relation to planning obligations

Background

1023 This section inserts a new subsection into section 106A of the Town and Country Planning Act 1990 ("TCPA 1990").

1024 Section 106A TCPA 1990 provides for how a planning obligation under section 106 TCPA 1990 may be modified or discharged. A section 106 planning obligation may be modified or discharged:

- at any time, by a deed entered into by the relevant local planning authority and the person(s) against whom the obligation is enforceable; and

- from five years after the obligation is first entered into, by application to the relevant local planning authority (and there is a right of appeal against the authority's decision to the Secretary of State).

Effect

1025 This section enables regulations to provide for requirements which must be met in order for a section 106 planning obligation to be modified or discharged, and for circumstances in which section 106 planning obligations may not be modified or discharged.

Section 126: Fees for certain services in relation to nationally significant infrastructure projects

Background

1026 As part of the process for applying for a development consent order for Nationally Significant Infrastructure Projects ("NSIPs") under the Planning Act 2008, applicants must engage with statutory consultees. Statutory consultees play a crucial role in providing advice throughout the process but are currently unable to recover their costs for the full range of statutory activities required under the regime.

Effect

1027 Section 126 introduces a new power for the Secretary of State to make provision in regulations for public authorities, limited to certain statutory consultees to charge applicants for their services in connection with NSIPs. Provision as to who will have the ability to charge will be prescribed in regulations.

1028 Section 126 inserts a new section 54A (Power to provide for fees for certain services in relation to nationally significant infrastructure projects) after section 54 (rights of entry: Crown Land) of the Planning Act 2008.

54A Power to provide for fees for certain services in relation to nationally significant infrastructure projects

1029 Subsection (1) provides the Secretary of State with the power to make regulations for and in connection with fees charged by particular public authorities (to be listed in regulations) when providing services associated with NSIPs.

1030 Subsection (2) defines a relevant service to include any advice, information or other assistance (such as responding to consultation) in connection with applications for, or post-consent changes to, Development Consent Orders. This also includes any other prescribed matters relating to NSIPs.

1031 Subsection (3) specifies what the regulations under subsection (1) may in particular make provision about and includes: when a fee may or may not be charged, the amount which may be charged, what may and may not be taken into account when calculating a charge, who is liable to pay, the recovery of any fees charged, details of waiver, reduction or repayment of fees, the effect of failing to pay such fees, the supply of information for any purpose of the regulations, and conferring a function, including a function involving the exercise of a discretion, on any person.

1032 Subsection (4) provides that a public authority must have regard to any guidance published by the Secretary of State which relates to any requirements set out in regulations made under this power.

1033 Subsection (5) defines a "public authority" for the purpose of this section.

Section 127: Power to shorten deadline for examination of development consent order applications

Background

1034 Section 98 of the Planning Act 2008 relates to the timetable for examining and reporting on Development Consent Order applications for Nationally Significant Infrastructure Projects (NSIP). It imposes a duty on the Examining Authority to complete its examination of an application by the end of the period of six months from the last day of the preliminary meeting where an initial assessment of the principal issues takes place. It also provides the Secretary of State with the power to extend the six-month deadline.

1035 This section gives the Secretary of State a corresponding power to set an earlier deadline for completion of an Examination, where the Secretary of State considers it is appropriate to do so. The intention for this power is to support the reforms to the NSIP planning system as set out in the NSIP Action Plan (February 2023), in particular the process for fast-track consenting.

Effect

1036 Subsection (2) inserts a new subsection (4A) into section 98 of the Planning Act 2008 which gives the Secretary of State the power to set a shorter timescale (than the six months set out in section 98(1)).

1037 Subsection (3) adds a reference to subsection (4A) into section 98(6) of the 2008 Act, so that the notification and publicity requirements set out in sections 98(7) and (8) apply when the power under subsection (4A) is exercised.

Section 128: Additional Powers in relation to non-material changes to development consent orders

Background

1038 Schedule 6 to the Planning Act 2008 makes provision for applications for non-material changes to Development Consent Orders.

1039 This section amends Schedule 6 to allow the Secretary of State to make regulations regarding the decision-making process in respect of non-material change applications (for example, to set time limits for making decisions on such applications).

Effect

1040 This section inserts new sub-paragraphs (1A) and (1B) after sub-paragraph (1) of paragraph 2 of Schedule 6 to the Planning Act 2008.

1041 Sub-paragraph (1A) enables the Secretary of State to make provision through regulations about:

a. the decision-making process for non-material change applications

b. the making of a decision on a non-material change application

c. the effect of that non-material change decision.

1042 Sub-paragraph (1B) replicates paragraphs 2(8A) and 4(5A) of Schedule 6 to the Planning Act 2008, confirming for the avoidance of doubt that the power to make regulations includes a discretion as to how the power is exercised, and can include, for instance, provision allowing the Secretary of State to extend a deadline for a decision relating to a non-material change application.

Section 129: Hazardous substances consent: connected applications to the Secretary of State

Background

1043 This section amends existing section 62A of the Town and Country Planning Act 1990 which relates to applications made to the Secretary of State for planning permission and permission in principle, or an application for approval of a matter that, as defined by section 92, is a reserved matter in the case of an outline planning permission for the development of land in England ('relevant application').

1044 This section inserts a new subparagraph (ia) between (3)(a)(i) and (ii) to include applications for hazardous substance consent under the Planning (Hazardous Substances) Act 1990.

Effect

1045 Subparagraph (ia) has the effect of enabling applicants to submit applications for hazardous substance consent under the Planning (Hazardous Substances) Act 1990 directly to the Secretary of State under section 62A, where it is considered by the applicant to be connected with a relevant application submitted under section 62A.

Section 130: Regulations and orders under the Planning Acts

Background

1046 This section concerns technical legal amendments to the general powers to make statutory instruments contained in the Town and Country Planning Act, the Planning (Listed Buildings and Conservation Areas) Act and the Planning (Hazardous Substances) Act 1990 ("the relevant Acts"). It is concerned with providing express powers to make ancillary provision when exercising powers to make statutory instruments under the relevant Acts.

1047 The current general powers to make statutory instruments (as Regulations or Orders) under the relevant Acts do not expressly refer to making ancillary provision. These amendments would correct that omission. It is usual/standard practice to expressly provide for ancillary provision to be made when exercising powers to make statutory instruments. This avoids the need to rely on implied powers. The legislative aim of this amendment is to make the legal position clear and express. The amendments do not affect the Parliamentary process which applies whenever the statutory instrument powers are exercised.

Effect

1048 This section makes amendments to the general powers to make statutory instruments under the Town and Country Planning Act, the Planning (Listed Buildings and Conservation Areas) Act and the Planning (Hazardous Substances) Act 1990 ("the relevant Acts"). The effect of these amendments is to provide express powers to make ancillary provision – namely, consequential, supplementary, incidental, transitional, transitory or saving provision.

1049 These amendments are required to avoid having to rely on implied powers to make necessary ancillary provision when making a statutory instrument and so make the legal position clear and coherent. Express power to make ancillary provision is necessary so that the statutory instrument can make effective provision to achieve its purpose and so that the power to make secondary legislation is capable of being exercised in a satisfactory way. For example, when varying or revoking a statutory instrument it is necessary to, at least, make the required transitional provision.

1050 Subsection (1) of this section makes amendments to the general powers to make statutory instruments (as Regulations or Orders) contained in section 333 of the Town and Country Planning Act 1990. The amendments insert new subsections (2B) and (8) in that section of that Act which

provide express powers to make ancillary provision (i.e. consequential, supplementary, incidental, transitional, transitory or saving provision). Subsections (2) and (3) of this section make consequential amendments. Subsection (3) repeals certain provisions in the 1990 Act which are no longer required given the amendments made in subsection (1); and subsection (2) makes an amendment to section 238(5)(c) of the 1990 Act to provide for the application of new section 333(2B) of that Act, whilst retaining the specific reference to the "closing of registers".

1051 Subsection (4) makes amendments to section 93 of The Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") to provide express powers for ancillary provision. Subsection (5) repeals certain provisions in the Listed Buildings Act which are no longer required given the amendments made in subsection (4).

1052 Subsection (6) makes amendments to section 40 of the Planning (Hazardous Substances) Act 1990 ("the Hazardous Substances Act") by insertion of subsection (5) to provide express powers for ancillary provision (and amends the heading of the section to include orders in addition to regulations). Subsection (7) makes consequential amendment to section 5 of the Hazardous Substances Act to provide at subsection (3) that powers to make transitional provision are powers under section 40(5) of that Act. Subsection (8) repeals certain provisions which are consequential to the insertion of subsection (5) into section 40 of the Hazardous Substances Act.

Section 131: Power for appointees to vary determinations as to procedure

Background

1053 This section allows an appointed Planning Inspector, rather than a case officer, to change the mode of procedure for a planning appeal (written representations, hearings or inquiries) where they consider this appropriate.

Effect

1054 Subsections (a) and (b) amend existing legislation within Schedule 6 to TCPA 1990 to enable an appointed Planning Inspector, rather than a case officer to change the procedure determining a planning appeal, under s319A of that Act, where it is considered that an alternative procedure would be more appropriate. Currently, only a case officer is able to change the mode of procedure.

Section 132: Pre-consolidation amendment of planning, development and compulsory purchase legislation

Background

1055 Section 132 enables the Secretary of State to make changes to the law relating to planning, development and compulsory purchase in connection with the consolidation of some, or all, of that law.

Effect

1056 Subsections (1) and (4) provide the Secretary of State with the power to amend and modify relevant enactments by regulations in support of their future consolidation, including the ability to repeal and revoke enactments.

1057 Subsection (2) defines 'relevant enactments' for the purposes of subsection (1). Paragraph (a) provides for relevant enactments to include the enactments listed in subsection (3). Paragraph (b) widens this definition to include any other enactment which relates to planning, development or compulsory purchase (including compensation for such purchases). Paragraph (b) only brings into scope enactments to the extent that they contain provisions which relate to planning, development or compulsory purchase and does not allow for wider consolidation of those enactments.

1058 Subsections (5) and (6) provide that amendments and modifications made by regulations under subsection (1) only come into effect immediately before a related consolidation act comes into force.

1059 Subsection (7) provides that regulations under this section cannot make changes which would be within Scottish, Welsh or Northern Ireland devolved legislative competence, as defined in subsection (8). Subsection (7) includes an exception for changes which would be within devolved legislative competence where these arise from changes outside that devolved legislative competence. This power only allows technical changes to preserve legislative coherence and does not extend to substantive changes to legislation within devolved competence.

1060 Subsection (9) defines 'Minister of the Crown' in line with the Ministers of the Crown Act 1975 for the purposes of this section.

Section 133: Participation in certain proceedings conducted by, or on behalf of, the Secretary of State

Background

1061 This section allows the Secretary of State, or person appointed by the Secretary of State, to require or permit that a person participates in certain events/proceedings (relating to planning, development or the compulsory purchase of land) either wholly or partly remotely. It is intended that the person appointed by the Secretary of State for this purpose will be the Planning Inspectorate.

Effect

1062 Subsection (1) allows the Secretary of State to require or permit a person taking part in certain proceedings conducted by the Secretary of State to participate either wholly or partly remotely.

1063 Subsection (2) allows the references in subsection (1) to the Secretary of State to also include a person appointed by the Secretary of State.

1064 Subsection (3) defines 'relevant proceedings' which means any inquiry, hearing, examination, meeting or other proceedings under an Act, which relate to planning, development or the compulsory purchase of land.

1065 Subsection (4) sets out a non-exhaustive list of relevant procedures to which this section relates.

1066 Subsection (5) sets out modes of participation for relevant proceedings. These are: a live telephone link, a live television link, or any other arrangement which does not involve the person attending the proceedings in person.

Section 134: Power of certain bodies to charge fees for advice in relation to applications under the Planning Acts

Background

1067 Section 134 inserts new section 303ZB into the Town and Country Planning Act 1990 (TCPA) which enables a prescribed body to charge fees for providing advice, assistance, or information on planning matters in respect to applications within the planning Acts. This enables a single basis for charging, removing the current disparate arrangements and any ambiguities around generic charging powers which are not specific to the planning advice offered by the individual public authority.

Effect

1068 Subsection (1) enables a prescribed body to charge fees for the provision of advice, information or assistance (including the provision of a response to a consultation) in connection with an application. Subsection (2) defines application as application, proposed application or proposal for a permission, approval or consent under, or for the purposes of, the planning Acts (as defined in section 336 of the TCPA).

1069 Subsection (3) applies limitations to the charging power, excluding charging in respect of: (a) a response to a consultation a qualifying neighbourhood body (as defined in subsection (4): e.g. a parish council) is required to carry out; and (b) the provision of prescribed advice, information or assistance; or advice, information or assistance of a prescribed description.

1070 Subsection (5) sets out requirements to ensure transparency and accountability of charging. This includes requiring that a prescribed body can only charge in accordance with a statement published on its website which: describes the advice, information or assistance in respect of which fees are charged; sets out the fees (or, if applicable, the method by which the fees are to be calculated); and refers to any provision in an enactment pursuant to which the advice or information is provided.

1071 Subsection (6) sets out that subsections (7) and (8) apply where a prescribed body decides to charge in respect of advice on a statutory footing. Subsection (7) enables prescribed bodies to withhold services in the event of non-payment of fees or charges, including withholding advice where a prescribed body is otherwise required to respond.

1072 Subsections (8) and (9) provide that a prescribed body may only charge fees for their advice on a cost-recovery basis, taking one financial year with another (from April 1st to 31 March) in order that the income generated from fees does not exceed the cost of providing the service.

1073 Subsection (10) requires that before making regulations under this section the Secretary of State must first carry out consultation with any body likely to be affected, and any other person the Secretary of State considers appropriate.

1074 Subsection (11) defines 'fees'.

Section 135: Biodiversity net gain: pre-development biodiversity value and habitat enhancement

Background

1075 Section 135 inserts new paragraphs 6A and 6B into Schedule 7A to the Town and Country Planning Act 1990. It also inserts new subparagraphs (1A) to (1D) into paragraph 10 and makes some other minor amendments. The purpose of this is to reduce incentives to lower the biodiversity value of land before establishing baselines on both development sites and biodiversity gain sites. Biodiversity gain sites are places outside of a development site, where habitat is being improved so that it may contribute to a development's achievement of BNG.

1076 Biodiversity net gain ('BNG') requires the measurement of increases in biodiversity value against a pre-determined baseline value. Deliberately lowering the baseline value would artificially make it easier to achieve BNG and would not lead to actual improvements to biodiversity.

Effect

1077 Paragraph 6A of Schedule 7A closes a potential loophole whereby a site could be cleared under an existing planning permission and then a new planning permission applied for with the cleared site as its baseline. Where that happens, the baseline is taken to be the habitat before the clearance occurred.

1078 Paragraph 6B requires that, in cases where a site has been cleared and there is doubt about the habitats that were on the site before the clearance occurred, a precautionary approach is taken. This means the site is assumed to have been the highest biodiversity value habitats which are reasonably supported by evidence.

1079 Paragraph 10(1A) to (1D) remove any incentive to reduce biodiversity on prospective biodiversity gain sites prior to establishing the baseline.

1080 Subparagraph (1A) provides that the biodiversity value of habitat enhancements on gain sites is the difference in value between the baseline habitat and the proposed habitat.

1081 Subparagraph (1B) introduces the term relevant date which is the date when the baseline is set. The habitat on the site on that date is taken to be the baseline or 'pre-enhancement biodiversity value'.

1082 Subparagraph (1C) defines when the relevant date is.

1083 Subparagraph (1D) changes the relevant date from that in (1C) to a date immediately before any activity which lowered the biodiversity value, such as habitat clearance. Except where that activity was done in accordance with planning permission or other permission types specified by the Secretary of State.

Section 136: Developments affecting ancient woodland.

Background

1084 The Town and Country Planning (Consultation) (England) Direction 2021 requires a local planning authority to consult the Secretary of State if the authority does not propose to refuse an application for planning permission for development of a type listed in the 2021 Direction. It is the mechanism which generates the majority of applications for planning permission which come to the attention of the Secretary of State. Once referred, consideration is given whether to call in the application for decision by or on behalf of the Secretary of State rather than by the local planning authority.

Effect

1085 Section 136(1) creates a duty to amend the Town and Country Planning (Consultation) (England) Direction 2021 within three months of Royal Assent. Its effect is to ensure that local planning authorities must consult the Secretary of State where they do not intend to refuse planning permission in relation to applications for development affecting ancient woodland.

1086 Section 136(2) defines "ancient woodland" as referred to in subsection (1) as meaning an area in England which has been continuously wooded since at least the end of the year 1600 A.D.

1087 Section 136(3) indicates this section does not affect the Secretary of State's ability to withdraw or vary the 2021 Direction after it has been varied to give effect to this provision.

Part 4: Infrastructure Levy and Community Infrastructure Levy

Section 137: Infrastructure levy: England

Background

1088 This section introduces Schedule 12 of this Act which makes provision for, and in connection with, the imposition, in England, of a new charge to be known as the Infrastructure Levy ("IL"). Schedule 12 contains powers for the Secretary of State to make regulations for the Infrastructure Levy ("IL regulations"). Schedule 12 inserts a new Part 10A (comprising new sections 204A to 204Z2) into the Planning Act 2008 ("the 2008 Act").

1089 Section 137 is related to section 139 which, when commenced, will make changes to Part 11 of the 2008 Act to restrict application of the Community Infrastructure Levy (CIL) to Greater London (for Mayoral CIL only) and Wales. Section 139 may be commenced in relation to specific areas, so that IL may be introduced in those areas and CIL may be restricted accordingly. Savings provisions can be used to ensure that development granted planning permission under the pre-existing system of developer contributions will continue to be subject to that system rather than the new IL. The introduction of IL will not impact the operation of CIL in Wales or of Mayoral CIL in London.

1090 IL charging authorities – who are generally local planning authorities – will be required to charge IL for development of land in their area, whereas charging CIL is at the discretion of charging authorities. The overall purpose of IL is: to ensure that the costs incurred in supporting the development of an area (including by the provision of affordable housing), and achieving any additional purpose specified in IL regulations, are funded (at least in part) by owners or developers of land, but in a way that does not make development of the area economically unviable (this is set down in new section 204A(2)).

1091 IL must be spent to support the development of an area by funding the provision, improvement, replacement, operation or maintenance of infrastructure (see new section 204N(1)). In addition, the IL regulations may describe the circumstances in which charging authorities may spend a specified amount of IL for any other purposes (see new section 204N(5)).

1092 The exact method of charging IL will be set in regulations. It is currently intended that IL will be charged based on the final gross development value of development, whereas the CIL charge is based on the floorspace of development when planning permission is granted. This will be subject to further consultation.

Effect

1093 The effect of this section is to enable IL to replace CIL in England, with the exception of Mayoral CIL in London. It is intended that IL will be introduced over time, to allow a 'test and learn' approach to IL regulations. The new Part 10A of the Planning Act 2008 (to be inserted by Schedule 12) enables the Secretary of State to make provision in IL regulations for a deadline date for the introduction of IL in a particular charging authority's area (see new section 204M(1)).

1094 It is intended that the IL regime, when fully introduced, will (to some extent) replace the need for "planning obligations" under section 106 of the Town and Country Planning Act 1990. Section 139 and the provisions in Schedule 12 (see new section 204Z2) therefore also allow the Secretary of State to make regulations about how IL will work alongside other existing planning powers such as section 106 planning obligations, which are currently used for (among other purposes) securing funding from developers to deliver mitigations to the impact of development in an area.

1095 The new Part 10A of the Planning Act 2008 replicates many of the existing powers and provisions set out in Part 11 of the same Act. Part 11 provides the legislative framework for CIL. The powers required to operate IL are therefore substantially the same as for CIL, but there are some differences.

1096 Some provisions in new Part 10A , such as new sections 204J and 204K, are drawn directly from the existing provisions in Part 11 of the 2008 Act (as they apply to CIL). Some provisions, such as new sections 204A and 204B, replicate elements of sections 205 and 206 of the 2008 Act, but also with some amendments to enable the effective delivery of IL. Some provisions, such as new section 204Q, are entirely new.

1097 Key differences from existing provisions in Part 11 are sign-posted throughout the explanatory notes.

Section 138: Power to designate Homes and Communities Agency as a charging authority

Background

1098 Under sections 13-14 of the Housing and Regeneration Act 2008, the Homes and Communities Agency ("the HCA") (which operates under the trading name of Homes England) can be designated as a local planning authority.

Effect

1099 Section 138 amends section 14 of the Housing and Regeneration Act 2008 to provide that, if a designation order is made under section 13 of that Act designating the HCA as a local planning authority for all or part of a designated area, then the designation order may also make provision for the HCA to be the IL charging authority for all or part of the designated area. The order may specify that the HCA is to be the charging authority for all or specified purposes, and in relation to all or specified types of development. The order may also designate the HCA as the charging authority in place of the body that would otherwise be the charging authority, so that there are not multiple authorities charging IL on the same developments.

Section 139: Restriction of Community Infrastructure Levy to Greater London and Wales

Background

1100 This section amends Part 11 of the Planning Act 2008 to restrict the application of CIL to Greater London (in respect of Mayoral CIL only) and Wales. These are consequential changes which are needed as a result of the imposition of a new charge, IL, in England, with the sole exception of Greater London, where the Mayor of London will not be the charging authority for IL. The Mayor of London will continue to levy Mayoral CIL to fund Crossrail, and the existing CIL regulations (S.I. 2010/948) (as amended) allow the Mayor to borrow against CIL receipts up to 2043 (see regulation 60(7A)).

1101 This section is related to section 137, which provides for the imposition of a new charge, IL, in England, to replace CIL charged under Part 11 of the Planning Act 2008.

1102 CIL may be charged by 'charging authorities' in England and Wales, and such authorities are usually local planning authorities (see section 206 of the 2008 Act). In Greater London, the Mayor of London is an additional CIL charging authority, such that developments in Greater London may be subject to two CIL liabilities: one charged by the borough council or other charging authority; and one charged by the Mayor of London ("Mayoral CIL"). Mayoral CIL is used to fund Crossrail (see regulation 59(2) of the CIL Regulations).

1103 For IL, the Mayor of London will not be a charging authority as provision is not made for the Mayor to act in this regard in new section 204B. It is intended that the Mayor of London will continue to be able to charge Mayoral CIL to fund Crossrail.

Effect

1104 The effects of this section and its' consequent amendments to Part 11 of the Planning Act 2008 are to restrict the application of CIL to Greater London (by the Mayor of London) and to Wales. Save for these exemptions, IL will be charged in place of CIL, once it is introduced in a charging area in England.

1105 To that end, subsections (1) – (4) of section 139 amends the CIL provisions in Part 11 so as to only apply in Greater London and in Wales.

1106 Subsection (5) omits section 207 (Joint committees) from the Planning Act 2008. This is because when the operation of CIL is restricted to Wales and Greater London this provision will not be needed in relation to England. Subsection (6) makes an amendment to section 223(1) of the Planning Act 2008 (Relationship with other powers). This amendment will enable CIL regulations to make provision about how the new levy powers may be used or not. This will ensure the two regimes (CIL and the new levy) work coherently.

> ### Example (1): 'Test and learn' approach to IL
> New section 204M in Schedule 12 provides the Secretary of State a power to set a date in IL regulations by when a charging authority must issue its charging schedule. Different dates are intended to be set for different charging authorities, allowing a staggered roll out of IL, so that IL regulations can be informed by how IL works in practice. It is intended that developments granted planning permission prior to the adoption of an IL charging schedule will continue to be liable for CIL, if a CIL charging schedule was in place at the time of the grant. Therefore, the ability for charging authorities in England to collect CIL will remain until such a date where it is no longer required. This means section 139 will not be commenced until that date, or alternatively it will be commenced subject to suitable saving and transitional provisions.

Section 140: Enforcement of Community Infrastructure Levy

Background

1107 This section substitutes section 218(11) and (12) of the Planning Act 2008 to insert wording which reflects the general limits that apply when sentencing on summary conviction (for summary offences and offences triable either way). This is to reflect changes made by section 13 of the Judicial Review and Courts Act 2022. The wording used follows existing wording in Schedule 12 of the Act, in new section 204S(13) and (14). As a result of the changes made by the 2022 Act the Secretary of State may increase or reduce the maximum term of imprisonment that may apply on summary conviction. Therefore, the substituted wording ensures that in the context of CIL enforcement measures the sentencing powers of Magistrates are in-step with wider sentencing policy.

Effect

1108 This section allows provision to be made in CIL regulations for enforcement measures to impose the maximum term of imprisonment which may apply to magistrates sentencing powers for summary conviction of summary offences or offences triable either way. This replicates the wording used in the Infrastructure Levy context, in new section 204S(13) and (14) (inserted by Schedule 12 to the Act).

Part 5: Community Land Auction Pilots

Community land auction arrangements

Section 141: Community land auction arrangements and their purpose

Background

1109 Section 141 is a new power which provides for the introduction of Community Land Auction ("CLA") arrangements. This makes temporary provision enabling CLA pilots to be run. The local planning authority (LPA) will invite landowners to grant options over land in the area of a participating LPA, with a view to the land being allocated for development in the next local plan for the authority's area.

1110 The LPA may exercise or sell the option, capturing some of the increased value that will result from allocation of the land for development, which can then be used to support development of the area. CLA arrangements seek to improve land value capture for the benefit of local communities and potentially increase land supply when LPAs prepare their new local plan.

1111 This section confers certain regulation making powers and also contains key definitions of "CLA regulations", "community land auction arrangement", and "CLA option".

Effect

1112 Subsection (1) sets out the overall purpose of CLA arrangements.

1113 Subsection (2) sets out the meaning of "CLA regulations".

1114 Subsection (3) sets out that a "community land auction arrangement" means an arrangement provided for in CLA regulations under which:

- An LPA is to invite landowners in the authority's area to offer to grant a CLA option over the land, with a view to the land being allocated for development in the next local plan for the authority's area. This option will give the LPA the right to purchase the land at the price offered by the landowner.
- Any CLA option granted under the arrangement ceases to have effect if the land subject to the option is not allocated in the local plan when it is adopted or approved, and
- The LPA may either sell the option to a developer , exercise the option and sell the land, or exercise the option and develop the land themselves.

1115 Subsection (4) defines a "CLA option" as an option that is granted under a CLA arrangement, to acquire a freehold or leasehold interest in the land which can be exercised by the LPA in whose area the land is situated, or disposed of by the LPA on terms set by the authority. It must also meet any requirements imposed by CLA regulations.

1116 Subsection (5) provides examples of what CLA regulations, made under subsection (4)(c), may make provision for.

Section 142: Power to permit community land auction arrangements

Background

1117 Section 142 provides for the power to permit community land auction (CLA) arrangements in areas where CLA regulations provide that an LPA may do so and the LPA has agreed.

1118 This section sets out that the LPA's local plan may only allocate land for development if it is subject to a CLA option (or a CLA option has already been exercised in relation to it), or in other circumstances prescribed in regulations. It also provides the power to take into account financial benefits arising from CLA options in making decisions about the local plan. This section will help meet the overall purpose of CLA arrangements as set out in section 141, by allowing LPAs to take into account financial benefits arising from CLA options and ensuring that CLAs can optimise land value capture and deliver benefits for the local community.

Effect

1119 Subsection (1) sets out the circumstances in which this section applies.

1120 Subsection (2) sets out conditions regarding the allocation of land for development in the local plan of an LPA running a CLA arrangement. One of these conditions must pertain in order for land to be permitted to be allocated for development in the plan.

1121 Subsection (3) provides the power to take into account financial benefits arising from CLA options.

1122 Subsection (4) provides a regulation making power to prescribe how, or to what extent any financial benefit may be taken into account. This includes provision about how any financial benefit is to be weighed against other relevant considerations, in determining allocation of land in the local plan or whether the plan is sound.

1123 Subsection (5) sets out that references to a local plan in this section do not include references to a joint local plan but highlights section 147 in relation to this.

CLA Receipts

Section 143: Application of CLA receipts

Background

1124 Section 143 makes provision for how Community Land Auction receipts can be spent by LPAs. It largely replicates provisions made by sections 204N for the Infrastructure Levy ('IL') (see Schedule 12 to the Act) and section 216 of the Planning Act 2008 for Community Infrastructure Levy ('CIL').

Effect

1125 Subsection (1) provides that regulations must require the LPA to apply financial benefits derived from CLA options ("CLA receipts") to support the development of an area by funding infrastructure or the operation of CLA arrangements in relation to the LPA's area.

1126 Subsection (2) sets out what subsection (1) is subject to.

1127 Subsection (3) enables regulations to make provision about the extent to which LPAs may or must apply the CLA receipts it receives to specific types of infrastructure.

1128 Subsection (4) provides a non-exhaustive list of what is considered to be 'infrastructure'.

1129 Subsection (5) sets out the definition of "affordable housing" for the purposes of subsection (4)(g) and provides a power for CLA regulations to specify further descriptions of housing which fall within this definition.

1130 Subsection (6) provides powers for CLA regulations to amend the definition of "infrastructure" in subsection (4), as well as to amend this section in order to list matters excluded from the meaning of "infrastructure", and therefore contains powers to guide at a national level what CLA receipts may be spent on.

1131 Subsection (7) provides for regulations to set out the circumstances in which LPAs may spend a specified amount of CLA receipts on matters that fall outside the requirements of subsection (1).

1132 Subsection (8) provides that regulations may specify further details of what may or may not be funded by CLA receipts, what can be treated as funding and criteria for determining areas that may benefit from funding by CLA receipts.

1133 Subsection (9) provides powers to require LPAs to prepare and publish lists of projects which they propose will be funded, either wholly or partly, by CLA receipts, and, by exemption from that list, infrastructure that developers should expect to fund and provide outside of CLA receipts. Subsection (9) also provides powers to make provision about the procedure to be followed in preparing such a list, and to permit or require the list to be prepared and published as part of the CLA infrastructure delivery strategy.

1134 Subsection (10) is a list of types of provision which may be made by CLA regulations when making provision about funding. It includes powers to permit CLA receipts to be used for the reimbursement of expenditure already incurred and to include provision for the giving of loans, guarantees, and indemnities.

1135 Subsection (11) sets out the types of provision which may be made by CLA regulations to require LPAs to monitor what CLA receipts are spent on and to report on their collection and application, or to permit LPAs or other bodies to do certain other things with CLA receipts.

1136 Subsection (12) sets out the circumstances, for the purposes of subsection (1), where a "financial benefit" will have derived from a CLA option.

Section 144: Duty to pass CLA receipts to other persons

Background

1137 Section 144 allows CLA regulations to establish a duty for LPAs to pass on CLA receipts to other persons. It broadly replicates provision made in section 204O for Infrastructure Levy ('IL') (see Schedule 12 to the Act) and section 216A of the Planning Act 2008 for Community Infrastructure Levy ('CIL'). It includes an additional power to allow for CLA receipts to be passed to other persons to fund the operation of CLA arrangements in relation to land in the LPA's area.

1138 This section also replicates powers granted in section 143. It allows CLA regulations to set out circumstances in which a specified amount of CLA receipts may be used for purposes not specified in subsection (2).

Effect

1139 Subsection (1) allows CLA regulations to establish a duty – applicable to CLA receipts received in respect of development in an area – to pass such receipts (whether in part or whole) to another person.

1140 Subsection (2) sets out that CLA regulations which establish such a duty under subsection (1) must contain provision securing that CLA receipts passed to another person under this duty are used to fund the matters set out in this subsection.

1141 Subsection (3) allows CLA regulations to set out circumstances in which a specified amount of CLA receipts passed in this way may be used for purposes not specified in subsection (2).

1142 Subsections (4), (5), (6), (7) and (8) set out the framework for this process, providing for CLA 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; monitoring, accounting, and reporting responsibilities of LPAs, and when funding is to be returned to the LPA.

1143 Subsection (9) makes clear that this section does not limit section 143(11)(f) which provides that regulations may permit an LPA to pass money to another body.

Example (1): Duty to pass CLA receipts to other persons

Subsection (1) can be used to make regulations to require local planning authorities to pass on a proportion of CLA receipts to other persons (for example a parish council). Where subsection (1) applies, subsection (2) requires that CLA regulations must require receipts which have been passed to another person under that duty to be used to support the development of the area to which the duty relates by funding infrastructure or anything else concerned with addressing the demands that development places on an area or fund the operation of CLA arrangements in the LPA's area.

This broadly replicates the powers that exist in section 216A of the Planning Act 2008 to enable the neighbourhood share for the Community Infrastructure Levy. This is currently used to require authorities to pass on a portion of CIL receipts to the parish or town council in parished areas.

Regulations made under subsection (2)(b) will enable CLA receipts passed to other persons to be used to fund the operation of community land auction arrangements. Consequently, the persons to whom the duty in subsection (1) relates (e.g. a parish council) will be able to use CLA receipts to, for example, purchase CLA options over land in the LPA area.

Section 145: Use of CLA receipts in an area to which section 144(1) duty does not relate

Background

1144 Section 145 deals with the use of CLA receipts in an area to which the duty to pass on receipts, set out in section 144(1), does not relate. It largely replicates powers for Infrastructure Levy ('IL') granted under section 204P of the Planning Act 2008 (see Schedule 12 to the Act). Section 145 includes an additional power to allow for CLA receipts to fund the operation of CLA arrangements in relation to land in the LPA's area.

1145 This section also replicates the powers granted in sections 143(7) and 144(3) allowing CLA regulations to set out circumstances in which a specified amount of CLA receipts may be spent on specified purposes that are not set out in subsection (2).

Effect

1146 Subsection (1) sets out where subsection (2) applies.

1147 This section applies where CLA regulations provide for a duty under section 144(1) in respect of one or more areas, and there are also one or more areas to which that new duty does not apply ("the uncovered area").

1148 Subsection (2) sets out the matters which CLA regulations may allow the LPA to use CLA receipts it has received in respect of development in the uncovered area to fund. The uncovered area could include areas where parish or town councils do not exist, for example.

1149 Subsection (3) allows CLA regulations to set out circumstances in which a specified amount of CLA receipts may be used for purposes not specified in subsection (2).

1150 Subsection (4) sets out that provision under subsection (2)(a) or (b) may relate to the whole, or part only, of the uncovered area.

1151 Subsection (5) sets out what provision made under subsection (2) may relate to.

Section 146: CLA infrastructure delivery strategy

Background

1152 Section 146 sets out that LPAs may be required, by CLA regulations, to prepare and publish a CLA infrastructure delivery strategy. This section largely replicates powers granted in relation to Infrastructure Levy under section 204Q of the Planning Act 2008 (see Schedule 12 to the Act). However, this section states that regulations may make a requirement to this effect (not must do as in section 204Q). This is to ensure that LPAs piloting this novel process of CLA arrangements can do so effectively, allowing the Secretary of State, should they decide it is appropriate, to set out in CLA regulations that LPAs are required to produce and publish a CLA infrastructure delivery strategy.

Effect

1153 Subsection (1) provides regulation making powers to require an LPA to prepare and publish a CLA infrastructure delivery strategy.

1154 Subsection (2) sets out what a CLA infrastructure delivery strategy is and provides a power to prescribe other information that CLA infrastructure delivery strategies are to contain.

1155 Subsection (3) elaborates on the kind of information that can be included in a CLA infrastructure delivery strategy. It also contains a power for CLA regulations to require a CLA infrastructure delivery strategy to include the information set out in this subsection.

1156 Subsection (4) enables LPAs to revise or replace their CLA infrastructure delivery strategy at any time.

1157 Subsection (5) sets out that CLA regulations may make provision for the independent examination of CLA infrastructure delivery strategies and revisions to, or replacements of, such strategies.

1158 Subsection (6) sets out other types of examination which CLA regulations may allow the examination of an CLA infrastructure delivery strategy to be combined with.

1159 Subsection (7) provides a non-exhaustive list of examples of the kind of provision that may be set out in CLA regulations regarding the examination of a CLA infrastructure delivery strategy, including details about the examiner, the process of examination, and any circumstances in which an examination is not required.

1160 Subsection (8) imposes a duty on LPAs which are required to prepare and publish a CLA infrastructure delivery strategy to have regard to guidance issued by the Secretary of State in relation to CLA infrastructure delivery strategies.

1161 Subsection (9) gives examples of the type of provision relating to CLA infrastructure delivery strategies that CLA regulations may make provision about.

General

Section 147: Power to provide for authorities making joint local plans

Background

1162 The provisions in Part 5 do not automatically apply to joint local plans, and section 142(5) makes clear that references in that section to a local plan do not include references to a joint local plan.

1163 Section 147 confers a power on the Secretary of State to apply, by way of CLA regulations, all or some of Part 5 in relation to LPAs who are to prepare a joint local plan, and that in doing so, the provisions can be modified if necessary to ensure that they work in the intended way.

1164 This section also sets out that where this power is exercised, the CLA regulations must also include provision about how CLA receipts deriving from a joint CLA arrangement are to be shared between the authorities.

Effect

1165 Subsection (1) enables CLA regulations to make provision applying any provision made by or under this Part in relation to LPAs and whose next local plan is to be a joint local plan, with or without modifications.

1166 Subsection (2) sets out that where CLA regulations make provision under subsection (1), those regulations must include provision about how CLA receipts deriving from the arrangement are to be shared between the authorities.

Section 148: Parliamentary scrutiny of pilot

Background

1167 Section 148 provides for Parliament to scrutinise the piloting of CLA arrangements carried out under this Part, placing a requirement on the Secretary of State to prepare and lay before Parliament a report on the effectiveness of the CLA arrangements no later than two years after the expiry of this Part or two years after the final CLA arrangement is completed, whichever is later. Parliamentary scrutiny of CLA arrangements is important as this is previously untested policy and will allow for the effectiveness of this piloted measure to be assessed.

Effect

1168 Subsection (1) places a requirement on the Secretary of State to prepare a report on the effectiveness of CLA arrangements in delivering their overall purpose (and any other information the Secretary of State considers appropriate).

1169 Subsection (2) sets out when the Secretary of State is required to lay the report before each House of Parliament.

1170 Subsection (3) makes clear that the "final community land auction arrangement" (as referenced in subsection (2)) means the last CLA arrangement to come to an end.

1171 Subsection (4) requires the Secretary of State to publish the report after it has been laid before Parliament and sets out when this must be done.

1172 In calculating the period of 24 months within which the Secretary of State is required to lay the report, subsection (5) excludes from this period any days when Parliament is dissolved or prorogued, and any periods of more than 4 days when either House of Parliament is adjourned.

Section 149: CLA regulations: further provision and guidance

Background

1173 This section confers a number of powers on the Secretary of State to make regulations, and guidance, in connection with Part 5.

Effect

1174 Subsection (1) gives a power to the Secretary of State to make provision about the design of various elements of CLA arrangements in regulations. This subsection also permits CLA regulations to make provision about how section 106 of the TCPA 1990 is to be used, or not to be used, in areas where

CLA arrangements are piloted, about the exercise of any other power relating to planning or development and about anything else relating to planning or development.

1175 Subsection (2) sets out that the Secretary of State may publish guidance about, or in connection with, CLA arrangements and that the authorities to whom this guidance is given must have regard to the guidance.

1176 Subsection (3) sets out constraints on the exercise of the powers in subsections (1)(h)-(j) and (2).

1177 Subsection (4) allows CLA regulations to confer functions on persons (for example, LPAs) in relation to how CLA arrangements work. It also allows CLA regulations to make consequential, supplementary, or incidental provision under section 252 (1)(c) which disapplies, or modifies the effect of, any provision made by or under an Act of Parliament (whenever passed or made).

Section 150: Expiry of Part 5

Background

1178 In line with CLA arrangements being a pilot scheme, this section provides for Part 5 (with the exception of section 148 and this section) to expire ten years after CLA regulations are first made under this Part. It also ensures that the expiry of the Part does not affect certain elements of the CLA process. This is so that any CLA arrangement which has commenced but remains ongoing after the Part expires is still subject to the provisions in Part 5, otherwise there will be no regulation of such arrangements. It also confers a power on the Secretary of State to make transitional, transitory, or saving provision in CLA regulations in connection with expiry of the Part.

Effect

1179 Subsection (1) provides that Part 5 (other than section 148 and this section) expires ten years after the date on which the CLA regulations are first made.

1180 Subsection (2) sets out the elements of the CLA process which subsection (1) does not affect, and which will therefore be saved once Part 5 expires.

1181 Subsection (3) provides a power for CLA regulations to make further transitional, transitory, or saving provision which subsections (1) and (2) are to be subject to in connection with the expiry of this Part.

Section 151: Interpretation of Part 5

Background

1182 This section sets out the definitions for key terms in this Part.

Effect

1183 This section establishes the meaning of terminology pertaining to CLAs as set out in this Part, including the meaning of “CLA option”, “CLA receipts”, CLA regulations”, “community land auction arrangement”, “joint local plan”, “local plan”, and “local planning authority”.

Part 6: Environmental outcomes reports

Setting environmental outcomes

Section 152: Power to specify environmental outcomes

Background

1184 This provision allows the appropriate authority to make regulations to set 'specified environmental outcomes', against which relevant consents and relevant plans will be assessed. The regulations that set outcomes will be subject to public consultation and the affirmative parliamentary procedure and must uphold the non-regression provisions in this Part. In setting outcomes, the appropriate authority must have regard to the appropriate environmental improvement plan, policy strategy or national natural resources policy, including the legally binding long-term targets and interim targets that are set under them.

Effect

1185 Subsection (1) allows the appropriate authority to make regulations specifying outcomes relating to environmental protection. It will be against these specified environmental outcomes that relevant plans and relevant projects will be assessed through an Environmental Outcomes Report.

1186 Subsections (2), (3) and (4) provide a range of definitions to support the interpretation of this Part, including; 'environmental protection', 'natural environment' and 'cultural heritage'.

1187 Subsection (5) ensures that in developing outcomes, the appropriate authority must have regard to the appropriate current environmental improvement plan, policy strategy or national natural resources policy. Environment improvement plans are the Government's plans for significantly improving the natural environment and inform legally binding long-term targets for areas such as water quality, air and biodiversity, as well as additional short-term interim targets. While the appropriate authority must have regard to the appropriate environmental improvement plan or policy strategy, they can, of course, draw on other relevant material when developing outcomes.

Power to require environmental outcomes reports

Section 153: Environmental outcomes reports for relevant consents and relevant plans

Background

1188 This is a new provision which allows the appropriate authority to make regulations requiring the preparation of an Environmental Outcomes Report for relevant plans and relevant consents. This provision establishes an outcomes-based approach to assessment where anticipated environmental effects are measured against specified environmental outcomes. As well as assessing against outcomes, an Environmental Outcomes Report must set out and assess the impact of any proposed mitigation or compensation as well as considering reasonable alternatives to the consent or plan, or any element of them. Where an Environmental Outcomes Report is required, this must be taken into account when considering whether to grant consent or bring a plan into effect.

Effect

1189 Subsection (1) allows the appropriate authority to make regulations requiring that an Environmental Outcomes Report is prepared as a requirement to proceed with relevant plans or grant consent to relevant projects.

1190 Subsection (2) sets the dual requirements that where an Environmental Outcomes Report is required, consent cannot be granted unless the Environmental Outcomes Report has been prepared (subsection (2)(a)) and that the Environmental Outcomes Report needs to be considered when determining whether a relevant consent is to be granted and the terms on which it is given (2(b)).

1191 Subsection (3) mirrors the dual preparation and consideration requirements of an Environmental Outcomes Report as outlined in subsection 2, but in respect of relevant plans.

1192 Subsection (4) sets the core requirements of what an Environmental Outcomes Report should contain. These build on the mandatory information required in the reporting stages of the Environmental Impact Assessment Directive (85/337/EEC) (Article 5 and Annex 4) and the Strategic Environmental Assessment Directive (2001/42/EC) (Article 5 and Annex 1). Subsection (4)(a) captures the need of an Environmental Outcomes Report to demonstrate how the plan or consent would affect the delivery of specified environmental outcomes as defined in regulations. Subsection (4)(b) includes any proposals for increasing the extent to which an outcome is delivered. Subsection (4)(c) reflects that, in addition to providing an assessment of the extent to which the delivery of specified environmental outcomes is affected, an Environmental Outcomes Report must assess any steps proposed to avoid, mitigate or compensate (the mitigation hierarchy) effects relating to the delivery of a specified environmental outcome. Subsection (4)(d) provides that an Environmental Outcomes Report should include an assessment of how matters raised through assessment are monitored or secured.

Example: Failure to prepare an Environmental Outcomes Report

If, where a consent has been identified as a relevant consent in regulations, an Environmental Outcomes Report is not produced then consent could not be granted. Furthermore, if an Environmental Outcomes Report is required then the report needs to be considered before making a decision as to whether to the grant the consent or plan.

1193 Subsection (5)(a) captures the need to consider reasonable alternatives in reference to the steps outlined under subsection (4)(c) which relate to the relevant consent, the project that is the subject of the consent, or to any element of either. Subsection (5)(b) relates to reasonable alternatives in respect of a relevant plan or any element of it.

1194 Subsection (6) disapplies subsection (2) where consent is granted under section 154(4). This is to avoid the circular situation where the report would need to be taken into account in deciding whether to grant the consent, when it is the report itself that gives the consent.

1195 Subsection (7) lists the circumstances in which the appropriate authority can make regulations in respect of Environmental Outcomes Reports.

1196 Subsection (7)(a) provides a power to set out the form in which the relevant consent is to be given to constitute the issue of consent.

1197 Subsections (7)(b) and (c) allow the appropriate authority to make regulations to set what plans and consents require an Environmental Outcomes Report.

1198 Subsection (7)(d) allows the appropriate authority to make regulations to guard against duplication where the assessment of the impact on the delivery of a specified environmental outcome has already been adequately assessed in a different Environmental Outcomes Report.

> ### Example: The requirement to produce an Environmental Outcomes Report
> The use of this power is linked to the definition of "relevant plans" and "relevant consents" in section 154. The combined effect of these provisions will allow the appropriate authority to specify what consents and plans require an Environmental Outcomes Report. The use of this power is constrained by the commitment to non-regression and a duty to consult relevant public authorities but will allow the appropriate authority to set out which consents must produce an Environmental Outcomes Report ("category one consents") and which consents must produce an Environmental Outcomes Report if certain conditions are met ("category two consents"). Similarly, the appropriate authority will be able to set which plans require an Environmental Outcomes Report.

1199 Subsection (7)(e) enables the appropriate authority to specify the proposals that a report needs to deal with as set out in subsection (4)(b), (c) and (d).

1200 Subsection (7)(f) provides powers to enable appropriate authority to set out how assessments under subsection 4 should be carried out.

1201 Subsection (7)(g) enables the appropriate authority to set what information is to be included in an Environmental Outcomes Report. This also allows the appropriate authority to determine the content and form of an Environmental Outcomes Report. This subsection also allows the appropriate authority to make provision for additional matters to be provided in the Environmental Outcomes Report over and above those detailed in subsection (4).

> ### Example: Form and content of information in an Environmental Outcomes Report
> This power could be used to prescribe that certain information produced for the purpose of an Environmental Outcomes Report is produced in a consistent manner. For example, regulations could be used to set how a specific type of environmental data is presented for the purpose of the Environmental Outcomes Report.

1202 Subsection (7)(h) allows the appropriate authority to set the extent to which Environmental Outcomes Reports are to be taken into account when making decisions in relation to relevant consents and plans.

> ### Example: The weight given to Environmental Outcomes Reports
> While Environmental Outcomes Reports must always be taken into account when prepared, the appropriate authority would have the power to make regulations that increased the weight afforded to an Environmental Outcomes Report. This would, for example, allow the appropriate authority to make regulations specifying that a decision-maker should, in certain circumstances, give increased weight to the findings of an Environmental Outcomes Report when considering whether to grant a consent.

1203 Subsection (7)(i) allows the appropriate authority to make provision regarding how proposals should be carried out for the purposes of improving compliance with specified environmental outcomes as per subsection (4)(b), (c) and (d) (following the mitigation hierarchy), as well as the monitoring of those proposals.

Defining the consents and plans to which this Part applies

Section 154: Power to define 'relevant consent' and 'relevant plan' etc.

Background

1204 These provisions allow the appropriate authority to set in regulations which consents and plans are covered by this Part and the requirements to produce an Environmental Outcomes Report. It also provides for a scenario where consent must be granted by the Environmental Outcomes Report itself.

Effect

1205 Subsection (1) allows the appropriate authority to make regulations setting out those consents that are to be considered as relevant consents for the purposes of Environmental Outcomes Report. These "category 1" consents will always require an Environmental Outcomes Report.

1206 Subsection (2) allows the appropriate authority to make regulations setting out those consents that should be considered "category 2" consents - a "category 2" consent will only be required to produce an Environmental Outcomes Report where it meets criteria set through regulations made under this provision.

1207 Subsection (3) allows for regulations to be made that set the criteria where a consent listed as a "category 2" consent will be a relevant consent and therefore require an Environmental Outcomes Report.

1208 Subsection (4) allows the appropriate authority to make regulations imposing a requirement for a consent in relation to a project. This will be used, as in the current Environmental Impact Assessment Agriculture regime, where no other consenting mechanism exists.

1209 Subsection (5) allows the appropriate authority to make regulations setting out how a consent required by subsection (4) is to be given, including that it may be given, or refused, by an Environmental Outcomes Report.

1210 Subsection (6) provides that a relevant plan for the purposes of this Part will be defined through regulations. This section requires that, in order for a plan to be capable of being specified as a relevant plan, it must or may relate to a project or environmental protection in the United Kingdom or a relevant offshore area as defined in section 167.

1211 Subsection (7) extends the definitions to include modifications of consents and plans.

1212 Subsection (8) explains the meaning of the term 'consent' for the purposes of this Part given the breadth of terminology associated with existing environmental assessment legislation.

1213 Subsection (9) explains the meaning of the term 'project' for the purposes of this Part given the range of activities to which the term could apply.

Assessment and monitoring

Section 155: Assessing and monitoring impact on outcomes etc.

Background

1214 These provisions allow the appropriate authority to make regulations setting out how relevant consents and relevant plans should be assessed and monitored once in place, so that information on delivery against specified environmental outcomes can be captured. This will then also allow remedial action and/or mitigations to be carried out where necessary.

Effect

1215 Subsection (1) provides powers to enable the appropriate authority to make regulations setting out how the delivery of specified environmental outcomes should be assessed or monitored.

1216 Subsection (2) makes provision for the appropriate authority to make regulations setting how any proposals assessed in the Environmental Outcomes Report should be assessed and monitored.

> #### Example: Monitoring and dynamic mitigation
> The appropriate authority will be able to make regulations that require action to be taken where monitoring shows that the expected delivery of a specified environmental outcome is not being met. For example, these regulations could mandate that certain mitigations are put in place where ongoing monitoring shows that a predicted effect has not been realised or unanticipated effects have arisen, resulting in a specified environmental outcome not being met.

1217 Subsection (3) enables requirements to be set to take action to i) increase the extent to which an environmental outcome is delivered, ii) mitigate or remedy the effects of an environmental outcome not being met to any extent or iii) compensate for an environmental outcome not being met to any extent.

Safeguards, devolution and exemptions

Section 156: Safeguards: non-regression, international obligations and public engagement

Background

1218 This section enshrines in legislation the Government's commitments to non-regression of environmental protection, adherence to its international obligations and to public engagement on consents and plans. In introducing a new framework of environmental assessment, the Government is committed to maintaining overall existing levels of environmental protection as required by the relevant provisions of the EU-UK Trade and Cooperation Agreement. This provision also ensures that the process of environmental assessment provides suitable opportunity for public engagement.

Effect

1219 Subsection (1) constrains the use of the regulation making powers to require that the appropriate authority must be satisfied that any regulations do not reduce the overall level of environmental protection provided by existing environmental law at the time the Act is passed.

1220 Subsection (2) is an additional constraint that ensures regulations cannot contain provisions that are inconsistent with the implementation of the UK's international obligations relating to the assessment of the environmental impact of relevant plans and relevant consents.

1221 Subsection (3) sets a commitment to ensuring adequate public engagement in the process of preparing an Environmental Outcomes Report. This will ensure the public are informed of any

relevant consents / plans and have the opportunity to engage in the process, in line with the requirements of the Aarhus Convention on Matters of Public Participation in Decision Making.

1222 Subsection (4) provides definitions of "adequate public engagement" and "environmental law" to support the understanding of these constraints.

Section 157: Requirements to consult devolved administrations

Background

1223 The provision provides that the Secretary of State must obtain the consent of or consult the relevant devolved administrations where regulations contain provision within devolved competence.

Effect

1224 Subsection (1) requires the Secretary of State to obtain the consent of the Scottish Ministers before making EOR regulations within Scottish devolved legislative competence or which Scottish Ministers could make themselves, unless the changes are consequential or incidental to provisions outside of their devolved legislative competence.

1225 Subsection (2) requires the Secretary of State to consult Scottish Ministers before making EOR regulations where those regulations contain provision which confers, removes or modifies a function of the Scottish Ministers, unless that provision requires Scottish Ministers' consent under subsection (1) or the changes are consequential or incidental to provisions which would be outside Scottish devolved legislative competence.

1226 Subsection (3) defines Scottish devolved legislative competence as where the provisions could have been made by Scottish Ministers in an Act of the Scottish Parliament.

1227 Subsection (4) requires the Secretary of State to seek the consent of Welsh Ministers before making EOR regulations within Welsh devolved legislative competence, unless the changes are consequential or incidental to provisions which would be outside of their devolved legislative competence.

1228 Subsection (5) requires the Secretary of State to consult Welsh Ministers before making EOR regulations where those regulations contain provision which could be made by Welsh Ministers or confers, removes or modifies a function of the Welsh Ministers or a devolved Welsh authority, unless that provision requires Welsh Ministers' consent under subsection (4) or the changes are consequential or incidental to provisions which would be outside of their devolved legislative competence.

1229 Subsection (6) defines devolved Welsh authority by reference to the Government of Wales Act 2006. Subsection (7) defines Welsh devolved legislative competence as where the provisions could have been made by Welsh Ministers in an Act of Senedd Cymru.

1230 Subsection (8) requires the Secretary of State to obtain consent from the relevant Northern Ireland department before making EOR regulations within Northern Ireland devolved legislative competence, unless the changes are consequential or incidental to provisions which would be outside of their devolved legislative competence.

1231 Subsection (9) requires the Secretary of State to consult a Northern Ireland department before making EOR regulations where those regulations contain provision which could be made by a Northern Ireland department or confers, removes or modifies a function of a Northern Ireland department, unless that provision requires consent under subsection (8) or the changes are consequential or incidental to provisions which would be outside their devolved legislative competence.

1232 Subsection (10) defines a Northern Ireland department. Subsection (11) defines Northern Ireland devolved legislative competence as where the provisions could have been made by the Northern Ireland Assembly in an Assembly Act without requiring the Secretary of State's consent.

1233 Subsection (12) refers to the definition of "Minister of the Crown" used in this section.

Section 158: EOR regulations: devolved authorities

1234 This section introduces Schedule 13 which sets out restrictions that apply to devolved authorities when exercising the powers in Part 6 (as well as Chapter 1 of Part 3).

Section 159: Exemptions for national defence and civil emergency etc

Background

1235 This provision replicates the position under the current environmental assessment regulations and provides the necessary powers to allow the Secretary of State to direct when an Environmental Outcomes Report is not required.

Effect

1236 Subsection (1) enables the Secretary of State to direct that an Environmental Outcomes Report is not required where a proposed relevant consent relates solely to national defence or preventing or responding to civil emergency.

1237 Subsection (2) provides a power for EOR regulations to set out other instances when the Secretary of State is able to direct that an Environmental Outcomes Report is not required.

1238 Subsection (3) provides that, where a direction for an exemption has been made, that direction may require that certain provisions of the regulations apply even where a full Environmental Outcomes Report is not required.

1239 Subsection (4) enables the Secretary of State to modify or revoke a direction under this section. This provides a mechanism to deal with emergency situations but would then allow for revocation of the direction when it is no longer required or its modification were the relevant circumstances to change.

Enforcement

Section 160: Enforcement

Background

1240 This section sets out the enforcement provisions that can be made in respect of Environmental Outcomes Reports. The appropriate authority is under a duty to consult relevant public authorities when making regulations in respect of enforcement.

Effect

1241 Subsection (1) provides the power to allow for the creation of enforcement provisions in respect of Environmental Outcomes Reports.

1242 Subsection (2) specifies the specific type of provisions that can be made in respect of enforcement – subsection (2)(a) – (g) details the range of criminal and civil provisions that are available.

1243 Subsection (3) confirms that civil sanctions imposed under the powers contained in this section may be imposed in circumstances when the conduct does not constitute a criminal offence.

1244 Subsection (4) defines 'civil sanction' in the context of this section.

Reporting

Section 161: Reporting

Background

1245 This is a new provision which sets out the framework of regulation-making powers available to Government and the devolved administrations in respect of Environmental Outcomes Reports. This will allow the appropriate authority to require public authorities to report back on the delivery of specified environmental outcomes which will allow the Government/devolved administrations to build a picture of the delivery of environmental outcomes across the country.

Effect

1246 Subsection (1) is an enabling power to allow the appropriate authority to require a public authority to provide information in relation to the delivery of environmental outcomes.

1247 Subsection (2) frames the potential contents of any Environmental Outcomes Report regulations in respect of reporting requirements. Subsection (2)(a) – (f) allow regulations to set the details of what is required of public authorities in relation to reporting. This includes: the form and content of information ((a) and (b)); when and how information is to be published ((c) and (d)); to whom the report is to be provided ((e)) and allowing reports to be combined with other documents ((f)).

Example: Reporting on environmental outcomes

The appropriate authority could, for example, use this power to make regulations requiring local planning authorities to provide consolidated information on how their local plans are delivering on specified environmental outcomes.

General

Section 162: Public consultation etc

Background

1248 This section sets out the consultation requirements when making regulations under this Part. This introduces two routes of consultation for different provisions. Public consultation is enshrined in the legislation for the core elements of the new system, with consultation with relevant public authorities proposed for more technical and procedural matters.

Effect

1249 Subsection (1) requires that the appropriate authority consult the public before making, amending or repealing existing legislation in respect of environmental assessment. The appropriate authority is also placed under a duty to consult the public when making regulations that set environmental outcomes.

1250 Subsection (2) requires the appropriate authority to consult public authorities (or other such persons considered appropriate) before making certain guidance or regulations under this Part. Subsection (2)(a) makes provision in relation to regulations in respect of consents and plans subject to this Part, exemptions, enforcement, interaction with existing environmental assessment legislation and the Habitats Regulations (subsections (2)(a)(i)-(iv)). Subsection (2)(b) makes equivalent provision for the purposes of guidance issued under section 163.

1251 Subsection (3) allows for Environmental Outcomes Report regulations to direct how public authorities must respond to consultation requirements.

1252 Subsection (4) allows for circumstances in which consultation requirements have already been met before subsections (1) or (2) come into force.

Section 163: Guidance

Background

1253 This provision requires public authorities to have regard to guidance issued by the appropriate authority when exercising their functions in respect of environmental assessment. In setting outcomes, the appropriate authority will prepare guidance detailing out how relevant plans and consents demonstrate they are supporting the delivery of specified environmental outcomes. This guidance will support public authorities to ensure consistency of assessment and allow the appropriate authority to reflect up-to-date science and methodologies.

Effect

1254 Subsections (1) and (2) and (4) require public authorities to have regard to guidance issued by the Secretary of State or by the devolved authorities, where relevant regulations are made jointly by the Secretary of State and one or more devolved authorities, or by a devolved authority acting alone. "Devolved authorities" is defined in section 167(3).

1255 Subsection (3)(a) requires the Secretary of State to obtain the consent of Scottish Ministers, Welsh Ministers or relevant Northern Ireland departments before issuing guidance in relation to EOR regulations made jointly with them that would be within the devolved legislative competence of the Scottish Ministers, Welsh Ministers or Northern Ireland departments. Subsections (3)(b)-(d) require the Scottish Ministers, Welsh Ministers and Northern Ireland departments to obtain the Secretary of State's consent before making guidance relating to matters outside their respective devolved legislative competence. The meaning of devolved legislative competence is set out in section 157.

1256 Subsection (4) defines the relevant Northern Ireland department.

1257 Subsections (6)-(9) require public authorities which carry out functions under existing environmental assessment legislation (as set out in Schedule 14) to have regard to guidance issued either by the Secretary of State (where the relevant existing environmental legislation is listed in Part 1 of that Schedule) or by the Scottish Ministers, Welsh Ministers or Northern Ireland departments (where it is listed in Parts 2, 3 or 4 respectively). Particular provisions apply in respect of Schedule 3 to the Harbours Act 1964.

1258 Subsection (10) allows for regulations to introduce a requirement that where any person carrying out a function in respect of Environmental Outcomes Report regulations fails to have regard to guidance, then that function will not be valid.

Section 164: Interaction with existing environmental assessment legislation and the Habitats Regulations

Example: Guidance to support Environmental Outcomes Reports

The need to ensure regard is given to guidance will ensure that, for example, where guidance is issued that demonstrates how relevant plans and consents can demonstrate they are in line with a specified environmental outcome, this guidance is given proper consideration by the decision-maker when taking account of the Environmental Outcomes Report.

Background

1259 This provision ensures that legislation made under this Part is able to interact with existing environmental assessment legislation, as well as the Habitats Regulations, subject to non-regression provisions. This is necessary to ensure that where an Environmental Outcomes Report is prepared, where appropriate, this is capable of meeting the requirements of existing environmental assessment so as to avoid duplication.

Effect

1260 Subsection (1) provides the power to make regulations in respect of interaction with existing environmental assessment legislation or Habitats Regulations.

1261 Subsection (2) provides that regulations can be made that set out how the preparation of an Environmental Outcomes Report can meet the requirements of existing environmental assessment legislation or certain relevant Habitats Regulations (subsection (2)(a)) and how things done under existing environmental assessment legislation and Habitats Regulations can be treated as meeting the requirements of EOR regulations (subsection (2)(b)). Subsection (2)(c) allows for the coordination of things done under Environmental Outcomes Reports and existing environmental assessment legislation and Habitats Regulations. Subsection (2)(d) and (e) allows for regulations to be made that disapply existing environmental assessment legislation and relevant Habitats Regulations, and Environmental Outcomes Reports when there would be duplication between the two systems.

1262 Subsection (3) provides a supporting power to allow for the amendment, repeal or revocation of relevant existing environmental assessment legislation. Relevant existing environmental assessment legislation is defined in section 167(2) by reference to Schedule 14.

1263 Subsection (4) defines the meaning of Habitats Regulations and relevant Habitats Regulations for the purpose of this Part.

Section 165: Consequential repeal of power to make provision for environmental assessment

Effect

1264 Subsections (1) to (3) repeal references in relevant legislation including for England the Town and Country Planning Act 1990, relating to the power of the Secretary of State to make provision about the consideration, before planning permission, of the likely environmental effects of a development (including for Urgent Crown Development applications).

Section 166: EOR regulations: further provision

Background

1265 This section provides additional regulation-making powers that build on the core regulation making powers in this Part.

Effect

1266 Subsection (1) provides the appropriate authority with the power to make regulations in relation to procedural matters (subsection (1)(a)), who can prepare an Environmental Outcomes Report (subsection (1)(b)), requiring a public authority to assist with assessment or monitoring (subsection (1)(c)), requirements in relation to publication, consultation and public engagement in connection with Environmental Outcomes Reports and other relevant documents (subsection (1)(d)), information requirements (subsection (1)(e)), the persons to whom an Environmental Outcomes Report is to be given and how it is given (subsection (1)(f)), how information should be collected or provided (subsection (1)(g)), the ability to decline documents that fail to meet requirements (subsection (1(h)), how public authorities are to consider any failure to comply with any

requirements under this Part when reaching a decision on the relevant consent or plan (subsection (1)(i)), and appeals and reviews of decisions made by public authorities (subsection (1)(j)).

1267 Subsection (2) allows regulations to provide for the charging of fees (subsection (2)(a)) confer a function on any person (subsection (2)(b)) and make consequential amendments (subsection (2)(c)).

1268 Subsection (3) defines the meaning of legislation for the purposes of making consequential supplementary or incidental amendments, capturing the necessary legislative provisions in respect of the UK Parliament and devolved legislatures.

Section 167: Interpretation of Part 6

Background

1269 This section clarifies the interpretation of key terms relating to this Part.

Effect

1270 Subsection (1) sets out the existing environmental assessment legislation that transposes or incorporates the SEA and EIA Directive by reference to the list in Schedule 14 and subsection (2) sets out the meaning of relevant existing environmental assessment as made by the Scottish Ministers, Welsh Ministers and Norther Ireland departments by reference to Parts 2, 3 and 4, respectively, of that Schedule.

1271 Subsection (3) provides and references a range of definitions to support the interpretation of this Part. These include definitions in respect of, amongst other things, 'cultural heritage' 'project', and 'public authority'.

Part 7: Nutrient Pollution Standards

Section 168: Nutrient pollution standards to apply to certain sewage disposal works

Background

1272 This section inserts new provisions (sections 96B to 96N) into the Water Industry Act 1991 and makes consequential amendments to section 213 of that Act.

1273 This section allows the Secretary of State to designate catchment areas for certain habitats sites polluted by nitrogen and/or phosphorus. It also requires sewerage undertakers to ensure that treated effluent from sewage disposal works in England that discharge into the designated catchments will, unless exempted, meet specified standards for the removal of nitrogen and/or phosphorus from wastewater by the applicable upgrade date.

Effect

1274 Subsection (1) inserts new sections 96B to 96N into the Water Industry Act 1991:

96B Nutrient pollution standards to apply to certain sewage disposal works

1275 Subsection (1) requires sewerage undertakers wholly or mainly in England to ensure that any sewage disposal works classed as nitrogen or phosphorus significant plants meet the relevant nutrient pollution standard on and after the upgrade date (see section 96E).

1276 Subsection (2) requires sewage undertakers to consider using nature-based solutions, technologies and facilities to meet the nutrient pollution standard.

1277 Subsections (3) and (4) define the terms "nitrogen significant plant" and "phosphorus significant plant" respectively, as plants in England that discharge treated effluent into nitrogen or phosphorous sensitive catchment areas and are not exempt.

96C Sensitive catchment areas

1278 Subsection (1) allows the Secretary of State to designate a "nitrogen sensitive catchment area" in relation to a habitats site in England that is in an unfavourable condition due to nitrogen pollution.

1279 Subsection (2) allows the Secretary of State to designate a "phosphorus sensitive catchment area" in relation to a habitats site in England that is in an unfavourable condition due to phosphorus pollution.

1280 Subsection (3) specifies that when determining (a) whether a habitats site is in an unfavourable condition due to nutrient pollution, (b) the catchment area for a habitats site, or (c) whether to exercise the power to specify the nutrient pollution standard that applies to a plant instead of the standard concentration, the Secretary of State may take into account advice or guidance from, in particular, Natural England, the Environment Agency or the Joint Nature Conservation Committee.

1281 Subsection (4) sets out the process for making designations of nutrient sensitive catchment areas. Where a designation is made after the end of the initial period, the upgrade date must be specified (see section 96E). The designation may specify the concentration that applies to a plant in relation to a nutrient pollution standard instead of the standard concentration.

1282 Subsection (5) further requires that where a nutrient sensitive catchment area is designated after end of the initial period, the upgrade date must be at least 7 years after the designation date.

1283 Subsection (6) requires that before specifying a different nutrient pollution standard that applies to a plant, the Secretary of State must consult the Environment Agency.

1284 Subsection (7) sets out that a concentration specified under subsection (4)(e) ceases to have effect if the plant becomes exempt.

1285 Subsection (8) specifies that designation of a nutrient sensitive catchment area cannot be revoked. The designation will remain regardless of whether or not the associated habitats site continues to be in an unfavourable condition due to nutrient pollution.

1286 Subsection (9) defines the term "catchment area" as the area where water, if released, would drain into the habitats site.

96D Exempt sewage disposal works

1287 Subsection (1) sets out when a plant is exempt in relation to a nutrient pollution standard: that is, if it has a capacity of less than a 2000 population equivalent at the time when the associated catchment area is designated; if it is designated as exempt by the Secretary of State under subsection (2); or if it is exempt under regulations made under subsection (8).

1288 Subsection (2) allows the Secretary of State to designate a plant as not being exempt in relation to a nutrient pollution standard. If a plant has a capacity of less than a population equivalent of 250, the Secretary of State must exercise the power to designate it as not exempt before, or at the same time as, the designation of the associated catchment area takes effect.

1289 Subsection (3) sets out the process for designating plants as exempt and not exempt.

1290 Subsection (4) requires that, where a plant is designated as not being exempt after the designation of the associated catchment area takes effect, the upgrade date must be specified (see section 96E). The upgrade date must be at least 7 years after the designation under subsection (2) takes effect.

1291 Subsection (5) sets out that a designation under subsection (2) may specify the nutrient pollution standard that applies to a plant, instead of the standard concentration.

1292 Subsection (6) requires that before specifying a different nutrient pollution standard that applies to a plant, the Secretary of State must consult the Environment Agency.

1293 Subsection (7) specifies that the different nutrient pollution standard, set in subsection (5) ceases to have effect if the plant again becomes an exempt plant.

1294 Subsection (8) allows the Secretary of State to make regulations to specify plants or descriptions of plant that are to be exempt in relation to a nutrient pollution standard.

1295 Subsection (9) explains that subsections (10) and (11) apply where a plant that is exempt under regulations under subsection (8) can, by virtue of the regulations, cease to be exempt.

1296 Subsection (10) requires the regulations to specify or provide for determining the upgrade date in relation to any plant that ceases to be an exempt plant in relation to a standard after the designation of the associated catchment area takes effect. The upgrade date must be at least 7 years after the plant ceases to be exempt in relation to the standard.

1297 Subsection (11) specifies that the regulations may provide for the Secretary of State to specify the concentration that applies to a plant that ceases, by virtue of regulations, to be an exempt plant in relation to a nutrient pollution standard instead of the standard concentration. In this instance, the regulations must require that the Secretary of State consults the Environment Agency before specifying a concentration and provide for any specified concentration to cease to have effect if the plant again becomes an exempt plant.

1298 Subsection (12) makes a designation of a plant as not exempt under subsection (2) to be of no effect if the plant ceases, by virtue of regulations under subsection (8), to be exempt in relation to the standard before, or at the same time as, the designation would otherwise take effect.

1299 Subsection (13) defines the term "population equivalent" as the meaning given by regulation 2(1) of the Urban Waste Water Treatment (England and Wales) Regulations 1994 (S.I. 1994/2841).

1300 Subsection (14) clarifies that a reference to the designation of an associated catchment in this section is to its designation as a sensitive catchment area.

96E Upgrade date

1301 Subsection (1) specifies that unless subsection (2) or (3) applies, the upgrade date, by and after which a nutrient significant plant must meet the relevant nutrient pollution standard (see section 96B), is 1 April 2030 provided the associated catchment area is designated during the initial period. The upgrade date is specified by the Secretary of State if the designation is made after the initial period (see section 96C(6)(d)).

1302 Subsection (2) specifies the upgrade date that applies where a plant becomes a nutrient significant plant by way of being designated as not exempt, or ceasing to be exempt under regulations, after the designation of the associated catchment area takes effect is the date specified either by designation made by the Secretary of State under 96D(4) or is the date specified or determined under provision made by regulations under 96D(8).

1303 Subsection (3) specifies that where a catchment permitting area designation has been revoked, the date specified in the revocation is the upgrade date.

1304 Subsection (4) defines "the initial period" as the period of 3 months beginning with the date on which the Levelling-up and Regeneration Act 2023 is passed.

1305 Subsection (5) clarifies that a reference to the designation of an associated catchment in this section is to its designation as a sensitive catchment area.

96F Nutrient pollution standards

1306 Subsections (1) and (2) specify the criteria for nitrogen and phosphorous significant plants meeting the relevant nutrient pollution standards, including where the associated catchment area is a catchment permitting area.

1307 Subsections (3) and (4) define various terms relating to the operation of sewerage disposal works.

1308 Subsection (5) allows the Secretary of State to make regulations specifying how the concentration of total nitrogen or total phosphorus in treated effluent is to be determined.

1309 Subsection (6) sets out provisions that may be included in regulations made under subsection (5), such as provision for sampling and provisions in relation to catchment permitting areas.

96G Nutrient pollution standards determined through environmental permitting

1310 Subsection (1) allows the Secretary of State to designate a sensitive catchment area as a catchment permitting area.

1311 Subsection (2) specifies that when determining whether to designate a catchment permitting area, or revoke such a designation, the Secretary of State may take into account, in particular, advice from, or guidance published by, the Environment Agency or Natural England.

1312 Where the Secretary of State has designated a catchment permitting area, subsection (3) requires the Environment Agency to review the environmental permits for nutrient significant plants in the catchment as well as other plants the Environment Agency considers appropriate, and apply conditions on those permits relating to nutrients in treated effluent for the "relevant purpose".

1313 Subsection (4) defines the "relevant purpose" to ensure that, by a specified date, the overall effect on the habitats site of nutrient pollution from plants across the catchment is the same as, or better than, the overall effect if all non-exempt nutrient significant plants were upgraded to the nutrient pollution standard.

1314 Subsection (5) clarifies the conditions applied to environmental permits under subsection (3) may impose the same, or a different concentration of nitrogen and/or phosphorus as the standard nutrient pollution concentration and may relate to any or all plants mentioned in the subsection (3)(a).

1315 Subsection (6) defines various terms relevant to subsection (4). The "applicable date" means 1 April 2030, provided the associated sensitive catchment area designation takes effect during the initial period, or the date specified if the sensitive catchment area designation takes effect after the initial period.

1316 Subsection (7) specifies how the duty in subsection (3) applies in relation to the granting of an environmental permit for a plant that discharges (or will discharge) treated effluent into the catchment permitting area.

1317 Subsection (8) specifies that it is for the Environment Agency to determine the overall effect on a habitats site of nutrients in treated effluent.

1318 Subsection (9) allows the Secretary of State to make regulations specifying how the overall effect on a habitats site is to be determined.

1319 Subsection (10) defines the term "nutrients" in relation to this section.

96H Section 96G: procedure and revocations

1320 Subsection (1) specifies that the designation or revocation of a catchment permitting area must be in writing, published as soon as practicable after being made, and takes effect in accordance with subsection (3) or (4).

1321 Subsection (2) clarifies that a catchment permitting area designation may be made at the same time, or at any time after, the designation as a sensitive catchment area is made.

1322 Subsection (3) specifies the time that a catchment permitting area designation takes effect. If the designation as a catchment permitting area is made before the designation as a sensitive catchment area takes effect, both designations will take effect at the same time. If the designation as a catchment permitting area is made after the designation as a sensitive catchment area takes effect, the catchment permitting area designation takes effect on the day specified in it. Subsection (3)(c) also allows for a designation to be revoked.

1323 Subsection (4) specifies that the revocation of a catchment permitting area designation takes effect on the day specified in the revocation, or if none is specified, on the day on which it is made. The subsection also clarifies that the revocation has no effect in relation to the designation of the areas as a sensitive catchment area, and that the revocation may specify the upgrade date that is to apply in relation to nutrient significant plants.

1324 Subsection (5) specifies that when determining whether an alternative upgrade date should be specified under a revocation, the Secretary of State may take into account, in particular, advice from, or guidance published by, Natural England or the Environment Agency.

96I Information about catchment areas and nutrient significant plants

1325 Subsection (1) requires the Secretary of State to maintain and publish a map online showing all the nitrogen and phosphorus sensitive catchment areas.

1326 Subsection (2) requires the Secretary of State to publish the revised map as soon as practicable after designating a sensitive catchment area.

1327 Subsection (3)(a) requires the Secretary of State to maintain and publish online a document listing all sewage disposal works that are or have been nitrogen or phosphorous significant plants. Paragraph (b) specifies further information that must be published in relation to each listed plant. Paragraph (c) requires the Secretary of State to maintain and publish online a document listing all catchment permitting areas.

1328 Subsection (4) requires the Secretary of State to publish a revised document as soon as practicable after there has been a change in the information listed.

96J Section 96B: enforcement and interaction with other provisions

1329 Subsection (1) specifies that the duty of a sewerage undertaker under section 96B is enforceable under section 18 of the Water Industry Act 1991, by the Secretary of State, or with the consent of, or authorisation given by, the Secretary of State, the Water Services Regulation Authority (Ofwat).

1330 Subsection (2) requires the Environment Agency to exercise its statutory functions so as to enforce the duty imposed by section 96B and secure compliance by sewerage undertakers. This may include the use of environmental permits issued to sewerage undertakers.

1331 Subsection (3) further specifies that the Environment Agency must exercise its functions under the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 to ensure sewerage undertakers fulfil duties to prevent and remediate damage to protected sites arising from any failure to comply with the duty imposed by section 96B.

1332 Subsection (4) clarifies that nothing in section 96B, 96G or this section affects any other obligation of a sewerage undertaker relating to nutrient levels in treated effluent, or any power to impose an obligation relating to nutrient levels. In particular, these sections do not prevent the exercising of a power to require a lower nitrogen or phosphorus concentration in treated effluent than section 96B requires.

96K Powers to amend sections 96D and 96F

1333 Subsection (1) allows the Secretary of State to make regulations to amend any plant capacity specified in section 96D(1)(a) or (2)(a).

1334 However, subsection (2) prevents regulations made under subsection (1) from applying to an area already designated as a sensitive catchment area.

1335 Subsection (3) specifies that regulations made under subsection (1) may amend section 96D to specify different plant capacities in relation to nitrogen and phosphorus pollution standards. Where different plant capacities apply for different purposes or areas as a result of subsection (1) regulations, section 96D may be amended accordingly.

1336 Subsection (4) allows the Secretary of State to make regulations to amend section 96F(1)(a)(i) and/or (2)(a)(i) to set a different concentration of nitrogen and/or phosphorus as the relevant nutrient pollution standard.

1337 However, subsection (5) specifies that the new nutrient pollution standard would not apply to any area that is already a sensitive catchment area.

1338 Subsection (6) specifies that where regulations result in different concentrations applying in different circumstances, section 96F(1)(a)(i) and (2)(a)(i) may be amended accordingly.

1339 Subsection (7) specifies that the affirmative resolution procedure applies to a statutory instrument containing regulations made under subsection (1) or (4).

1340 Subsection (8) contains a dehybridising provision in relation to regulations made under subsection (1) or (4).

96L Sections 96B to 96K, 96M and 96N: interpretation

1341 Subsection (1) is self-explanatory.

1342 Subsection (2) defines various terms relevant to these sections.

1343 Subsection (3) clarifies the meaning of "a plant discharging into a sensitive catchment area".

1344 Subsection (4) clarifies the meaning of "the sewerage system of a sewerage undertaker".

96M New and altered plants: modifications

1345 Subsection (1) allows the Secretary of State to make regulations so that sections 96B to 96L apply with prescribed modifications in relation to any plant that operates for the first time or is altered after the Levelling-up and Regeneration Act 2023 is passed.

1346 Subsection (2) allows for regulations under this section to extend the period for new and altered plants to meet the nutrient pollution standard, that is, to provide for sections 96C(5) and 96D(4) and (10) to apply as if they specified periods other than 7 years.

1347 Subsection (3) specifies that regulations under this section may not modify section 96F(1) or (2), or section 96G(4) to apply a higher concentration of total nitrogen or phosphorus than would otherwise apply.

96N Setting and enforcing nutrient pollution standards

1348 Subsection (1) allows the Secretary of State to make regulations which make provision about the setting and enforcing of nutrient pollution standards.

1349 Subsection (2) specifies that the Secretary of State may only exercise these powers if they consider the provisions will be at least as effective as the provisions already in force under sections 96B to 96M, the Environmental Damage Regulations 2015, or this section as a result of the exercise of the power.

1350 Subsection (3) provides examples of how this power may be used.

1351 Subsection (2) amends section 213 (Powers to make regulations) of the Water Industry Act 1991 to insert a reference to 96K and 96N.

Section 169: Planning: assessments of effects on certain sites

Effect

1352 This section introduces Schedule 15. Schedule 15 inserts new regulations (85A to 85D and 110A to 110C) into Part 6 of the Conservation of Habitats and Species Regulations 2017 ("the 2017 Regulations") and amends the planning related regulations to signpost the assumptions in new regulations 85A, 85B and 110A.

Section 170: Remediation

Background

1353 This section inserts new regulation 9A and new Schedule 2ZA into the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 ("the 2015 Regulations").

1354 The 2015 Regulations apply to serious environmental damage to land, water, species and habitats and impose duties on operators to take steps to prevent or remediate damage. This new regulation treats any excess nutrient pollution attributable to the failure of a plant to meet the nutrient pollution standard by the upgrade date or applicable date as environmental damage so that provisions of the 2015 Regulations apply, subject to the modifications made to the 2015 Regulations by Schedule 2ZA.

Effect

1355 Subsection (1) is self-explanatory.

1356 Subsection (2) inserts new regulation 9A into the 2015 Regulations.

9A Nutrient significant sewage disposal works: environmental damage

1357 New regulation 9A(1) sets out the circumstances when this regulation applies, that is where a sewerage undertaker fails to secure the plant is able to meet the nutrient pollution standard as set out in the duty in section 168 (Nutrient pollution standards to apply to certain sewage disposal works).

1358 Paragraph (2) determines that any excess nutrient pollution is to be treated for the purposes of these regulations as environmental damage to the related habitats site caused by an activity of the sewerage undertaker that requires a permit under the Environmental Permitting (England and Wales) Regulations 2016 and falls within Schedule 2 of the 2015 Regulations.

1359 Paragraph (3) defines "excess nutrient pollution" as used in subsection (2). This is the nutrient pollution attributable to the failure of a plant to meet the nutrient pollution standard by the upgrade date or applicable date, i.e. the amount by which any nutrient pollution discharged by a plant between the upgrade date or applicable date and the date the nutrient pollution standard is met, exceeds the amount of nutrient pollution that would have been discharged had the nutrient pollution standard been met by the upgrade date or applicable date.

1360 Paragraph (4) clarifies the following modifications (in paragraphs (5)(6) and (7)) are to be made to paragraph (3) to account for excess nutrient pollution in catchment permitting areas where the sewerage undertaker has failed to comply with a condition in the environmental permit for the plant imposed relating to nutrients in treated effluent for the relevant purpose.

1361 Paragraph (5) specifies references to the "upgrade date" are to be read as the "applicable date".

1362 Paragraph (6) makes modifications to account for a condition imposed on a permit that relates to the total nutrient pollution discharged by all plants that discharge into the associated catchment area.

1363 Paragraph (7) specifies that the "applicable date" is to be determined in accordance with section 96G(6)(a) of the Water Industry Act 1991.

1364 Paragraph (8) sets out that it is for the Environment Agency to determine the excess nutrient pollution discharged by a plant. This is the nutrient pollution attributable to the failure of a plant to meet the nutrient pollution standard by the upgrade date or applicable date (see paragraph (3)).

1365 Paragraph (9) directs to Schedule 2ZA for modifications of the 2015 Regulations that apply where new regulation 9A applies.

1366 Paragraphs (10) and (11) define terms used in this regulation with reference to the Water Industry Act 1991.

1367 Subsection (3) inserts new Schedule 2ZA into the 2015 Regulations.

Schedule 2ZA: Modifications where regulation 9A applies

1368 Schedule 2ZA has the effect of making consequential modifications to the 2015 Regulations in relation to anything that is deemed environmental damage by regulation 9A. It includes modifications relating to liability to remediate and appeals against liability to remediate specifically in relation to regulation 9A.

Part 8: Development Corporations

Local authority proposals and oversight

Section 171: Locally-led urban development corporations

Background

1369 Sections 134 and 135 of the Local Government, Planning and Land Act 1980 makes provision for the Secretary of State to designate, by order, one or more parcels of land as an urban development area if it is expedient in the national interest to do so and to establish an Urban Development Corporation to oversee an urban development area.

1370 Responses to the Development Corporation Reform: Technical Consultation suggested that there is a gap in the existing models of development corporation, particularly outside of mayoral areas where there is no model with a regeneration remit available for local authorities.

1371 Therefore, provisions in section 171 allows the Secretary of State, upon request from a local authority or authorities, to designate an urban development area and create an Urban Development Corporation for which a local authority rather than central government is responsible.

1372 It allows the Secretary of State to appoint one or more local authorities to oversee the regeneration of an urban development area. It also gives the Secretary of State the power to modify the Local Government, Planning and Land Act 1980 through secondary legislation, so that some of the functions for overseeing the development corporation which sit with central government can be

transferred to the relevant local authority or local authorities, and makes further changes necessary to enable the local authority led model to work effectively.

Effect

1373 This section amends sections 134 and 135 of the Local Government, Planning and Land Act 1980. Subsections (1) and (2) insert new subsection (1B) after section 134(1A). It allows the Secretary of State to designate, by order, an urban development area where a proposal has been made by a local authority or authorities and whether it is expedient in the local interest to designate the urban development area and establish a development corporation in relation to the proposal.

1374 Subsection (3) inserts new subsection (134A) after section 134 of the Local Government, Planning and Land Act 1980.

134A Local authority proposal for designation of a locally-led urban development area in England

1375 New section 134A(1) makes provision for one or more local authorities acting jointly to make a proposal to the Secretary of State to designate an urban development area. New section 134A(2) and (3) provides that a proposal must contain the name, which local authority or local authorities should be designated as the oversight authority, a map of the area to be designated and may also specify other matters that may be specified in the order. This could include what planning functions should be conferred on the Locally-led Urban Development Corporation. New section 134A(4) provides that a proposal can be for separate parcels of land and therefore do not have to be contiguous. New section 134A(5) provides that a local authority may only make a proposal where the proposal area falls within its whole area or where a proposal is made by two or more local authorities, they may make a proposal if the proposal area falls partly or wholly within each area and wholly within their combined area. New section 134A(6) provides that a proposing authority must consult before making a proposal to the Secretary of State with individuals and bodies specified in new section 134A(7). The proposing authority or authorities must have regard to the responses and publish a consultation statement setting out reasons for non-acceptance from comments made by a local authority or Greater London Authority.

1376 New section 134A(8) sets out who can be an oversight authority. A local authority can only be an oversight authority if the proposal area is partly or wholly within the area of the local authority. New section 134A(9) provides that where there are two or more local authorities being proposed as the oversight authority they may propose who carries out a particular function. New section 134A(10) sets out the definitions for 'local authority', 'locally-led proposal', 'proposing authority' and 'constituent council' for this section.

1377 Subsections (4) to (7) amend section 135 (urban development corporations). Subsection (5) has the effect of separating the consultation provisions for Urban Development Corporations from Locally-led Urban Development Corporations that are designated under new section 134A(1).

1378 Subsection (6) inserts new subsection (4A) to (4C). It provides that the order designating the Locally-led Urban Development Corporation must give effect to the proposal including, by giving it the name, designating the oversight authority, setting out the number of board members, and establishing which authorities are to perform which functions where there are two or more local authorities that make up the oversight authority. The order must also contain other functions that the proposal sets out.

1379 Subsection (7) inserts new section 135A after section 135. Subsections (1) to (5) provides the Secretary of State with the power to make regulations, via the affirmative parliamentary procedure, setting out how an oversight authority is to oversee the regeneration of a locally-led urban development area. Regulations may prescribe the transfer of functions under the Act from central government to the local authorities and other changes to the Act to enable this to work in practice. These regulations may include how an oversight authority is to exercise specified functions, such as plan making and development management powers, and may make provision about the board membership of a Locally-led Urban Development Corporation.

> ### Example
> A proposed locally-led urban development area covers three sites in close proximity to each other. The proposed area covers three Districts and two County Councils.
>
> Districts A and B plus both County Councils want to propose and become an oversight authority for a locally-led Urban Development Corporation. They also want to transfer local plan making, neighbourhood planning and development management planning powers to the development corporation to facilitate the delivery of the three sites.
>
> District C only covers a small portion of the area and therefore does not want to become part of the proposing or oversight authority.
>
> Before making a proposal to the Secretary of State, Districts A, B plus both County Councils consult on designating the proposed area, establishing a development corporation and transferring planning powers.
>
> District C is content with the proposals and responds positively to the consultation on designating the urban development area, establishing the development corporation and transferring planning powers.
>
> Districts A and B, plus both County Councils have regard to the consultation responses. Districts A and B, plus both County Councils may then submit the proposal to the Secretary of State for designation and conferral of planning powers.

Section 172: Development corporations for locally-led new towns

Background

1380 Section 16 of the Neighbourhood Planning Act 2017 inserted section 1A into the New Towns Act 1981. It provides that the oversight of new town development corporations may rest with the local authority or authorities covering the designated area for the new town, rather than the Secretary of State.

1381 This section inserts new section 1ZA and 1ZB into the New Towns Act 1981 to reflect the establishment process of designating a locally-led urban development area and corporation to ensure consistency.

1ZA Local authority proposal for designation of locally-led new town in England

Effect

1382 This section amends the New Towns Act 1981.

1383 Subsection (2) inserts new subsections 1ZA and 1ZB after section 1 of the New Towns Act 1981 and provides that one or more local authorities may submit a proposal to the Secretary of State to designate an area as a new town under New Section 1ZA(1).

1384 New section 1ZA(2) provides that the proposal must include the name of the development corporation, the name of the local authority or authorities which will become the oversight authority and a map of the proposal area.

1385 New section 1ZA(3) provides that the proposal may also specify other matters that should be included in the order. This could include what planning functions should be conferred on the locally-led New Town Development Corporation.

1386 New section 1ZA(4) provides that a local authority may only make a proposal where the proposal area falls within its whole area or where a proposal is made by two or more local authorities, they may make a proposal if the proposal area falls partly or wholly within each area or wholly within their combined area.

1387 New section 1ZA(5) provides that an authority or authorities must consult before making a proposal to the Secretary of State with individuals and bodies specified in new section 1ZA(6). The proposing authority or authorities must have regard to the responses, and publish a consultation statement setting out reasons for non-acceptance from comments made by a local authority or Greater London Authority.

1388 New section 1ZA(7) provides who can be an oversight authority. A local authority can only be an oversight authority if the new town area is partly or wholly within the area of the local authority.

1389 New section 1ZA(8) provides that where there are two or more local authorities being proposed as the oversight authority, they may propose who carries out a particular function. New section 1ZA(9) sets out the definitions for 'local authority', 'locally-led proposal', 'proposing authority' and 'constituent council' for this section.

1ZB Designation of locally-led new town in England

1390 New subsection 1ZB(1) relating to the designation of a locally-led new town only applies when a proposal has been made to the Secretary of State by the proposing authority under new section 1ZA. New section 1ZB(2) allows the Secretary of State to designate an area as a new town, by order where a proposal has been made by a local authority or authorities and whether it is expedient in the local interest to designate the area and establish a development corporation in relation to the proposal. New section IZB(3) applies current section 1(3) and (5) of the New Town Act 1981 to the designation of a locally-led new town. The new town area can include existing towns or other populated areas and an order under this section will be a local land charge.

1391 Subsection (3) amends section 3 of the New Towns Act 1981. Subsection (3)(a) provides that the Secretary of State shall make an order establishing a development corporation for a new town area as a result of a proposal for designating a new town area under new section 1ZB. Subsection (3)(b) has the effect of separating the consultation provisions for New Town Development Corporations from Locally-led New Town Development Corporations that are designated under new section 1ZB. Subsection (3)(c) inserts new subsections (2B) to (2D) which provides that the order designating the locally-led new town development must give effect to the proposal by giving it the name, designating the oversight authority and establishing which authorities are to perform which functions where there are two or more local authorities that make up the oversight authority.

1392 Subsection (4) amends section 77 of the New Towns Act 1981 (regulations and orders) and provides that an order designating a new town area and establishing the related development corporation is to be made via the affirmative parliamentary procedure and disapplies the hybrid instrument procedure.

Section 173: Minor and consequential amendments

1393 This section introduces Schedule 16 which makes consequential amendments to the Local Government, Planning and Land Act 1980 and New Towns Act 1981 in connection with sections 171 and 172.

Planning functions

Section 174: Planning functions of urban development corporations

Background

1394 Development corporation models had access to varying planning powers. Section 149 of the Local Government, Planning and Land Act 1980 (the '1980 Act') makes provision for the Secretary of State to transfer by order the power for Urban Development Corporations to become the local planning authority for the purposes of development management – the process of deciding planning applications.

1395 The provisions set out in section 174 which apply to England only, allow for Urban Development Corporations to have access to planning powers that are equivalent to those available to Mayoral Development Corporations. This includes the ability for Urban Development Corporations to become the local planning authority for the purposes of plan-making and neighbourhood planning in addition to development management purposes that can already be given to an Urban Development Corporation.

Effect

1396 This section amends the 1980 Act.

1397 Subsection (2)(a) inserts new subsection (1A) into section 149 of the 1980 Act to allow the Secretary of State to make an order, making an Urban Development Corporation the local planning authority in its area for the purposes of local plan-making and neighbourhood planning. This can be, separately or collectively, for those purposes and for the whole or any part of the Urban Development Corporation Area.

1398 Subsection (2)(b) allows the order conferring planning functions for the purposes of development management, local plan-making and neighbourhood planning to specify which enactments relating to local planning authorities should apply or apply with modifications.

1399 Subsection (2)(c) inserts subsection (2A) into section 149 of the 1980 Act. This makes provisions for an Urban Development Corporation to become the minerals and waste planning authority for the purpose of plan-making. This can be for the whole or any part of the urban development corporation area. This provision does not apply to locally-led Urban Development Corporations.

1400 Subsection 2(d) amends subsection 3 of section 149 of the 1980 Act. This removes references to specific legislation in relation to planning functions listed in Schedule 29 to the 1980 Act. Subsection 2(e) inserts new subsection (3A) into section 149 of the 1998 Act so that specific planning functions that can be passed onto Urban Development Corporations by paragraphs 1,3 and 5 of Part 1 of Schedule 29 only apply to development corporations in England.

1401 Subsection (2)(f) inserts new subsection (4A) into section 149 of the 1980 Act. This makes provisions for an Urban Development Corporation to take on functions set out by Schedule 8 to the Electricity

Act 1989 for consenting planning applications under section 37 of the 1989 Act. This can be for the whole or any part of the urban development corporation area.

1402 Subsection (3) inserts new section 149A into the 1980 Act (Arrangements for discharge of, or assistance with, planning functions in England).

149A Arrangements for discharge of, or assistance with, planning functions in England

1403 Subsections (1) to (4) of section 149A provide that an Urban Development Corporation, may make arrangements for the discharge of its development management functions, in whole or part, by the relevant council(s) but without prejudice to its own ability to perform those functions. This allows a development corporation to delegate its functions to the local authorities in the area.

1404 Subsection (3) allows for the discharge of the function by a committee, sub-committee or officer of the council and that section 101(2) of the Local Government Act 1972 (delegation by committees and sub-committees) applies.

1405 Subsections (5) and (6) allow an Urban Development Corporation to seek the relevant council(s) assistance in the discharge of its other planning functions including local plan-making and waste and minerals plan-making functions.

1406 Subsection (7) provides for the definition of "council" for the purposes of this section.

1407 Subsection (4) amends Part 1 of Schedule 29 to the Local Government, Planning and Land Act 1980, which expands the list of specific planning functions that can be taken on by Urban Development Corporations in relation to functions contained in the Land and Compensation Act 1961, the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conversation Areas) Act 1990.

Section 175: Planning functions of new town development corporations

Background

1408 Previously, New Town Development Corporations could not be local planning authorities for their areas.

1409 The provisions in section 175, which apply to England only, allow for New Town Development Corporations to be a local planning authority for their area so that they have access to planning powers that are equivalent to those available to Mayoral Development Corporations. This includes the ability for New Town Development Corporations to become the local planning authority for the purposes, separately or collectively, of local plan-making, development management and neighbourhood planning.

Effect

1410 This section amends the New Towns Act 1981.

7A Development corporation as planning authority in England

1411 Subsection (1) and (2) inserts new section 7A (Development corporation as planning authority in England) and 7B (Arrangements for discharge of, or assistance with, planning functions in England) into the New Towns Act 1981. New section 7A(1) to (3) allows for New Town Development Corporations to become the local planning authority for the purposes of local plan-making, development management, and neighbourhood planning by order. This can be, separately or collectively, for those purposes for any part of the New Town Development Corporation area. It can also be for such purposes and such kinds of development in relation to development management functions and for such purposes for local plan making and neighbourhood planning.

1412 Section 7A(4)allows the New Town Development Corporation to have other planning functions under Part 1 and Part 2 of Schedule 29 to the Local Government Planning and Land Act 1980. Section 7A(5) in respect of Schedule 29, allows references to local planning authorities to be applied to a New Town Development Corporation specified in an order and provides that legislation in Schedule 29 can be applied to the corporation subject to modification in an order. Section 7A(6) provides for a New Town Development Corporation to become the minerals and waste planning authority for the purpose of plan-making. This provision does not apply to Locally-led New Town Development Corporations.

1413 Section 7A(7) provides for a New Town Development Corporation to take on functions set out by Schedule 8 to the Electricity Act 1989 for consenting planning applications under section 37 of the 1989 Act.

1414 Section 7A(8) provides that the planning functions in section 7A can be for the whole or any part of the area designated as a new town. Section 7A(9) allows for supplementary or transitional provisions and savings and section 7A(10) sets out the meaning of 'specified'.

7B Arrangements for discharge of, or assistance with, planning functions in England

1415 Subsections (1) to (4) of section 7B (Arrangements for discharge of, or assistance with, planning functions in England) allow a New Town Development Corporations to make arrangements for the discharge of its development management functions, in whole or part, by the relevant council(s) but without prejudice to its own ability to perform those functions. This allows a development corporation to delegate its functions to the local authorities in the area. Subsections (5) and (6) allows the New Town Development Corporation to seek the relevant councils' assistance in the discharge of other planning functions including local plan-making functions and waste and minerals plan-making functions. Subsection (7) provides for the definition of "council" for the purposes of this section.

1416 Subsection (3) amends Schedule 3 by inserting paragraph 10A and paragraph 10B. Paragraph 10A(1) to (2) allows New Town Development Corporations to discharge any of their planning functions made by order under new subsection (7A) to a committee. Paragraph 10A(3) allows any functions that are authorised or required to be done by the corporation to be done by a member of the corporation or of its staff, or by a committee or sub-committee. Paragraph 10A(4) to (6) allows the development corporation or Secretary of State to set out the arrangements for meetings and the minimum number of people in a committee or sub-committee. The validity of the committee or sub-committee is not affected by a vacancy or a flaw in the appointment of members.

1417 Paragraph 10B(1) to 10B(4) sets out the arrangements for membership in relation to the membership of the committee and the sub-committee. Paragraph 10B(2) and 10B(3) sets out that the membership of a committee or sub-committee to be appointed by members of the development corporation, or any other person the development corporation considers appropriate, provided that they have consent from the Secretary of State. Paragraph 10B(4) sets out that the membership of a committee or sub-committee must always have at least one member of the development corporation, and must not include any person who is a member of the staff of the development corporation.

Section 176: Mayoral development corporation as minerals and waste planning authority

Background

1418 Section 202 of the Localism Act 2011 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.

1419 This section amends section 202 which allows for the Mayor to decide on a case-by-case basis whether the Mayoral Development Corporation for the area should be the minerals and waste planning authority for the purposes of plan making. Previously, when Mayoral Development Corporations were conferred powers to be the local planning authority for the purposes of plan-making under Part 2 of the PCPA 2004, they were local planning authorities capable of preparing local development documents on a range of topics, including minerals and waste.

Effect

1420 This section amends sections 202 to 204 of the Localism Act 2011. Subsection (2) inserts new subsection (3A) into section 202. It makes provisions to allow mayoral development corporations to become the minerals and waste authority for the purpose of plan-making. This can be for the whole or any part of the mayoral development corporation area.

1421 Subsection (3) amends section 203 and allows for the Mayoral Development Corporation to seek the relevant council(s) assistance in the discharge of its minerals and waste functions.

1422 Subsection (4) amends section 204 and 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 which now includes minerals and waste.

Section 177: Minor and consequential amendments

Effect

1423 This section introduces Schedule 17 which makes consequential amendments in relation to the planning functions of development corporations.

Membership

Section 178: Removal of restrictions on membership of urban development corporations and new town development corporations

Background

1424 The previous legislative provisions for the governance of development corporations varied depending on the type of corporation. In some cases, there were prescribed caps on the number of other board members (excluding the chairman and deputy chair) a corporation can have.

1425 This section amends Schedule 26 to the Local Government, Planning and Land Act 1980 and section 3 of the New Towns Act 1981. It removes the previous board member cap and the need to set board membership numbers out in an order establishing a New Town Development Corporation and an Urban Development Corporation, in England. This brings them in line with Mayoral Development Corporations and Locally-led New Town Development Corporations which have no upper cap.

Effect

1426 Subsection (1) amends paragraph 1 of Schedule 26 to the Local Government, Planning and Land Act 1980. This has the effect of removing the upper limit on the number of other board members and the need to set out the number of members in an order establishing an Urban Development Corporation in England. The limit was previously set at up to 11 other members. New paragraph 1A maintains the existing position for Urban Development Corporation in Scotland and Wales. The number of other board members will need to be prescribed by order when setting up a Locally-led Urban Development Corporation and must not be less than 5 other members for both Urban Development Corporations and locally-led Urban Development Corporations.

1427 Subsection (2) amends section 3(2)(c) of the New Towns Act 1981. This has the effect of removing the upper limit on the number of other board members and the need to set out the number of other members in an order establishing a New Town Development Corporation in England. This was previously set at up to 11 other members. New subsection (2ZA) maintains the existing position for New Town Development Corporations in Wales. New subsection (2ZB) establishes that the number of board members will need to be prescribed by order when setting up a Locally-led New Town Development Corporation.

1428 Subsection (3) has the effect of maintaining the current position of board membership for existing development corporation orders which were made before the section comes into force.

Finance

Section 179: Removal of limits on borrowing of urban development corporations and new town development corporations

Background

1429 This section amends paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 and section 60 of the New Towns Act 1981.

1430 Paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 makes financial provisions for Urban Development Corporations, in England, Scotland and Wales by addressing how much money can be borrowed from HM Treasury, or any other person approved by HM Treasury and with the consent of the Secretary of State. It states that the total sum of money that all Urban Development Corporations can borrow should not exceed £30 million, or up to £100 million through an order made by the Secretary of State.

1431 Sections 58 to 60 of the New Towns Act 1981 makes financial provisions for New Town Development Corporations by addressing how much money can be borrowed from HM Treasury, or any other person approved by HM Treasury and with the consent of the Secretary of State. Section 60 states that the total sum of money that a New Town Development Corporation can borrow should not exceed £4,600 million, or a greater sum not exceeding £5,250 million as the Secretary of State may by order specify.

1432 The amendments to paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 and section 60 of the New Towns Act 1981 removes the financial and borrowing limits for Urban Development Corporations and New Town Development Corporations, in England, for money borrowed after the commencement of this section.

Effect

1433 Subsection (1) and (2) amends paragraph 8 of Schedule 31 to the Local Government, Planning and Land Act 1980 and section 60 of the New Towns Act 1981. This has the effect of removing the financial and borrowing limits for Urban Development Corporations and New Town Development Corporations, in England, for money borrowed after the commencement of this section. This ensures that development corporations can borrow sufficient funds in line with the current economy on a case-by-case basis.

Part 9: Compulsory Purchase

Powers

Section 180: Acquisition by local authorities for purposes of regeneration

Background

1434 Local authorities have the power, under section 226 of the Town and Country Planning Act 1990 ("TCPA"), to acquire land compulsorily if it will facilitate the carrying out of development, re-development or improvement of the land and it is in the interests of the proper planning of an area.

1435 This section amends section 226 of the TCPA.

1436 The aim of the measure is to give local authorities greater confidence that they have the power to acquire land by compulsion to support regeneration schemes.

Effect

1437 This section will ensure that local authorities can use this power to compulsorily purchase land for regeneration purposes.

1438 This section amends section 226 of the TCPA to make it clear that, for the purposes of the power, improvement includes regeneration.

1439 This also aligns local authorities with other authorities that have compulsory purchase powers in relation to regeneration such as the Greater London Authority and Homes England.

Procedure

Section 181: Online publicity

Background

1440 This section amends sections 7, 11, 12, 15 and 22 and paragraph 9 of Schedule 3 of the Acquisition of Land Act 1981 ("the 1981 Act") which set out the publicity requirements for certain documents and notices issued as part of the compulsory purchase order (CPO) process. It also inserts a new section 12A into the 1981 Act.

1441 The changes are being made to help modernise the CPO process and, by making information more accessible online, raise awareness and increase engagement in the CPO process.

Effect

1442 This section makes certain documents and notices available online while ensuring that those who do not have internet access are able to find the information they need in local newspapers or in physical locations.

1443 Subsection (1) explains this section amends the 1981 Act.

1444 Subsection (2) inserts a new definition of 'appropriate website' into the 1981 Act. This is a website that the public can reasonably be expected to find and access.

1445 Subsection (3) amends section 11 of the 1981 Act which sets out the requirements to publish notice of a CPO in local newspaper(s) prior to submitting a CPO for confirmation. It:

a. introduces a new additional requirement for acquiring authorities to publish the notice on an appropriate website for 21 days

b. introduces a new additional requirement for the notice to specify a website where the CPO and associated map can be viewed

c. requires that the notice should specify the final date for making objections

d. gives confirming authorities a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the confirming authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make the documents available in a physical location.

1446 Subsection (4) amends section 12 of the 1981 Act which sets out the requirements to notify certain persons prior to submitting a CPO for confirmation. It introduces a new requirement for the notice to include details of a website where a CPO and associated map can be viewed. It also requires that the notice should specify the final date for making objections.

1447 Subsection (5) inserts a new section 12A into the 1981 Act. This new section explains what the final day for making objections to a CPO is. The time period for making objections has not changed. This section is only needed to clarify the position following the introduction of the additional requirements to publish notices under sections 11 and 12 of the 1981 Act on an appropriate website.

1448 Subsection (6) amends section 15 of the 1981 Act which sets out requirements to publish notices after a CPO has been confirmed. It:

a. introduces a new additional requirement for acquiring authorities to publish the notice on an appropriate website for 6 weeks;

b. introduces a new additional requirement for the notice to specify a website where a CPO and associated map can be viewed; and

c. gives confirming authorities a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the confirming authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make copies available in a physical location.

1449 Subsection (7) amends section 22 of the 1981 Act which sets out the publicity requirements where a confirming authority issues a certificate in relation to the acquisition of special kinds of land under Part 3 of the 1981 Act. It introduces a new additional requirement for acquiring authorities to publish notice that a certificate has been issued on an appropriate website for 6 weeks.

1450 Subsection (8) amends paragraph 9 of Schedule 3 which sets out the publicity requirements where a confirming authority issues a certificate in relation to the acquisition of new rights over special kinds of land. It introduces a new additional requirement for acquiring authorities to publish the notice of the certificate on an appropriate website for 6 weeks.

Example (1):

An acquiring authority makes a CPO and is required to publicise the CPO in accordance with section 11 of the Acquisition of Land Act 1981. They will now be required to place the notice under section 11(1) online together with a copy of the CPO and the map. This could be on the acquiring authority's website.

Section 182: Confirmation proceedings

Background

1451 This section amends sections 13A and 13B of the the 1981 Act which set out the procedure a confirming authority should follow when considering objections to a CPO.

1452 Under the current rules, there are three options for the procedure which can be used – written representations, public local inquiry or a hearing. However, the written representations procedure cannot be used where any remaining objector does not give consent. In practice, in such circumstances, this usually results in a public local inquiry being held.

1453 The measure will make the confirmation process more efficient by ensuring the most appropriate and proportionate procedure for considering objections to a CPO is used.

Effect

1454 This section gives the confirming authority greater discretion to use the appropriate procedure while still giving any remaining objector who wishes to be heard in person by the confirming authority the right to do so.

1455 Subsection (1) explains this section amends the 1981 Act. To make new provision for the procedure to be followed when considering confirmation of a CPO.

> ### Example
> On receipt of a CPO for confirmation, a confirming authority will be able to decide whether the appropriate procedure will be the representations procedure or a public local inquiry. If the confirming authority decides it is the representations procedure, then a remaining objector will still be able to provide oral representations at a hearing if they wish to.

1456 Subsection (2) sets out the circumstances in which a public local inquiry must be held. Where those circumstances do not apply, the confirming authority has the power to decide whether to hold either a public local inquiry or follow a representations procedure. Details of the representations procedure will be set out in secondary legislation. The procedure will allow remaining objectors to provide oral representations at a hearing if they wish to. It will also allow acquiring authorities and any other person who the confirming authority thinks appropriate to make representations in writing or at any hearing requested by a remaining objector.

1457 Subsection (3) makes consequential amendments to section 13B of the 1981 Act to reflect the changes in section 13A of the 1981 Act.

1458 Subsections (4) and (5) amend sections 13C and 14D of the 1981 Act to update references to section 13A of the 1981 Act.

Section 183: Conditional confirmation

Background

1459 This section inserts a new provision (section 13BA) into the 1981 Act and makes consequential amendments to section 15 of that Act. It also introduces Schedule 18 which makes consequential amendments in connection with this section and with paragraph 3 of Schedule 19 (which makes similar provisions in respect of CPOs made by Ministers).

1460 At present confirming authorities have the power to reject a CPO or confirm it with or without modifications or to confirm the CPO in stages.

1461 The new provision gives confirming authorities an additional option of confirming a CPO subject to conditions before the powers under it can be exercised. The aim of the measure is to increase the certainty of land assembly through compulsory purchase generally and shorten the delivery of a scheme by encouraging acquiring authorities to make a CPO earlier in the delivery process alongside other consenting and funding processes. Acquiring authorities often make their CPO only after other impediments to the delivery of project have been overcome, delaying the overall delivery of a scheme.

Effect

1462 Subsection (1) explains that this section amends the 1981 Act.

1463 Subsection (2) inserts new section 13BA into that Act:

1464 New subsection 13BA(1) gives confirming authorities the power to confirm a CPO conditionally.

1465 New subsection 13BA(2) provides acquiring authorities will only be able to implement CPOs which have been confirmed conditionally, once an application to discharge the conditions has been approved by the confirming authority. Where such an application has not been received within the required time or the confirming authority declines the application, the CPO cannot be implemented.

1466 New subsection 13BA(3) gives confirming authorities discretion as to what conditions to impose and the timeframe in which the conditions must be met.

1467 New subsection 13BA(4) provides the application process will be set out in secondary legislation.

1468 New subsection 13BA(5) requires the application process must provide for relevant objectors to be notified of the application and have the opportunity to submit written representations to the confirming authority.

1469 New subsection 13BA(6) defines a relevant objector.

1470 New subsection 13BA(7) provides the application process may also set out requirements around the giving of reasons for the confirming authority's decision on the application.

1471 New subsection 13BA(8) applies subsections (2)-(6) of section 13B of the 1981 Act to the new representations procedure introduced in section 182.

1472 Subsection (3) makes consequential amendments to ensure notices issued after confirmation of a CPO under section 15 of the 1981 Act reflect where conditional confirmation has been given. It also inserts new subsections (4B)– (4F) in that Act to make new provision for notices to be served on discharge of any condition imposed:

1473 New section 4B introduces a requirement, where a CPO has been conditionally confirmed, for the acquiring authority to serve a copy of the CPO and a fulfilment notice on those who need to be notified under section 12 of the 1981 Act.

1474 New subsection 4C requires the acquiring authority to attach a fulfilment notice to an object on or near the acquired land, publish it in one or more local newspapers and publish on an appropriate website for 6 weeks.

1475 New subsection 4D sets the time period in which an acquiring authority must comply with 4B and 4C(a) and (b)(i)

1476 New subsection 4E makes clear that if acquiring authority fails to comply with relevant provisions, the confirming authority make take the necessary steps and recover its costs of doing so

1477 New subsection 4F explains what a fulfilment notice is.

1478 Subsection (4) introduces Schedule 18 which contains, and makes provision in connection with, amendments in consequence of this section and paragraph 3 of Schedule 19 – (corresponding provision for purchases by ministers).

Example

An acquiring authority may choose to make a CPO alongside seeking other consents such as planning or alongside confirming the full funding package for the scheme, knowing that the CPO may be confirmed conditionally, if at the point of decision those elements are not sufficiently certain for the CPO to be fully confirmed at that point.

Section 184: Corresponding provision for purchases by Ministers

Background

1479 As well as public bodies such as local authorities, Government Ministers also have compulsory purchase powers. The procedure which must be followed for CPOs made by Ministers is set out separately in Schedule 1 to the 1981 Act and operates differently. This is because certain modifications are required for Ministerial CPOs to reflect the fact that they are both the acquiring and confirming authority.

1480 This section and Schedule 19 amend Schedule 1 to the 1981 Act.

Effect

1481 The effect of this section and Schedule 19 is to make the same provision for Ministers who are the acquiring authorities and for the CPO process changes in the rest of the Act.

Section 185: Time limits for implementation

Background

1482 Section 4 of the Compulsory Purchase Act 1965 and section 5A of the Compulsory Purchase (Vesting Declarations) Act 1981 set out the timeframe in which compulsory purchase powers under a CPO must be implemented after it has been confirmed. In both cases the current time period is 3 years.

1483 Sections 4A and 5B of the respective Acts allow for an extension to this time period where there is a legal challenge to the CPO. Both sections do so by reference to 'the three year period' in the preceding section.

1484 This section amends these sections and inserts a new section 13D into the Acquisition of Land Act 1981 to give confirming authorities the flexibility to allow a longer implementation period where appropriate.

1485 This measure will give acquiring authorities greater confidence to bring forward more complex schemes, for example, regeneration schemes, which in some cases may need longer than three years to implement.

1486 The effect of this section is to give acquiring authorities longer than three years to implement a CPO after it has been confirmed where a confirming authority considers this is justified.

Effect

1487 Subsection (1) inserts new section 13D (Power to extend time to implementation) into the Acquisition of Land Act 1981. This gives confirming authorities a new power to extend the time limit for implementing a CPO (beyond the current 3 years) for both Ministerial and non-Ministerial CPOs. It will be for the confirming authority to decide whether a longer period is justified in the circumstances and what that longer period should be, if any.

Example 1: Staged development

An acquiring authority may wish to bring forward a CPO for the whole of a staged development. The later stages of the development may not have been planned for delivery until more than three years from the operative date of the CPO.

1488 Subsections (2), (3) and (4) make the required corresponding changes to sections 4 and 4A of the Compulsory Purchase Act 1965, sections 5A and 5B of the Compulsory Purchase (Vesting Declarations) Act 1981 and section 582 of the Housing Act 1985.

Example 2: Earlier certainty of land assembly

An acquiring authority may make a CPO earlier in the delivery process to ensure it has certainty over land assembly knowing there is the possibility of conditional confirmation of a CPO. This may in term mean that the period between the CPO becoming operative and delivery of the scheme is longer.

Section 186: Agreement to vary vesting date

Background

1489 Under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 an acquiring authority must give at least three months' advance notice of the date on which it will take ownership of the land which is the subject of the CPO. At present, once that date is set it cannot be varied.

1490 This section introduces new section 8A into the Compulsory Purchase (Vesting Declarations) Act 1981 to allow for the postponement of the date on which the acquiring authority will take ownership of an interest in the land. It also makes consequential amendments to reflect new section 8A.

1491 The measure will give greater flexibility to the acquiring authority and the owner of an interest in the land should circumstances change after notice has been given.

Effect

1492 Subsection (1) explains this section amends the Compulsory Purchase (Vesting Declarations) Act 1981.

1493 Subsections (2) and (3) make consequential amendments to sections 7 and 8 of the Compulsory Purchase (Vesting Declarations) Act 1981 to refer to new section 8A (as introduced by subsection (4)).

1494 Subsection (4) inserts new section 8A (postponement of vesting by agreement) into the 1981 Act. This allows the acquiring authority and the owner of any interest in the land to agree a later date for transfer of ownership of that interest in the land than was specified in the notice given under section 4.

1495 Subsection (5) makes a consequential change to section 10 of the Compulsory Purchase (Vesting Declarations) Act 1981 to clarify that compensation liability in respect of the interest in the land which is the subject of an agreement under subsection (4) applies from the new vesting date.

1496 Subsection (6) makes consequential amendment to paragraph 5 of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981. It amends the definition of 'original vesting date' to provide for any agreements to vary the vesting date.

1497 Subsection (7) makes consequential amendment to section 5A of the Land Compensation Act 1961 to clarify the relevant valuation date for the purposes of calculating compensation in relation to the interest in the land which is subject to an agreement to vary the vesting date. It inserts new subsection (4A) to provide specifically for circumstances where an agreement is in place. It clarifies that the relevant valuation date for the interest in the land which is the subject of an agreement is the earlier of the date the land vests and the date when the assessment is made.

> **Example**
>
> An acquiring authority will give notice to an owner of land that it intends to acquire that person's interest in the land. An acquiring authority will give at least three months' advance notice and the date for acquisition will be set. An acquiring authority and an owner of the land will now be able to agree in writing a different date between that point and the acquisition date. That might be because the owner of the land is relocating to another property and needs to tie in the acquisition to the relocation, the exact date for which may only become apparent after the original acquisition date was set. In the circumstances, there would be a more suitable date for acquisition than the one set by the acquiring authority.

Section 187: Common standards for compulsory purchase data

Background

1498 This section provides a new provision giving the Secretary of State the power to set data standards in relation to CPO information.

1499 The measure will facilitate the development of a compulsory purchase system that makes better use of digital technology to improve access to important compulsory purchase information, drive efficiencies in applications for confirmation and decision making, and facilitate better public engagement.

1500 This section will provide for common data standards within the CPO process which all acquiring authorities must comply with. The data standards will apply only to acquiring authorities and not to those whose land is being acquired or other parties involved in the CPO process.

Effect

1501 Subsection (1) gives the Secretary of State the power to make regulations requiring acquiring authorities to comply with approved data standards in relation to certain compulsory purchase data.

1502 Subsections (2) and (3) explain the terms 'acquiring authority' and 'approved data standards'.

1503 Subsection (4) provides that approved data standards may differ for different purposes.

1504 Subsections (5) and (6) provide definitions for "relevant compulsory purchase data" and "relevant compulsory purchase documentation". These definitions cover information in CPO documents prepared by acquiring authorities under "relevant compulsory purchase legislation".

1505 Subsection (7) defines ''relevant compulsory purchase legislation" by reference to a list of the relevant Acts.

1506 Subsection (8) explains and the meaning of the term "providing" for the purposes of this section.

Compensation

> ### Example
> Data standards may, for example, be applied to the order and map that an acquiring authority produces for a CPO to ensure they are provided in standard digital format, accessible and searchable.

Section 188: 'No-scheme' principle: minor amendments

Background

1507 For the purposes of assessing the compensation for an interest in land that is acquired by compulsion, the effect on the value of that land arising from 'the scheme' which is the subject of the CPO, is disregarded.

1508 Section 6D of the Land Compensation Act 1961 ("the 1961 Act") sets out the meaning of 'the scheme' for these purposes. In particular, it provides that where land is acquired for regeneration or redevelopment which is facilitated or made possible by a relevant transport project, the scheme includes the relevant transport project. Relevant transport project is defined in section 6E of the 1961 Act.

1509 This section amends sections 6D and 6E of the 1961 Act to ensure that the definition of 'the scheme' also includes re-development, regeneration and improvement.

1510 This section will ensure that where greenfield land is acquired for development which is made possible by a relevant transport project, then that scheme will include the relevant transport project. It further aligns the acquisition of such land to other compulsory purchase powers such as those of a local authority under section 226 of the Town and Country Planning Act 1990.

Effect

1511 Subsection (1) makes amendments to section 6D of the 1961 Act so that "regeneration and redevelopment" is substituted for "development" which in turn is then defined as including "re-development, regeneration and improvement". The effect is where land is acquired for "development" and "improvement" which is facilitated or made possible by a relevant transport project, then the scheme includes the relevant transport project. This is in addition to its continuing application to regeneration and re-development.

1512 Subsection (2) makes consequential changes to section 6E of the 1961 Act and also applies the effect of the change in respect of development and improvement that facilitates a relevant transport project to a date which is three months after section 188 of the Act comes into force.

Section 189: Prospects of planning permission for alternative development

Background

1513 This section amends sections 14, 17, 18, 19, 20 and 22 of the 1961 Act.

1514 The 1961 Act provides the basic framework for the payment of compensation to an owner of an interest in land for the compulsory acquisition of their interest or its acquisition in certain other situations where there is deemed compulsory acquisition.

1515 Section 5 of the 1961 Act provides the rules for assessing compensation. This includes rule 2 that the value of the land shall, subject as further provided in the Act, be taken to be the amount which the

land if sold in the open market by a willing seller might be expected to realise. This is to be assessed in light of the no-scheme principle set out in section 6A of the 1961 Act.

1516 Section 14 of the 1961 Act contains specific provisions for taking into account actual or prospective planning permission including the effect of establishing appropriate alternative development.

1517 Section 17 of the 1961 Act provides a mechanism whereby parties involved with the acquisition of land may in certain circumstances (set out in section 22(2) of the 1961 Act) apply to the local planning authority for a certificate of appropriate alternative development which will confirm whether planning permission for appropriate alternative development could reasonably have been expected to be granted in the absence of the scheme.

1518 Section 18 of the 1961 Act provides a mechanism to appeal against a certificate of appropriate alternative development to the Upper Tribunal.

1519 Section 19 of the 1961 Act extends the application of sections 17 and 18 to special situations involving absent or unknown owners of an interest.

1520 Section 20 of the 1961 Act provides a power to prescribe certain matters related to sections 17 and 19 of the 1961 Act.

1521 Section 22 of the 1961 Act makes provision for the interpretation of sections 17 to 20 of the 1961 Act.

1522 The changes are being made to put more onus on the owner of the interest in land to evidence development value associated with that interest. They also streamline the process for obtaining a certificate of appropriate alternative development and change where the burden of costs fall. This reduces the administrative burden on the local planning authority, reducing the cost burden on acquiring authorities and ensures the outcome of the certificate is relevant to the valuation exercise it informs.

Effect

1523 Subsection (1) explains that this section amends the 1961 Act.

1524 Subsection (2) amends section 14 of the 1961 Act. It amends section 14(2)(b) of the 1961 Act and substitutes new sections 14(2A) and 14(2B) for sections 14(3) and 14(4) of the 1961 Act. The effect is that planning permission for a description of development would only be taken as certain for the purposes of assessing the prospect of planning permission under section 14(2)(b) of the 1961 Act if it has been certified under section 17 of that Act as appropriate alternative development. Otherwise, the prospect of planning permission will be assessed under section 14(2)(b) of the 1961 Act and on the basis of the matters set out in section 14(2B) if that Act. Further consequential amendments are made to section 14 of the 1961 Act.

1525 Subsection (3) amends section 17 of the 1961 Act. Subsection (3)(a) amends section 17(1) of the 1961 Act so that an application for a certificate of appropriate alternative development to a local planning authority is now for a specific description of development, which the applicant must set out. It removes the ability to apply for a certificate that there is no appropriate alternative development. This removes the administrative burden for the local planning authority of assessing all types of possible alternative development. Consequently, following such an application, either a certificate for appropriate alternative development will be issued or the application will be rejected. An application may specify more than one description of development, following section 6(c) of the Interpretation Act 1978.

1526 Subsection (3)(b) introduces new sections 17(1A), 17(1B) and 17(1C) in the 1961 Act which includes a new definition of "appropriate alternative development" that replaces the previous definition under section 14(4) of that Act. The new definition provides a test to determine whether a description of

development is appropriate alternative development. The definition of appropriate alternative development no longer includes a future date. This means that a certificate of appropriate alternative development will only be determined against the "relevant planning date" in section 17(1C) of the 1961 Act. Assessment of the future prospect of planning permission can continue to be assessed under section 14(2)(b) of the 1961 Act. The amendment further deals with an issue where a certificate of appropriate alternative development is applied for before the relevant valuation date and provides that in such cases the date of assessment is the date on which the application is determined.

1527 Subsection (3)(c) substitutes new subsection (ba) for sections 17(3)(a) and (b) in the 1961 Act, relating to what the application should contain. This is consequential upon the amendment to section 17(1) of the 1961 Act and the nature of the application for a certificate of appropriate alternative development that can now be made.

1528 Subsection (3)(d) substitutes new subsections (5A) to (5C) for sections 17(5) to (8) of the 1961 Act. It provides the amended framework for the issue of a certificate of appropriate alternative development by a local planning authority because of the amendment to section 17(1) of the 1961 Act. The effect of this is that a local planning authority will no longer need to consider and issue a certificate for all forms of appropriate alternative development, whether applied for or not. Instead, the local planning authority will decide whether to issue a certificate against the description(s) of development applied for. The authority may issue a certificate for the description(s) of development that is less extensive than, but otherwise falls within, the description(s) of development set out in the application. New section 18(4) of the 1961 Act has the effect of substituted section 17(8) of the 1961 Act.

1529 Subsection (3)(e) amends section 17(10) of the 1961 Act. The consequence of the amendment is that, in assessing compensation payable to any person in respect of any compulsory acquisition, no account is to be taken of any expenses incurred by the person in connection with the issue of the certificate, including any expenses incurred in connection with an appeal under section 18 of the 1961 Act.

1530 Subsection (4) amends section 18 of the 1961 Act. Subsection (4)(a)(i) of the 1961 Act codifies the test that the Upper Tribunal must apply in determining an appeal. Subsection (4)(a)(ii) of the 1961 Act extends the options for the Upper Tribunal in making a decision on appeal as a result of the changes to section 17 of the 1961 Act.

1531 Subsection (4)(b) inserts new sections 18(2A) and (2B) in the Land Compensation Act 1961 to provide for an appeal where the local planning authority rejects an application for a certificate of appropriate alternative development.

1532 Subsection (4)(c) amends section 18(3) of the 1961 Act to provide that if a local planning authority does not determine an application for a certificate of appropriate alternative development within the prescribed time, it is to be treated as if the local planning authority had rejected the application.

1533 Subsection (4)(d) inserts new section 18(4) in the 1961 Act which ensures that for valuation purposes, the certificate of appropriate alternative development as issued or varied by the Upper Tribunal has effect. This replicates and replaces substituted section 17(8) of the 1961 Act.

1534 Subsection (5) makes a consequential amendment to section 19(3) of the 1961 Act arising from the amendments to section 17(3) of the 1961 Act. It inserts new section 19(4) in the 1961 Act which makes clarificatory amendments to how an appeal is dealt with under section 18 of that Act if the application for a certificate of appropriate alternative development is made in accordance with section 19 of the 1961 Act.

1535 Subsection (6) makes a minor clarificatory amendment to section 20(a) of the 1961 Act relating to certificates under section 17 of that Act, changing the words "time within which a certificate is required to be issued" to "the period within which an application under that section is to be determined".

1536 Subsection (7) inserts new section 22(2A) in the 1961 Act and clarifies that an application for a certificate of appropriate alternative development may still be made despite the acquisition of the interest in land having already occurred. The limitation in section 17(2) of the 1961 Act, where a notice to treat has been served or agreement for sale made and a reference has been made to the Upper Tribunal to determine compensation continues to apply. This measure reflects the different ways in which compulsory purchase powers may be exercised, with acquisition of the interest occurring either before or after compensation has been agreed.

Example

A land interest is subject to compulsory purchase as part of a wider scheme. The owner of the land interest considers that, in the absence of the scheme, there was the prospect of planning permission being granted on their land for a five-storey residential block with 20 units. The owner of the land interest applies for a certificate of appropriate alternative development in accordance with the requirements of section 17 of the Land Compensation Act 1961and will be responsible for their own expenses in making that application. The local planning authority will consider whether it would have been more likely than not to grant planning permission for that description of development in accordance with the test provided in section 17, or for a less extensive form of the same development applied for (e.g. four-storey residential block with 15 units). If it considers it more likely than not that it would not have granted planning permission for that description of development, it should reject the application. If a form of appropriate alternative development is certified, then it will be taken as certain for the purposes of section 14(2)(b) of the Land Compensation Act 1961 that planning permission for the description of development would have been granted on the relevant valuation date. The owner of the land interest or the acquiring authority may appeal the decision under section 18 of the Land Compensation Act 1961 and the Upper Tribunal will determine that appeal in accordance with the provisions and test set out in section 18. If the local planning authority fails to determine the application within the prescribed time, then the applicant may appeal, and the appeal will be considered on the basis the local planning authority rejected the application.

Section 190: Power to require prospects of planning permission to be ignored

Background

1537 This section inserts new section 15A and Schedule 2A into the Acquisition of Land Act 1981 and amends sections 7 and 14A of that Act. It also inserts new section 14A and Schedule 2A into the Land Compensation Act 1961 and amends Schedules 4 and 5 to the New Towns Act 1981. This section also makes consequential amendments to section 157 of the Town and Country Planning Act 1990.

1538 The Acquisition of Land Act 1981 ("the 1981 Act") provides the process for the making and confirmation of compulsory purchase orders (CPOs) and governs most compulsory purchase powers. Compulsory purchases under the New Towns Act 1981 provide an example of those governed by another Act.

1539 The Land Compensation Act 1961 ("the 1961 Act") provides the basic framework for the payment of compensation to an owner of an interest in land for the compulsory acquisition of their interest or its acquisition in certain other situations where there is deemed compulsory acquisition. Section 5 of the Land Compensation Act 1961 Act provides the rules for assessing compensation. This includes rule 2 that the value of the land shall, subject as further provided in the Act, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise. This is to be assessed in light of the no-scheme principle set out in section 6A of the Land Compensation Act 1961 Act. Section 14 of the Land Compensation Act 1961 Act contains specific provisions for taking into account actual or prospective planning permission, including the effect of establishing appropriate alternative development, in assessing the value of the land if sold in the open market.

1540 The New Towns Act 1981 is an Act which brings together legislation relating to the establishment of New Towns.

1541 Section 157 of the Town and Country Planning Act 1990 provides special provisions relating to the payment of compensation for a compulsory purchase resulting from the serving of a blight notice.

1542 The changes implemented by this section allow, on a scheme-by-scheme basis and for certain types of CPOs only, certain public sector authorities to include in their CPOs a direction that certain aspects of section 14 of the 1961 Act, i.e. the prospects of planning permission (including appropriate alternative development), are to be ignored when the value of the land is assessed for compulsory purchase compensation purposes. Where a CPO which includes direction is confirmed by the Secretary of State in England, or the Welsh Ministers in Wales, the assessment of the value of land may only take account of:

a. any existing planning permission which is on force on the land, or

b. any prosect of planning permission being granted for the conversion of a single dwelling into a two or more separate dwellings.

Effect

1543 Subsection (1) of section 190 amends the 1981 Act. Subsection (1)(a) amends section 7(3) of the 1981 Act to provide that any regulations made under new section 15A(11) of that Act to provide a definition of affordable housing will be subject to the negative procedure. Subsection (1)(b) makes a consequential amendment to section 14A of the 1981 Act arising from the ability for the Secretary of State, or the Welsh Ministers, to confirm (under new section 15A of the 1981 Act) a CPO with a direction that the prospects of planning permission are to be ignored when the assessment of compulsory purchase compensation for the value of land is undertaken. The effect of this consequential amendment is acquiring authorities are unable to use the power under section 14A of the 1981 Act to confirm their own CPOs which contain directions, regardless of whether there are objections to the CPOs or not.

1544 Subsection (1)(c) inserts new section 15A into the 1981 Act which makes the following provisions:

a. New subsection 15A(1) sets out that an acquiring authority may include in a CPO a direction that the prospects of planning permission are to be ignored when compulsory purchase compensation is assessed providing the power which is enabling the CPO to be made is listed in new Schedule 2A to the 1981 Act. New subsection 15A(2) provides that if a direction is included in a CPO, compensation is to be assessed in accordance with new section 14A of the 1961 Act.

b. New subsection 15A(3) explains an acquiring authority must submit a statement of commitments with a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act. New subsection 15A(4) sets out that a 'statement of commitments' is a statement of the acquiring authority's intentions as to what it will do with the land included in the CPO should the CPO proceed. It is these intentions which the acquiring authority will rely on to justify that the direction is in the public interest.

c. New subsection 15A(5) provides if the power enabling the CPO to be made is listed in paragraphs 1 to 6 of new Schedule 2A to the 1981 Act and authorises the acquisition for a purpose which includes housing, the acquiring authority's statement of commitments must demonstrate provision of affordable housing will be provided.

d. New subsection 15A(6) provides the notice required to be served under section 12(1)(a) of the 1981 Act must:

    i. include a statement of the effect of the direction i.e. that the assessment of compulsory purchase compensation cannot take account of the prospects of planning permission being granted on the land which means the assessment may not take account of either:

        1. of the prospect of appropriate alternative development being established, or

        2. the prospect of planning permission being granted for other development on or after the relevant valuation date;

        3. name a place within the locality where a copy of the statement of commitments may be viewed; and

        4. specify a website on which a copy of the statement of commitments may be viewed.

e. New subsections 15A(7) – (8) explain the Secretary of State, or the Welsh Ministers, may allow an acquiring authority to amend its statement of commitments before a CPO with a direction is confirmed but only if:

    i. the amendment would not be unfair to any person who made or could have made an objection to the CPO, and

    ii. where the power enabling the CPO to be made authorises an acquisition for a purpose which includes housing, only if the acquiring authority's intentions continue to include the provision of affordable housing.

f. New subsection 15A(9) provides the Secretary of State, or the Welsh Ministers, may only confirm a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of 1961 Act if they are satisfied the direction is justified in the public interest. If the Secretary of State, or the Welsh Ministers, is not satisfied the direction is justified in the public interest, they may decide not to confirm the CPO or, if they do decide to confirm the CPO, they must modify the CPO to remove the direction.

g. New subsection 15A(10) specifies where the Secretary of State, or the Welsh Ministers, have confirmed a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act, the confirmation notice required to be served under section 15 of the 1981 Act must provide the following information:

    i. a statement on the effect of the direction;

ii. explain how the acquiring authority's statement of commitments may be viewed; and

iii. explain additional compensation may be payable if the acquiring authority does not fulfil its statement of commitments.

h. New subsection 15A(11) provides definitions for terms in new section 15A of the 1981 Act.

1545 Subsection (1)(d) inserts new Schedule 2A in the 1981 Act. New Schedule 2A provides a list of CPO-making powers which directions may be sought on. The list of CPO-making powers contains three types:

a. acquisitions for purposes which include housing;

b. acquisitions for purposes of the National Health Service; and

c. acquisitions for educational purposes.

1546 Subsection (2) of section 190 amends the 1961 Act. Subsection (2)(a) inserts new section 14A into the 1961 Act which makes the following provisions:

a. New subsection 14A(1) makes clear the provisions under section 14A of the 1961 Act are to apply where a CPO has been confirmed and includes a direction that compensation is to be assessed in accordance with section 14A of the Land Compensation Act 1961.

b. New subsection 14A(2) disapplies section 14 of the 1961 Act. The effect of which means that section 14 cannot be taken into account when the value of the land is assessed for compensation purposes where a CPO includes a direction.

c. New subsection 14A(3) provides that when the value of the land is assessed for compensation purposes where a CPO includes a direction, it is to be assumed that no planning permission would be granted on the relevant valuation date or on a date in the future for development on the land (whether on that land alone or together with other land) except for those types of development provided under new subsections 14(A)(4) – (5) of the 1961 Act. This means value attributable to the following type of development cannot be claimed in compensation:

i. the prospect of planning permission being granted on the land for appropriate alternative development; or

ii. the prospect of planning permission being granted on the land for any other use which has a higher value than the existing use.

d. New subsections 14A(4) – (5) provide that when the value of the land is assessed for compensation purposes where a CPO includes a direction, the following may be taken into account:

i. an existing planning permission on the land i.e. a permission that has been granted and is in force on the relevant valuation date; or

ii. the prosect of planning permission being granted on or after the relevant valuation date for the conversion of a single dwelling into a two or more separate dwellings on the land included in the CPO.

e. New subsection 14A(6) introduces new Schedule 2A to the 1961 Act which allows for the payment of additional compensation in certain circumstances to persons whose interest in land was acquired via a CPO which included a direction that compensation was to be assessed in accordance with section 14A of the 1961 Act.

1547 Subsection 2(b) of section 190 inserts new subsection (3) in section 32 of the 1961 Act. The effect of this is to disapply the section 32 of the 1961 Act provision which provides for the applicable rate of interest on compensation where entry on land has been made before compensation has been paid to a person. Instead, regulations made under paragraph 7 of new Schedule 2A to the 1961 Act may set out how interest is to be applied when additional compensation is to be paid.

1548 Subsection 2(c) of section 190 inserts new Schedule 2A into the 1961 Act which makes the following provisions:

a. Paragraph 1(1) of new Schedule 2A provides that paragraph 1 applies where land has been compulsorily acquired further to a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act.

b. Paragraph 1(2) provides the Secretary of State, or the Welsh Ministers, are required to make a direction for the payment of additional compensation by the acquiring authority who made the CPO which included a direction that compensation was to be assessed in accordance with section 14A of the 1961 Act where it appears to the Secretary of State, or the Welsh Ministers, that:

i. the conditions in sub-paragraph 1(3) have been met, and

ii. an application for a direction for the payment of additional compensation has been made by a person whose interest in land was acquired via a CPO which included a direction that compensation was to be assessed in accordance with section 14A of the 1961 Act.

c. Paragraph 1(3) of new Schedule 2A outlines the conditions which must be satisfied before the Secretary of State, or the Welsh Ministers, can make a direction for the payment of additional compensation. The conditions are:

i. the use of the land by the acquiring authority following its acquisition is not materially in accordance with the authority's statement of commitments;

ii. either—

1. 10 years have passed since the CPO which included the direction that compensation was to be assessed in accordance with section 14A of the 1961 Act became operative i.e. the date on which notice of the confirmation of the CPO was first published, or

2. there is no realistic prospect of the acquiring authority's statement of commitments being fulfilled within that period of time; and

3. the Secretary of State, or the Welsh Ministers, would not have confirmed the CPO with the inclusion of the direction that compensation was to be assessed in accordance with section 14A of the 1961 Act on the basis of the use of the land by the acquiring authority following its acquisition.

d. Paragraph 1(4) of new Schedule 2A provides definitions for terms in paragraph 1(3) of new Schedule 2A.

e. Paragraph 1(5) of new Schedule 2A sets out the effect of a direction for additional compensation. That being where the Secretary of State, or the Welsh Ministers, make a direction for the payment of additional compensation, those eligible ("eligible persons") may make a claim to the acquiring authority for additional compensation relating to the original value of their interest.

f. Paragraph 1(6) of new Schedule 2A provides a definition of "eligible persons" for Schedule 2A and references paragraph 4(1) of new Schedule 2A which provides for eligibility where the land was subject to a mortgage.

g. Paragraph 2(1) of new Schedule 2A sets out additional compensation is only payable to an eligible person if, in respect of the acquisition of their interest in land, the amount of compensation that would have been assessed had section 14 of the 1961 Act applied ("the alternative amount") is greater than the amount of compensation which was awarded or agreed as a result of the direction which applied section 14A of the 1961 Act ("the original amount").

h. Paragraph 2(2) of new Schedule 2A provides where the alternative amount of compensation is greater than the original amount of compensation, additional compensation is payable and the amount payable will be the difference between the two amounts.

i. Paragraph 2(3) of new Schedule 2A provides a definition of the "original amount".

j. Paragraph 2(4) of new Schedule 2A provides a definition of the "alternative amount". The effect of which means the alternative amount may be assessed by taking account of the value associated with:

    i. the planning certainty of appropriate alternative development being established on the land through the granting of a Certificate of Appropriate Alternative Development (CAAD) under section 17 or 18 of the 1961 Act, or

    ii. the prospect of planning permission being granted for other development on the land on or after the relevant valuation date under section 14(2)(b) of the 1961 Act.

k. Paragraph 2(5) of new Schedule 2A provides for what the relevant valuation date should be, for the purposes of assessing the alternative amount, where the original amount of compensation was agreed: the date on which the original agreement was concluded.

l. Paragraph 2(6) of new Schedule 2A sets out that when determining the amount of additional compensation under Schedule 2A, the reference in section 17(2)(b) of the 1961 Act to the amount of compensation is to apply as if that reference were to the amount of additional compensation. The effect of this is when determining additional compensation, no application for a CAAD may be made if a reference has been made to the Upper Tribunal to determine the amount of additional compensation, except with the consent of the Upper Tribunal.

m. Paragraph 2(7) of new Schedule 2A provides that where a CAAD is granted after the original amount of compensation has been awarded or agreed, for the purposes of assessing the alternative amount of compensation, the granting of the CAAD is to have effect as if this decision had taken place before the assessment of the alternative amount. The practical effect of this is to ensure a CAAD may be applied for after the original amount of compensation has been agreed or awarded following a reference to the Upper Tribunal so it may be taken into account in the assessment of the alternative amount of compensation.

n. Paragraph 2(8) of new Schedule 2A provides compensation attributable to disturbance, severance or injurious affection heads of claim may not to be taken into account when calculating the original and alternative amounts of compensation.

o. Paragraph 3 of new Schedule 2A provides a time limit for the making of an application for a direction for additional compensation. The effect of which is an application for a direction for additional compensation may not be made 13 years after the date on which the CPO which included the direction that compensation was to be assessed in accordance with section 14A of the 1961 Act became operative i.e. the date on which notice of the confirmation of the CPO was first published. See section 26 of the 1981 Act for provisions as to operative dates for CPOs governed by that Act.

p. Paragraph 4, sub-paragraphs (1) – (6) of new Schedule 2A relate to mortgages. Sub-paragraph (1) provides a person who had an interest in land compulsory acquired via a CPO which included a direction that compensation was to be assessed in accordance with section 14A of the 1961 Act but was subject to a mortgage is entitled to make an application for a direction for the payment of additional compensation.

q. Paragraph 4(2) of new Schedule 2A provides that the existence of a mortgage is to be taken into account for the purpose of determining both the original and additional compensation amounts. So where an amount was paid to a mortgage provider under section 15 or 16 of the Compulsory Purchase Act 1965 (which provided for where the mortgage debt exceeded the value of the mortgage land) as a result of a CPO which included a direction that compensation was to be assessed in accordance with section 14A of the 1961 Act, for the purposes of the payment of additional compensation, this amount is to be considered as forming part of the original amount of compensation.

r. Paragraph 4(3) of new Schedule 2A further sets out that the reference in sub- paragraph (2) to an amount paid under section 15 or 16 of the Compulsory Purchase Act 1965 also includes any advance payment of compensation to a mortgage provider made under sections 52ZA or 52ZB of the Land Compensation Act 1973.

s. Paragraph 4(4) of new Schedule 2A provides where additional compensation is payable to a mortgage provider, it must be put towards discharging any outstanding loans secured by the mortgage on the relevant land or property. Paragraph 4(5) of new Schedule 2A sets out that if there is no outstanding loan secured by the mortgage, the additional compensation is payable to the mortgagor (the person who held the mortgaged land). Paragraph 4(6) of new Schedule 2A explains if the additional compensation payable to a mortgage provider exceeds the outstanding loans secured by the mortgage, the excess amount is payable to the mortgagor (the person who held the mortgaged land).

t. Paragraph 5, sub-paragraphs(1) – (6) of new Schedule 2A allow a successor-in-title of a person who had an interest in land compulsory acquired via a CPO which included a direction that compensation was to be assessed in accordance with section 14A of the 1961 Act to make an application for a direction for additional compensation under Schedule 2A.

u. Paragraph 6(1) of new Schedule 2A enables the Secretary of State, or the Welsh Ministers, to make regulations to allow the payment of additional compensation for consequential, qualifying losses. Sub-paragraph (2) provides a definition of "qualifying losses". Sub-paragraph (3) applies that definition to compensation which was payable to mortgage providers. Sub-paragraph (4) explains the scope of regulations which may be made under sub-paragraph 6 of new Schedule 2A.

v. Paragraph 7(1) of new Schedule 2A explains regulations may be made to set out procedures for:

i. how an application for a direction for additional compensation under new Schedule 2A to the 1961 Act may be made;

ii. how claims for additional compensation may be submitted;

iii. the publicity requirements for giving notice of the making of a direction for additional compensation;

iv. the payment of interest on additional compensation; and

v. procedures for how and when additional compensation (and interest) should be paid.

w. Paragraph 7(2) of new Schedule 2A disapplies section 4 of the 1961 Act (recovery of costs) in relation to additional compensation claims. It enables regulations under paragraph 7 to: modify or disapply section 29 of the Tribunals, Courts and Enforcement Act 2007 (costs and expenses) or the Tribunal Procedure Rules relating to costs; or apply (including with modifications) section 4 of the Land Compensation Act 1961 (costs proceedings).

x. Paragraph 8 of new Schedule 2A, sub-paragraphs (1) – (4) explain who may make regulations under new Schedule 2A, what the regulations may do, and the applicable procedure for regulations made by the Secretary of State or the Welsh Ministers.

y. Paragraph 9 of new Schedule 2A, sub-paragraphs (1) – (4) set out matters of interpretation and application in connection with new Schedule 2A and its interaction with provisions in related primary legislation.

1549 Subsection (3) of section 190 amends the New Towns Act 1981 to make similar provisions to those made to the 1981 Act by subsections (1)(c) and (d) as described above. Subsection (3)(a) inserts new paragraph 5A into Schedule 4 to the New Towns Act 1981 which makes the following provisions:

a. Paragraph 5A(1) allows a new town development corporation, when submitting a CPO for confirmation under Part 1 of Schedule 4 to the New Towns Act 1981, to include in the order a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act.

b. Paragraph 5A(2) requires a new town development corporation to submit a statement of commitments with a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act. Paragraph 5A(3) defines a 'statement of commitments' as a statement of the new town development corporation's intentions as to what it will do with the land included in the CPO should the CPO be confirmed. It is these intentions which the development corporation will rely on to justify that the direction is in the public interest. Paragraph 5A(4) makes it a condition that the development corporation's intentions must include provision of affordable housing.

c. Paragraph 5A(5) provides the notice required under paragraph 2(1) in Schedule 4 to the New Towns Act 1981 must:

i. include a statement of the effect of the direction i.e. that the assessment of compulsory purchase compensation cannot take account of the prospects of planning permission being granted on the land which means the assessment may not take account of either:

ii. the prospect of appropriate alternative development being established on the land, or

iii. the prospect of planning permission being granted for other development on or after the relevant valuation date;

iv. name a place within the locality where a copy of the statement of commitments may be viewed.

d. Paragraphs 5A(6) – (7) explain the Secretary of State, or the Welsh Ministers, may allow a new town development corporation to amend its statement of commitments before a CPO with a direction is confirmed only if:

i. the amendment would not be unfair to any person who made or could have made an objection to the CPO, and

ii. the development corporation's intentions continue to include the provision of affordable housing.

e. Paragraph 5A(8) provides the Secretary of State, or the Welsh Ministers, may only confirm a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act if they are satisfied the direction is justified in the public interest. If the Secretary of State, or the Welsh Ministers, is not satisfied the direction is justified in the public interest, they may decide not to confirm the CPO or, if they do decide to confirm the CPO, they must modify the CPO to remove the direction.

f. Paragraph 5A(9) specifies where the Secretary of State, or the Welsh Ministers, has confirmed a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act, the notice required to be served under paragraph 5 in Schedule 4 to the New Towns Act 1981 must provide the following information:

i. a statement on the effect of the direction;

ii. an explanation of how the new town development corporation's statement of commitments may be viewed; and

iii. an explanation that additional compensation may become payable if the development corporation does not fulfil its statement of commitments.

g. Paragraph 5A(10) provides definitions for terms in new paragraph 5A in Schedule 4 to the New Towns Act 1981.

1550 Subsection (3)(b) of section 190 inserts new paragraph 5A in Schedule 5 to the New Towns Act 1981. This makes similar amendments to Schedule 5, which sets out the procedure for the compulsory acquisition of statutory undertakers' land, as were made to Schedule 4 to the New Towns Act 1981by subsection 3(a) above. It makes the following provisions:

a. Paragraph 5A(1) allows a new town development corporation, when making an application under Part 1 of Schedule 5 to the New Towns Act 1981, to include in the application a request for a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act. It also explains the provisions of new paragraph 5A will apply if the development corporation makes such an application.

b. Paragraph 5A(2) requires a new town development corporation to submit a statement of commitments with its application which includes a request for a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act. Sub-paragraph 5A(3) defines a 'statement of commitments' as a statement of the new town development corporation's intentions as to what it will do with the land should the acquisition proceed. It is these intentions which the development corporation will rely on

to justify that the direction is in the public interest. Paragraph 5A(4) makes it a condition that the development corporation's intentions must include provision of affordable housing.

c. Paragraph 5A(5) provides the notice required under paragraph 2 of Schedule 5 to the New Towns Act 1981 must:

    i. state a request for a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act has been made;

    ii. state the effect of the direction i.e. that the assessment of compulsory purchase compensation cannot take account of the prospects of planning permission being granted on the land which means the assessment may not take account of either:

        1. the prospect of appropriate alternative development being established on the land, or

        2. the prospect of planning permission being granted for other development on or after the relevant valuation date;

        3. name a place within the locality where a copy of the statement of commitments may be viewed.

d. Paragraph 5A, sub-paragraphs (6) – (7) explain the Secretary of State, or the Welsh Ministers, and the appropriate Minister may allow a new town development corporation to amend its statement of commitments before a direction is made on the application only if:

    i. the amendment would not be unfair to any person who made or could have made an objection to the application, and

    ii. the development corporation's intentions continue to include the provision of affordable housing.

e. Paragraph 5A(8) provides the Secretary of State, or the Welsh Ministers, and the appropriate Minister may make a CPO under paragraph 3 in Schedule 5 to the New Towns Act 1981 which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act only if they are satisfied the direction is justified in the public interest.

f. Paragraph 5A(9) specifies where a CPO is made which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act, the notice required to be served under paragraph 5 in Schedule 5 to the New Towns Act 1981 must provide the following information:

    i. a statement on the effect of the direction;

    ii. an explanation of how the new town development corporation's statement of commitments may be viewed; and

    iii. an explanation that additional compensation may become payable if the development corporation does not fulfil its statement of commitments.

g. Paragraph 5A(10) provides definitions for terms in new paragraph 5A in Schedule 5 to the New Towns Act 1981.

1551 Subsection (3A) of section 190 inserts new paragraph 3B in Schedule 4 to the Welsh Development Agency Act 1975. This makes similar amendments to Schedule 4, which sets out the procedure for compulsory acquisition under the Welsh Development Agency Act 1975, as were made to the 1981 Act by subsections (1)(c) and (d) as described above. It makes the following provisions:

a. Paragraph 3B(1) allows the Welsh Ministers, when preparing a CPO in draft under section 21A(1)(b) or (2)(b) of the Welsh Development Agency Act 1975, to include in the draft order a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act.

b. Paragraph 3B(2) requires the Welsh Ministers to submit a statement of commitments with a draft CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act. Paragraph 3B(3) defines a 'statement of commitments' as a statement of the Welsh Ministers' intentions as to what they will do with the land included in the draft CPO should the CPO be made. It is these intentions which the Welsh Ministers will rely on to justify that the direction is in the public interest. Paragraph 3B(4) makes it a condition that the Welsh Ministers' intentions must include provision of affordable housing.

c. Paragraph 3B(5) provides the statement required under paragraph 3(1)(a) of Schedule 1 to the Acquisition of Land Act 1981 must:

    i. include a statement of the effect of the direction i.e. that the assessment of compulsory purchase compensation cannot take account of the prospects of planning permission being granted on the land which means the assessment may not take account of either:

    ii. the prospect of appropriate alternative development being established on the land, or

    iii. the prospect of planning permission being granted for other development on or after the relevant valuation date;

    iv. name a place within the locality where a copy of the statement of commitments may be viewed.

d. Paragraphs 3B(6) – (7) explain the Welsh Ministers may amend their statement of commitments before a CPO with a direction is made only if:

    i. they are satisfied the amendment would not be unfair to any person who made or could have made an objection to the CPO, and

    ii. the Welsh Ministers' intentions continue to include the provision of affordable housing.

e. Paragraph 3B(8) provides the Welsh Ministers may make a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act if they are satisfied the direction is justified in the public interest. If the Welsh Ministers are not satisfied the direction is justified in the public interest, they may decide not to make the CPO or, if they do decide to make the CPO, they must modify the draft CPO to remove the direction.

f. Paragraph 3B(9) specifies where the Welsh Ministers make a CPO which includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act, the notice required to be served under paragraph 6 in Schedule 1 to the 1981 Act must provide the following information:

   i. a statement on the effect of the direction;

   ii. an explanation of how the Welsh Ministers' statement of commitments may be viewed; and

   iii. an explanation that additional compensation may become payable if the Welsh Ministers' do not fulfil their statement of commitments.

g. Paragraph 3B(10) provides definitions for terms in new paragraph 3B in Schedule 4 to the Welsh Development Agency Act 1975.

h. Paragraph 3B(11) explains the applicable procedure for regulations made under paragraph 3B(10).

1552 Subsection (4) of section 190 amends section 157 of the Town and Country Planning Act 1990 and inserts new subsection (A1) before subsection (1). The effect of which is where an interest in land is acquired following the serving of a blight notice, and the associated CPO which is operative (i.e. has been confirmed but the compulsory purchase powers have yet to be exercised) includes a direction that compensation is to be assessed in accordance with section 14A of the 1961 Act, the assessment of compensation is to be undertaken:

a. in accordance with that direction, and

b. as if the deemed notice to treat for the interest had been served as a result of the confirmation of the CPO.

Example 1 – Using compulsory purchase to facilitate affordable housing

Where a local authority has taken steps to acquire land by agreement to progress a scheme which includes affordable housing, but where such an agreement cannot be reached, the authority may use its powers of compulsory purchase to acquire the land providing they are applicable and there is a compelling case in the public interest to do so. For example, where doing so would facilitate the carrying out of development, re-development or improvement it may choose the power to make a compulsory purchase order (CPO) under section 226 of the Town and Country Planning Act 1990 ("the 1990 Act").

To ensure the local authority has:

(a) upfront certainty on the viability of its scheme (which includes affordable housing) to be facilitated by a CPO under section 226 of the 1990 Act, and

(b) confidence as to its ability to deliver the promised amount of affordable housing,

the authority may seek a direction from the Secretary of State, or the Welsh Ministers for CPOs in Wales, so it can acquire the land at closer to existing use value by not paying 'hope value' compensation. This means the compensation to be paid by the local authority for the value of the land would not include value attributed to:

- appropriate alternative development for which the grant of planning permission may be assumed (ignoring the local authority's scheme) if a Certificate of Appropriate Alternative Development is issued under section 17 or 18 of the Land Compensation Act 1961, or
- the prospect of a planning permission being granted on the land (ignoring the local authority's scheme) for a use which has a greater value than the existing use of the land (section 14(2)(b) of the Land Compensation Act 1961).

Where a direction is confirmed by the Secretary of State in England, or the Welsh Ministers for CPOs in Wales, affected landowners may claim compensation for the value of:

- any existing planning permission on the land which remains in force, or
- the prosect of planning permission being granted for the conversion of a single dwelling into a two or more separate dwellings.

A direction will only be confirmed by the Secretary of State, or the Welsh Ministers for CPOs in Wales, if they are satisfied the local authority has demonstrated that the direction is justified in the public interest.

If the local authority does not deliver the scheme it promised (including the provision of specific numbers of affordable housing units) within 10 years of the issuing of the original direction, or earlier where there is no realistic prospect that the scheme can be delivered within 10 years, affected landowners may ask the Secretary of State, or the Welsh Ministers for CPOs in Wales, to issue a direction that additional compensation may be paid to them by the local authority.

Example 2 – Using compulsory purchase to facilitate construction of a hospital

Where a National Health Trust has taken steps to acquire land by agreement to progress a scheme to facilitate the construction of a new hospital and associated facilities, but where such an agreement cannot be reached, the Trust may use its powers of compulsory purchase to acquire the land providing it can establish the required ground and there is a compelling case in the public interest to do so. For example, it may choose the power to make a compulsory purchase order (CPO) under paragraph 27 of Schedule 4 to the National Health Service Act 2006 ("the 2006 Act") for the purposes of carrying out its functions.

To ensure the National Health Trust has:

(a) upfront certainty on the viability of its scheme to be facilitated through a CPO under paragraph 27 of Schedule 4 to the 2006 Act, and

(b) confidence as to its ability to deliver the new hospital and associated facilities,

the Trust may seek a direction from the Secretary of State, or the Welsh Ministers for CPOs in Wales, so it can acquire the land at closer to existing use value by not paying 'hope value' compensation. This means the compensation to be paid by the Trust for the value of the land would not include value attributed to:

- appropriate alternative development for which the grant of planning permission on the land may be assumed (ignoring the Trust's scheme) if a Certificate of Appropriate Alternative Development is issued under section 17 or 18 of the Land Compensation Act 1961; or
- the prospect of a planning permission being granted on the land (ignoring the Trust's scheme) for a use which has a greater value than the existing use of the land (section 14(2)(b) of the Land Compensation Act 1961).

Where a direction is confirmed by the Secretary of State, or the Welsh Ministers for CPOs in Wales, affected landowners may claim compensation for the value of:

- any existing planning permission on the land which remains in force, or
- the prosect of planning permission being granted for the conversion of a single dwelling into a two or more separate dwellings.

A direction will only be confirmed by the Secretary of State, or the Welsh Ministers for CPOs in Wales, if they are satisfied the National Health Trust has demonstrated that the direction is justified in the public interest.

If the National Health Trust does not:

(a) deliver its scheme within 10 years of the issuing of the original direction, or

(b) it becomes apparent earlier that there is no realistic prospect that the scheme can be delivered within 10 years,

affected landowners may ask the Secretary of State, or the Welsh Ministers for CPOs in Wales, to issue a direction that additional compensation may be paid to them by the Trust.

Example 3 – Using compulsory purchase to facilitate construction of a school

Where a local authority has taken steps to acquire land by agreement to progress a scheme to facilitate the construction of a new primary school, but where such an agreement cannot be reached, the authority may use its powers of compulsory purchase to acquire the land providing there is a compelling case in the public interest to do so. For example, it may choose the power to make a compulsory purchase order (CPO) under section 530 of the Education Act 1996 ("the 1996 Act").

To ensure the local authority has:

(a) upfront certainty on the viability of its scheme to be facilitated through a CPO under section 530 of the 1996 Act, and

(b) confidence on its ability to deliver the new primary school,

the authority may seek a direction from the Secretary of State, or the Welsh Ministers for CPOs in Wales, so it can acquire the land at closer to existing use value by not paying 'hope value' compensation. This means the compensation to be paid by the Trust for the value of the land would not include value attributed to:

- appropriate alternative development for which the grant of planning permission on the land may be assumed (ignoring the authority's scheme) if a Certificate of Appropriate Alternative Development is issued under section 17 or 18 of the Land Compensation Act 1961; or
- the prospect of a planning permission being granted on the land (ignoring the authority's scheme) for a use which has a greater value than the existing use of the land (section 14(2)(b) of the Land Compensation Act 1961).

Where a direction is confirmed by the Secretary of State, or the Welsh Ministers for CPOs in Wales, affected landowners may claim compensation for the value of:

- any existing planning permission on the land which remains in force, or
- the prosect of planning permission being granted for the conversion of a single dwelling into a two or more separate dwellings.

A direction will only be confirmed by the Secretary of State, or the Welsh Ministers for CPOs in Wales, if they are satisfied the local authority has demonstrated that the direction is justified in the public interest.

If the local authority does not:

(a) deliver its scheme within 10 years of the issuing of the original direction, or
(b) it becomes apparent earlier that there is no realistic prospect that the scheme can be delivered within 10 years,

affected landowners may ask the Secretary of State, or the Welsh Ministers for CPOs in Wales, to issue a direction that additional compensation may be paid to them by the authority.

Affected landowners cannot ask the Secretary of State, or the Welsh Ministers for CPOs in Wales, to issue a direction for the payment of additional compensation if 13 years have passed since notification was first given to the effected landowners of the confirmation of the CPO which included the original direction.

Where the Secretary of State, or the Welsh Ministers for CPOs in Wales, issue a direction that additional compensation may be paid to affected landowners, additional compensation will be payable where the amount of hope value compensation they were prevented from claiming ("the alternative amount of compensation") is greater than the original amount of compensation they received from the local authority for their land ("the original amount of compensation").

The amount of additional compensation affected landowners will receive will be the difference between the alternative amount of compensation and the original amount of compensation.

The alternative amount of compensation may be assessed by taking account of the value associated with:

(a) appropriate alternative development for which the grant of planning permission on the land may be assumed (ignoring the local authority's original scheme) if a Certificate of Appropriate Alternative Development is issued under section 17 or 18 of the Land Compensation Act 1961; or
(b) the prospect of a planning permission being granted on the land (ignoring the local authority's original scheme) for a use which has a greater value than the existing use of the land (section 14(2)(b) of the Land Compensation Act 1961).

Part 10: Letting by Local Authorities of Vacant High-street premises

Significant concepts

Section 191: Designated highstreets and town centres

Background

1553 This section specifies that the premises to which this Part applies must be on a high street or within a town centre which has been designated by a local authority. This section sets out the criteria which must be met before a local authority can make a designation of a high street or town centre. It also deals with other matters relating to designations. HSRA refers to 'High Street Rental Auction'.

Effect

1554 This section sets out the criteria which must be met before a local authority can make a designation of a high street or town centre. It also deals with other matters relating to designations.

1555 Subsection (1) provides the circumstances in which a local authority may designate a high street. A local authority must consider the high street meets the criteria in subsection (1).

1556 Subsection (2) provides the circumstances in which a local authority may designate a town centre. A local authority must consider a town centre meets the criteria in subsection (2).

1557 Subsection (3) sets out where a street or area may not be designated by a local authority. An example would be an industrial estate where transactions or business are principally conducted between one business and another.

1558 Subsection (4) allows a local authority to vary or withdraw a designation.

1559 Subsection (5) sets out a requirement for a local authority to make available to the public a list and map showing any designations.

1560 Subsection (6) provides a designation is registrable as a local land charge. A local land charge will (if appropriate searches are carried out) alert purchasers of premises on high streets or in town centres to the existence of a designation.

1561 Subsection (7) provides definitions for ''designated high street'' and ''designated town centre''. The definition of "street" used in this section and throughout Part 10 can be found in section 218(5) (Interpretation of Part 10), which adopts the meaning from section 48(1) of the New Roads and Street Works Act 1991.

Section 192: High-street uses and premises

Background

1562 This section specifies that in order for this Part to apply, in addition to being in a designated area, the premises must be considered by the local authority to be suitable for a high street use.

Effect

1563 Subsection (1) sets out those uses which can be considered to be a high-street use.

1564 Subsection (2) provides that premises must be situated on a designated high street or designated town centre and considered by the local authority to be suitable for a high-street use to qualify for the exercise of this power. Premises which qualify are 'qualifying high-street premises' for the purpose of Part 10.

1565 Subsection (3) clarifies that premises used wholly or mainly as a warehouse cannot be qualifying high-street premises.

1566 Subsection (4) provides the meaning of the term "suitable high-street use" for the purpose of Part 10, which is premises considered suitable by the local authority for a high-street use.

1567 Subsection (5) provides for matters which the local authority is to have regard to in assessing whether the premises are suitable for a high-street use.

Section 193: Vacancy condition

Background

1568 A vacancy condition must be satisfied before a local authority may start the procedure preliminary to letting for qualifying high-street premises.

Effect

1569 Subsection (1) sets out the criteria for satisfaction of the vacancy condition on any given day. The premises must be unoccupied on that day and either have been unoccupied for the whole of the previous year or for 366 days within the previous two years.

1570 Subsection (2) clarifies that days of part-occupation count as full days of occupation in assessing the vacancy condition.

1571 Subsection (3) allows for days in which premises were unoccupied before this section came into force to count towards the assessment of the vacancy condition.

1572 Subsection (4) provides that occupation of premises by persons living in premises not designed or adapted for residential use will not count as occupation towards the assessment of the vacancy condition.

1573 Subsections (5) and (6) give the Secretary of State the power to make regulations to alter the circumstances in which the vacancy condition is satisfied. This alteration must relate to the time during which premises are or have been unoccupied.

1574 Subsection (7) clarifies that a state of affairs does not amount to occupation of premises for the purpose of assessing the vacancy condition unless it is substantial, sustained and involves the regular presence of people at the premises.

Section 194: Local benefit condition

Background

1575 A local benefit condition must also be satisfied before a local authority may start the procedure preliminary to letting for qualifying high-street premises.

Effect

1576 This section sets out the criteria for satisfaction of the local benefit condition. The local authority must consider the occupation of the premises for a suitable high-street use would be beneficial to the local economy, society or environment.

Procedure preliminary to letting

Section 195: Initial notice

Background

1577 If the vacancy condition and local benefit condition are met in relation to qualifying high-street premises, the local authority may start the procedure preliminary to letting by serving an initial letting notice on the landlord.

Effect

1578 Subsection (1) sets out the requirements which must be met before a local authority may serve an initial letting notice on the landlord. The landlord is the person entitled to possession of the premises and who can grant a tenancy of the premises of one year or more (see section 218(6)).

1579 Subsection (2) provides that an initial letting notice will be in force for 10 weeks. A final letting notice must be served whilst the initial letting notice is in force – see section 198(1)(a). This subsection therefore sets a time limit for the local authority to serve the final letting notice.

1580 A local authority may withdraw an initial letting notice at any time – see section 214(6).

Section 196: Restriction on letting while initial notice in force

Background

1581 The initial letting notice provides the landlord with an opportunity to let the premises to avoid the local authority exercising its power to carry out a HSRA. There are certain requirements which must be met by a landlord before it can let the premises following an initial letting notice.

Effect

1582 Subsection (1) requires the landlord to obtain the written consent of the local authority to the letting while the initial letting notice is in force. The landlord is required to obtain this consent before it enters into the letting. Consent is not required where the landlord is transferring or surrendering its interest in the premises.

1583 Subsection (2) requires a local authority to respond to a landlord's request for consent within a reasonable time after it is sought.

1584 Subsection (3) does not require consent where the tenancy is granted pursuant to an obligation that bound the landlord before the initial letting notice took effect. An example would be where the landlord has entered into an agreement for lease. This exception does not apply where the obligation to grant the lease is conditional on service of an initial letting notice (see subsection (4)).

1585 Subsection (5) sets out the implications for the letting if the landlord does not obtain consent from the local authority. It will be void.

1586 Subsection (6) provides for circumstances where a tenancy, licence or agreement which is void by virtue of subsection (5) is no longer treated as void. This is where the local authority does not trigger the procedure for letting by serving a final letting notice, or does not complete the procedure for letting having served a final letting notice, and the parties to such tenancy, licence or agreement have treated it as valid.

Section 197: Circumstances in which letting to be permitted

Background

1587 There are certain circumstances in which a letting by the landlord is permitted following an initial letting notice.

Effect

1588 Subsections (1) and (2) provide for circumstances where the local authority must consent to the letting; this is where the letting is for one year or more and would be likely to lead to the premises being occupied for a high street use. The term of the letting must begin within 8 weeks of the initial letting notice taking effect. The letting can be by way of licence or lease.

1589 Subsection (3) provides that a letting will not be considered to be for one year or more if it includes a landlord's break right within the first year. The same does not apply if the letting includes a tenant's break right during the first year.

1590 Subsection (4) provides that consent which has been given to a letting by a landlord is then treated as not having been given where the term of the letting does not begin within 8 weeks of the initial letting notice taking effect.

Section 198: Final notice

Background

1591 If the landlord does not let the premises in accordance with sections 196 and 197 the local authority may start the procedure to letting by serving a final letting notice on the landlord.

Effect

1592 Subsection (1) sets out the requirements which must be met before a local authority may serve a final letting notice on the landlord, in particular that no tenancy or licence has been entered into in accordance with sections 196 and 197. At the time of serving the final letting notice, the landlord needs to be the person entitled to possession of the premises and who can grant a tenancy of the premises of one year or more (see section 218(6)).

1593 The combined effect of subsection (1)(b) and subsection (2) is to provide a 2-week window for the local authority to serve the final letting notice after serving an initial notice. This window opens 8 weeks after the initial letting notice takes effect (see subsection (1)(b)).

1594 Subsection (3) provides the local authority with a 14-week window to complete the procedure for letting. This window is extended where the landlord serves a counter-notice or where the landlord brings an appeal (see sections 201(6) and 202(6)).

Section 199: Restriction on letting while final notice in force

Background

1595 The local authority may start the procedure for letting once a final letting notice is served, which includes making arrangements to carry out the rental auction. This section therefore places restrictions on the landlord letting the premises itself whilst the final letting notice is in force.

Effect

1596 Subsection (1) requires the landlord to obtain the written consent of the local authority to any letting while the final letting notice is in force. The landlord is required to obtain this consent before it enters into the letting. Consent is not required where the landlord is transferring or surrendering its interest in the premises.

1597 Subsection (2) requires a local authority to respond to a landlord's request for consent to a letting within a reasonable time after it is sought.

1598 Subsection (3) does not require consent where the tenancy is granted pursuant to an obligation that bound the landlord before the initial letting notice took effect. An example would be where the landlord has entered into an agreement for lease. This exception does not apply where the obligation to grant the lease is conditional on service of an initial letting notice (see subsection (4)).

1599 Subsection (5) sets out the implications for the letting if the landlord does not obtain consent from the local authority. It will be void.

1600 Subsection (6) provides for circumstances where a tenancy, licence or agreement which is void by virtue of subsection (5) is no longer treated as void. This is where the local authority does not complete the procedure for letting, and the parties to such tenancy, licence or agreement have treated it as valid.

Section 200: Restriction on works while final notice in force

Background

1601 The local authority may start the procedure for letting once a final letting notice is served, which includes making arrangements to carry out the rental auction. This section therefore places restrictions on the landlord who wishes to carry out works to the premises. These restrictions only apply after the final letting notice has been served by the local authority.

Effect

1602 Subsection (1) requires the landlord to obtain the written consent of the local authority to any works it wishes to carry out to the premises, including the alteration or removal of fixtures and fittings (see subsection (2)), after the final notice has been served.

1603 Subsection (3) provides that the landlord can carry out works to the premises under certain circumstances without the local authority's consent.

1604 Subsection (4) requires a local authority to respond to a landlord's request for consent to works within a reasonable time after it is sought. It also sets out the grounds upon which the local authority can refuse consent to works.

1605 An offence is committed if a person without reasonable excuse fails to obtain the local authority's consent to carry out works after the final letting notice has been served. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).

Section 201: Counter-notice

Background

1606 The landlord can appeal against the final letting notice. This section sets out the first step in the appeals procedure.

Effect

1607 Subsections (1) and (2) require the landlord to give a counter-notice to the local authority within 14 days of the final letting notice taking effect if it wishes to appeal against the final notice.

1608 Subsections (3) and (4) require the landlord to specify its grounds of appeal in the counter-notice. The grounds of appeal which the landlord can include are set out in Part 1 of Schedule 20 (Grounds of appeal against final letting notice).

1609 Subsection (5) gives the Secretary of State the power to make regulations which amend the grounds of appeal.

1610 Subsection (6) extends by 28 days the 14-week window for the local authority to complete the procedure for letting in circumstances where a counter-notice is served by the landlord.

Section 202: Appeals

Background

1611 This section sets out the second step in the appeals procedure.

Effect

1612 Subsection (1) sets out two requirements which must be met before a landlord can bring an appeal. The landlord must have given a counter-notice in accordance with section 201. The local authority must not have withdrawn the final letting notice within 14 days of receipt of the counter-notice.

1613 Subsection (2) requires any appeal to be brought in the county court.

1614 Subsection (3) provides that an appeal to the county court must only be on the grounds specified in the counter-notice.

1615 Subsection (4) provides a time limit for the landlord to bring an appeal. An appeal must be brought by the landlord within 28 days of the counter-notice being received by the local authority.

1616 Subsection (5) provides the court with power to confirm or revoke the final letting notice in deciding any appeal.

1617 Subsection (6) extends the 14-week window for the local authority to complete the procedure for letting in circumstances where the landlord brings an appeal. The extension period begins on the day on which the appeal is brought and ends with the day on which the appeal is finally determined, withdrawn or abandoned.

1618 Subsection (7) sets out when an appeal will be finally determined for the purpose of establishing the time limits in subsection (6).

Procedure for letting

Section 203: Rental auctions

Background

1619 The first stage of the procedure for letting is for the local authority to arrange a rental auction for the qualifying high-street premises.

Effect

1620 Subsection (1) sets out the circumstances in which a local authority may arrange a rental auction for the qualifying high-street premises. Subsection (1)(b) prevents the rental auction from being initiated while an appeal remains possible.

1621 Subsection (2) defines "rental auction".

1622 Subsections (3) and (5) give the Secretary of State the power to make regulations which provide for the process for the rental auction and how the 'successful bidder' at auction will be identified. These matters must be provided for in regulations.

1623 Subsection (4) requires provision in the regulations for the local authority to specify the suitable high street use ahead of the auction.

1624 Subsections (6) – (8) set out matters which the Secretary of State may provide for in the regulations in connection with the rental auction.

1625 Subsection (9) imposes a requirement on local authorities to have regard to representations made by the landlord where there is a choice as to procedure for the carrying out of the rental auction.

Section 204: Power to contract for tenancy

Background

1626 The second stage in the procedure for letting is for the local authority to enter into a contract with the successful bidder from the auction. The purpose of the contract is to allow for works to be carried out to the premises before the tenancy is granted.

Effect

1627 Subsection (1) sets out the circumstances in which a local authority can enter into a contract (referred to in Part 10 as the 'tenancy contract') with the successful bidder from the auction. This includes a final notice still being in force, the period for any appeal by the landlord having expired (42 days), the rental auction having been carried out by the local authority and no tenancy, licence or agreement having been granted by the landlord with the consent of the local authority.

1628 Subsection (2) provides that the contract may be entered into with the successful bidder from the auction.

1629 Subsection (3) describes what is meant by 'tenancy contract'. This is a contract between the landlord and tenant to grant a 'short-term tenancy' (this is a tenancy of at least one year and not exceeding five years, as defined in section 218(8)). The contract can be conditional.

1630 Subsections (4) and (5) give the local authority the power to enter into the contract as if it was entered into by the landlord.

1631 Subsection (6) provides for a copy of the completed contract to be sent to the landlord by the local authority.

Section 205: Terms of contract for tenancy

Background

1632 This section deals with the terms of the tenancy contract.

Effect

1633 Subsection (1) is self-explanatory.

1634 Subsections (2) – (4) sets out certain matters the contract must or may include, such as the terms of the tenancy. It also sets out other matters which the contract may include, such as works to be carried out by the landlord or the tenant before the term of the tenancy begins (referred to as 'pre-tenancy works'). These works can be inside or outside the premises. The contract may also make provision for the remedies available to the tenant if the landlord fails to carry out any Pre-tenancy works.

1635 Subsection (5) provides a definition of "pre-tenancy works".

1636 Subsection (6) gives the Secretary of State the power through regulations to make further provision about the terms of the contract and, in making the regulations, subsection (7) requires the Secretary of State to have regard to the terms on which contracts for the grant of short-term tenancies are typically entered into on a commercial basis.

1637 Subsection (8) imposes a requirement on local authorities to have regard to representations made by the landlord in deciding the terms of the contract (so far as the local authority has a discretion to do so).

1638 Subsection (9) provides definitions which are used in this section.

Section 206: Terms of tenancy

Background

1639 The terms of the tenancy must be included in the contract which is entered into under section 204. This section deals with the terms of the tenancy.

Effect

1640 Subsection (2) provides for a further limit on the length of term of the tenancy which can be granted by the landlord. A tenancy can be for a term of at least one year but not exceeding 5 years (see section 218(8)) but also needs to take into account the length of the landlord's own interest, which may be leasehold and shorter than 5 years. For example, if the landlord has 3 years and 1 day remaining on the term of its own lease then it can only grant a tenancy for a term of up to 3 years.

1641 Subsections (3), (4) and (6) set out what terms the tenancy must include. This includes those matters described in Schedule 21 (Provision to be included in terms of tenancy further to agreement under section 204).

1642 Subsection (5) provides that the terms of the tenancy may include the grant of rights to the tenant over land outside the premises.

1643 Subsection (7) gives the Secretary of State the power through regulations to make further provision about the terms of the tenancy and, in making the regulations, subsection (8) requires the Secretary of State to have regard to the terms on which contracts for the grant of short-term tenancies are typically entered into on a commercial basis.

1644 Subsection (9) imposes a requirement on local authorities to have regard to representations made by the landlord in deciding the terms of the tenancy.

1645 Subsection (10) provides definitions for the purpose of this section.

Section 207: Power to grant tenancy in default

Background

1646 The tenancy contract will require the landlord to grant the tenancy where certain requirements are met. This section deals with the power of the local authority to grant the tenancy where the landlord fails to do so.

Effect

1647 Subsections (1) – (4) give the local authority the power to grant the tenancy as if it was granted by the landlord, where the landlord fails to grant the tenancy as required by the contract.

1648 Subsection (5) provides for a copy of the completed tenancy to be sent to the landlord by the local authority.

Section 208: Deemed consent of superior lessor or mortgagee

Background

1649 The landlord may require consent from a third party to enter into the tenancy contract and the short-term tenancy. This could include consent from a 'superior landlord', where the landlord has a leasehold interest in the premises. It could also include consent from a mortgagee where the landlord's interest is charged.

Effect

1650 This section provides that the tenancy contract and short-term tenancy will be deemed to be with the express consent of any superior landlord or mortgagee.

1651 Regulations under section 214(8) may provide for copies of letting notices to be served on superior landlords or mortgagees.

Section 209: Exclusion of security of tenure

Background

1652 The Landlord and Tenant Act 1954 provides security of tenure to tenants who occupy premises for the purpose of their business. Security of tenure provides the tenant with the automatic right to remain in possession after the lease term ends.

Effect

1653 This section provides that the security of tenure provisions will not apply to the short-term tenancy, so the tenant will not have the right to remain in possession once the term of the short-term tenancy ends.

Powers to obtain information

Section 210: Power to require provision of information

Background

1654 This section provides local authorities with an additional power to require the provision of information in connection with HSRAs.

Effect

1655 Subsections (1)-(3) provide the local authority with the power to request information about premises on a designated high street or designated town centre from persons who appear to have an interest in those premises.

1656 Subsection (4) sets out what is meant by information about premises, which may include information about the occupation of the premises, matters affecting the premises, persons interested in the premises and their interests in the premises.

1657 Subsection (5) requires the local authority to state the time by which and manner in which the person is required to provide the information about premises.

1658 Subsection (6) provides that the local authority may only require the provision of information from persons if it thinks it likely to be necessary or expedient for the exercise of its functions under Part 10. For example, the local authority may need to use this power to find out the details of the person who it needs to serve with the letting notices. Or the local authority may require information on the premises which is needed to be provided to prospective bidders as part of the auction process.

1659 An offence is committed if a person without reasonable excuse fails to comply with a request for information about premises, or gives information that is false as per subsection (7). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500) as per subsection (8).

Section 211: Power to enter and survey land

Background

1660 This section provides local authorities with an additional power to enter and survey land in connection with HSRAs.

Effect

1661 Subsections (1)-(3) provide the local authority with the power to authorise someone to enter and survey a premises on a designated high street or designated town centre.

1662 Subsection (4) sets out that this power can only be used for the purpose of obtaining information about the premises the authority thinks is necessary or expedient to exercise its functions under this Part.

1663 Subsection (5) specifies that this power can only be exercised if the local authority has given or made reasonable efforts to issue a written notice to the landlord or to the person who appears to be landlord at least 14 days before the day on which the power of entry is exercised.

1664 Subsection (6) states that the power may only be exercised at a reasonable time. Subsection (7) states that the power may not exercised in way that involves use of force, except on the authority of a warrant issued by a magistrate.

1665 Subsection (8) clarifies that such a warrant may only be issued on an application supported by evidence, if the magistrate is satisfied that reasonable efforts have been made to exercise the power without the use of force and must state the number of occasions the power will be used.

1666 A person exercising the power must produce evidence of the authorisation and a copy of the warrant (subsection (9)).

1667 If no one is present when the power is exercised, the person exercising the power must leave the premises as secure as they found it on leaving (subsection (10)).

Section 212: Offences in connection with section 211

Background

1668 This section sets out the offences in connection with the power of entry at section 211.

Effect

1669 An offence is committed if a person without reasonable excuse obstructs another person in the exercise of this power of entry (see subsection (1)). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000) (see subsection (2))

1670 In addition, a person exercising the power of entry commits an offence if the person obtains and discloses confidential information other than for the purposes for which the person was exercising the power (see subsection (3)). A person who commits such an offence is liable on summary conviction to a fine and on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine, or both (see subsection (4)).

1671 Subsection (5) provides a definition of 'confidential information'.

Section 213: Power to extend time limits

Background

1672 Part 10 provides certain time limits for the local authority to serve a final letting notice or to complete the procedure for letting. The ability of the local authority to serve a final letting notice or to complete the procedure for letting may rely on obtaining information about the premises.

Effect

1673 This section allows a court to extend the time limits for the local authority to serve a final notice or to complete the procedure for letting in certain circumstances. This is where the local authority is impeded in the exercise of its functions under Part 10 due to a failure by a person to comply with a requirement to provide information about premises, or is obstructed in the exercise of its power to enter and survey land. The local authority would need to apply to the county court for such an extension.

General and supplementary provision

Section 214: Further provision about letting notices

Background

1674 Part 10 provides for the local authority to serve letting notices on the landlord as part of the procedure preliminary to letting in sections 195 to 202.

Effect

1675 This section makes further provision about letting notices.

1676 Regulations must make provision about the form of letting notices, the service of letting notices and when letting notices take effect (see subsection (2)).

1677 Subsection (3) sets out matters which must be included on the letting notices.

1678 Subsections (4) and (5) deal with matters relating to the serving of letting notices which must be dealt with in the regulations.

1679 Subsection (6) provides that a letting notice may be withdrawn by the local authority at any time.

1680 Subsection (7) provides that a letting notice is not affected by any change in the landlord of the premises in relation to which it has been served. A letting notice is a local land charge.

1681 Subsection (8) provides that regulations may provide for copies of letting notices to be served on superior landlords and mortgagee.

Section 215: Other formalities

Background

1682 This section supplements the main sections in Part 10.

Effect

1683 This section gives the Secretary of State the power to make regulations in relation to the manner of or procedure to be followed in connection with a number of matters in Part 10. This includes the designation of high streets and town centres by local authorities, the giving of consent by a local authority to a letting by the landlord where an initial notice or final notice are in force, the giving of a counter-notice by the landlord, the making of representations by the landlord as to the procedure to be followed by the local authority in connection with the rental auction, the making of representations by the landlord in connection with the terms of the tenancy contract and the terms of the short-term tenancy, the power of the local authority to require provision of information about premises, and the giving of notice by the local authority where it exercises its power to enter and survey.

Section 216: Compensation

Background

1684 There is a power to enter and survey land at section 211.

Effect

1685 Subsections (1) to (4) make provision for compensation to be recovered from the local authority for any damage done as a result of the exercise of the power of entry.

1686 Subsection (5) provides that no compensation is otherwise payable in the exercise of the powers in Part 10.

Section 217: Power to modify or disapply enactments applicable to letting

Background

1687 This section supplements the main sections in Part 10.

Effect

1688 This section provides the Secretary of State with the power to make regulations to modify or disapply enactments applicable to letting.

Section 218: Interpretation of Part 10

Background

1689 This section supplements the main sections in Part 10.

Effect

1690 Subsection (1) provides that the interpretative provisions in section 218 (interpretation of Part 10) apply for the purpose of Part 10.

1691 Subsection (2) sets out what is meant by a local authority for the purpose of Part 10.

1692 Subsection (3) provides clarification on what is meant by "premises" for the purpose of the power relating to HSRAs. This can mean the whole of a building that is designed or adapted to be used as a whole, or any part of a building which is designed or adapted to be used separately from other parts of the building, or any part of a building that could with reasonable adaptation be used separately from other parts of the building.

1693 Subsection (4) provides clarification of when premises are situated on a street for the purpose of Part 10.

1694 Subsections (5) and (6) provide definitions of "street" and "landlord".

1695 Subsection (7) provides for circumstances where a tenancy, licence or agreement is ignored for certain purposes.

1696 Subsection (8) defines "short-term tenancy", subsection (9) clarifies what is meant by terms of a contract or tenancy, and subsection (10) defines "mortgagee".

1697 Subsection (11) clarifies that references to regulations in Part 10 are regulations made by the Secretary of State.

Part 11 Information about dealings in land

Section 219: Power to require provision of certain classes of information

Background

1698 This section provides that regulations may be made requiring the provision of information that is within the scope of a permitted purpose (these are the contractual control purpose, beneficial ownership purpose and national security purpose as defined in sections 220 to 222).

1699 It also sets out technical details about: (i) territorial extent; (ii) what regulations made under this power must include; (iii) what regulations made under this power may include; and (iv) the person to whom the required information must be provided.

Effect

1700 Subsection (1) specifies that information can only be collected if it is within scope of a permitted purpose (as set out in sections 220 to 222).

1701 Subsection (2) clarifies that all three permitted purposes may apply in England and Wales.

1702 Subsection (3) specifies that only the national security purpose applies to Scotland and Northern Ireland.

1703 Subsection (4) makes clear that regulations must specify: (i) the person on whom the requirement falls; (ii) the occurrence or circumstances that gives rise to the requirement; (iii) the time limit for compliance; and (iv) the person to whom the information must be provided.

1704 Subsection (5) requires that the occurrence or circumstance that gives rise to a requirement to provide information under the national security purpose must be (or include) the giving of a notice to the person obliged to provide the information. A notice may also give rise to a requirement under the other permitted purposes.

1705 Subsection (6) specifies that notices issued under regulations may be deemed to have been given at a certain time in certain circumstances, to be defined through regulations.

1706 Subsection (7) specifies that the person to whom information must be provided must be (i) the Chief Land Registrar; or (ii) a person exercising public functions on behalf of the Crown.

1707 Subsection (8) provides that regulations may: (i) provide how information should be provided (including provision requiring it to be provided by electronic means); (ii) have retrospective and extraterritorial extent.

Section 220: The beneficial ownership purpose

Background

1708 This section sets out the first 'permitted purpose' – the beneficial ownership purpose – and defines the relevant terms and concepts. It adopts definitions used in regulations 5 and 6 of the Money Laundering Regulations 2017.

1709 The Government anticipates using these powers to ensure that the beneficial owners of land (as defined in section 220) in England and Wales are more easily identifiable, by requiring any ownership structures beyond legal ownership to be declared and, if they are not already in scope of other transparency regimes, fully disclosed.

Effect

1710 Subsection (1) clarifies that information is within scope of the beneficial ownership purpose if it appears to Secretary of State that it would be useful for: (i) identifying beneficial owners of land in England and Wales, or (ii) understanding the nature of the relationship between beneficial owners and the land in question.

1711 Subsection (2) sets out that a beneficial owner of land is defined for the purposes of this section by subsections (3) and (4) which set out who will be considered to be a beneficial owner of land where land is owned by a body corporate or partnership, trust, foundation or other similar legal arrangement or the estate of a deceased person in the course of administration. Subsections (3) and (4) refer to the definitions of beneficial owners - set out in regulations 5 and 6 of the Money Laundering Regulations 2017.

1712 Subsection (5) clarifies: (i) that expressions used in this section that are also used in regulations 5 or 6 of the Money Laundering Regulations have the same meaning as in those regulations; (ii) that references to ownership of land (except references to beneficial ownership) refer to legal ownership of a freehold or leasehold estate in the land; and (iii) the full title of the Money Laundering Regulations 2017.

Section 221: The contractual control purpose

Background

1713 This section sets out the second 'permitted purpose' – the contractual control purpose – and defines the relevant terms and concepts.

1714 The Government anticipates using this power to improve the transparency of arrangements, in particular those arrangements used within the development context, to control land short of ownership. This will allow it to meet the 2017 housing white paper commitment to publish data on options and other arrangements used by developers and others to exercise control over land, short of ownership.

Effect

1715 Subsection (1) clarifies that information is within scope of the contractual control purpose if it appears to Secretary of State that it would be useful for understanding relevant contractual rights.

1716 Subsection (2) clarifies that understanding those rights includes identifying those who hold them and understanding the circumstances in which those rights were created or acquired.

1717 Subsection (3) defines relevant contractual rights as rights arising under a contract relating to the development, use or disposal of land in England or Wales, which are held for the purposes of an undertaking.

1718 Subsection (4) in turn clarifies that a "contract" includes a deed (whether or not made for consideration) and an "undertaking" includes a business, charity or similar endeavour, or the exercise of public functions.

Section 222: The national security purpose

Background

1719 This section sets out the third 'permitted purpose' – the national security purpose.

1720 The Government anticipates using this power to identify those owning relevant interests in land or having relevant interests in land (and those with the ability to control or influence such persons) in respect of property close to critical national infrastructure and sensitive sites on a spot-check basis.

Effect

1721 Subsection (1) clarifies that information is within scope of the national security purpose if it: (i) relates to land that falls within subsection (2); (ii) is within subsection (3); and (iii) it appears to the Secretary of State that requiring the information would be justified in the interests of national security.

1722 Subsection (2) sets out that land is within this section if it appears to the Secretary of State that a threat to national security arises in connection either with the location of the land or anything situated or done on that land.

1723 Subsection (3) specifies that information required must appear to the Secretary of State to be useful for identifying those who have relevant interests or relevant rights in the land or are or may be able to control or influence those who do, or for understanding the relationship between those people and the land.

1724 Subsection (4) clarifies that in this section, references to "ownership" include both legal and beneficial ownership, and references to "control or influence" include control or influence by reason of interests or rights in or under a company, partnership, trust, foundation or legal structure or similar arrangement.

Section 223: Requirements may include transactional information

Background

1725 This section clarifies that the information that may be required to be provided if it falls within the scope of a permitted purpose includes "transactional information" about instruments, contracts and other arrangements relating to relevant interests in land and relevant rights concerning land.

1726 Transactional information is defined as: details of the parties and anyone on whose behalf or for whose benefit they are acting; terms of the transaction; details of persons providing professional services in relation to a transaction; details of the source of money paid or other consideration given; and copies of relevant documents.

Effect

1727 Subsection (1) clarifies that information that may be required to be provided (if it falls within the scope of a permitted purpose) includes transactional information about instruments, contracts or other arrangements relating to relevant interests in land and relevant rights concerning land.

1728 Subsection (2) specifies what 'transactional information' can be sought, specifically details of: the parties; persons on whose behalf or for whose benefit the parties were acting; terms of the transaction; details of persons providing professional services; source of funds or other consideration; and copies of documents evidencing the transaction.

1729 Subsection (3) defines a transaction as an instrument, contract or other arrangement within (1).

Section 224: Use of information

Background

1730 This section provides that regulations may provide for: (i) the information collected to be retained, shared and published; and (ii) the payment of fees by the persons providing the information to the person to whom the information is provided. It also provides that no civil liability is to arise from the sharing or publication of information pursuant to regulations made under this section by reason of any inaccuracy or omission in the information provided.

Effect

1731 Subsection (1) allows regulations to be made on the use of the information collected by the Secretary of State. Such regulations may provide for such information to be: (i) retained; (ii) shared with persons exercising functions of a public nature (such as other government departments and other public bodies) for the purposes of such functions, and (iii) published (for example to deliver on the 2017 housing white paper commitment to publish data on options and other contractual arrangements used by developers and others to exercise control over land short of ownership).

1732 Subsection (2) specifies that information required under the national security purpose may only be retained, shared or published insofar as appears to the Secretary of State to be justified in the interests of national security.

1733 Subsection (3) provides that regulations may provide for the payment of fees by persons providing information further to a requirement imposed by section 219 to the person to whom the information is provided in respect of any functions conferred on that person under Subsection (1) (with the intention of covering administrative costs).

1734 Subsection (4) makes clear that no civil liability will arise from the sharing or publication of information under regulations made under this section by reason of inaccuracies or omissions in respect of information that was provided.

Section 225: Offences

Background

1735 This section sets out the offences and maximum penalties associated with failure to comply with the requirements imposed through regulations under Part 11.

Effect

1736 Subsection (1) creates an offence if a person fails without reasonable excuse to comply with a requirement imposed under section 219.

1737 Subsection (2) creates an offence if a person provides information in response to a requirement imposed under section 219 which is false or misleading in a material particular and the person providing such information knows it to be false or misleading or is reckless as to whether this is the case.

1738 Subsection (3) specifies that offences are committed under the law of a jurisdiction only if the requirement is imposed by regulations which extend to it.

1739 Subsections (4) and (5) set out the maximum terms of imprisonment and fines in relation to the offence under subsection (1).

1740 Subsection (6) sets out the maximum terms of imprisonment and fines in relation to the offence under subsection (2).

1741 Subsections (7) and (8) clarify that relevant officers of entities specified in subsection 8 may also commit an offence if the relevant entity commits an offence under this section and that relevant officer authorises or permits, participates in, or fails to take all reasonable steps to prevent the offence being committed.

1742 Subsections (9) and (10) clarifies the process for prosecution of offences committed under the law of Scotland by a person outside Scotland.

Section 226: Enforcement of requirements

Background

1743 This section allows regulations to be made that would prevent a relevant registration act from being carried out in relation to a relevant interest in land or relevant right concerning land in which relation to which a requirement imposed under section 219 has not been complied with. It also provides that such regulations may amend the Land Registration Act 2002 and make consequential amendments of any other enactment to that effect.

Effect

1744 Subsections (1) allows regulations to be made that prevent a "relevant registration act" from being carried out in relation to a relevant interest in land or relevant right concerning land in relation to which a requirement imposed under section 219 has not been complied with. Subsection 2 clarifies that a relevant registration act is any act which would or could be carried out in relation to the register of title kept under the Land Registration Act 2002. Subsection 3 provides that regulations made under this section may amend the Land Registration Act 2002 and make consequential amendments to any other enactment.

Section 227: Interpretation of Part 11

Background

1745 This section provides definitions of various terms used in this part.

Effect

1746 This section defines the key terms and concepts used in this part. This includes making clear that the land interests and rights affected are those in the United Kingdom, a person includes any entity with legal personality under the law by which it is governed, and the regulations are regulations made by the Secretary of State

Part 12: Miscellaneous

Section 228: Registration of short-term rental properties

Background

1747 This section requires the Secretary of State to make regulations for a new registration scheme for short-term rental properties.

Effect

1748 Subsection (1) commits the Secretary of State to make regulations that will establish a registration scheme of specified short-term rental properties in England. The regulations may require or permit registration.

1749 Subsection (2) sets out the definition of a short-term rental property, which can be added to by specifying further dwellings or premises not captured by subsection (2)(a).

1750 Subsection (3) requires that the Secretary of State consults the public before making regulations, and this can take place before the section comes into force (subsection (4)).

1751 Subsection (5) describes the various provisions that may be included in the regulations. These are who administers the register or registers, who is required to register a short-term rental property, the conditions of registration, and the circumstances in which registration may be removed. It also sets out that the provisions may include the detail of how a scheme will be administered, including any appeals process against decisions made about registration, and the format and content of the register, applications to register, and any other document that may be required. Subsection (5) also sets out that the provisions may include details of how the scheme should be publicised, as well as the collection, provision or publication of information connected with the scheme. Finally, it also sets out that the regulations may include any relevant exemptions, the circumstances in which registration or promotion of a property to the public could be prohibited, and how the requirements of the regulations should be enforced.

1752 Subsections (6) and (7) make provision for enforcement by way of civil sanctions of the type contained in the Regulatory Enforcement and Sanctions Act 2008.

1753 Subsection (8) enables provision for fees or other charges to be included in the regulations, enables any function (including one exercised with discretion), for example in relation to administering the registration scheme, to be placed on any person, and states that the regulations may apply to either all of England or only part of England.

1754 Subsection (9) defines various terms used within the section.

Section 229: Pavement licences

Background

1755 This section inserts a new Schedule 22 which amends the Business and Planning Act 2020. Part 1 of the Business and Planning Act 2020 makes provision for a temporary streamlined route to pavement licensing across England. The purpose of these provisions is to make permanent the regime for pavement licences with certain amendments set out.

Section 230: Historic environment records

Background

1756 Historic Environment Records are an important source of information about the historic environment of any given area, especially its archaeology. They can help the public learn more about where they live and ensure local plans and planning decisions are informed by an understanding of an area's history.

1757 All local authorities have access to some kind of Historic Environment Record, but they can vary in what type of information they hold and how up-to-date they are. This section introduces a new statutory duty for local authorities to have access to an up-to-date Historic Environment Record.

Effect

1758 Subsection (1) sets out that a relevant authority must maintain an historic environment record for its area.

1759 Subsection (2) details that an historic environment record is a system for storing and making available to the public information about various heritage assets, listed in paragraphs (a) (i)-(vii), (b), (c) and (d) (i)-(ii).

1760 Subsection (3) details that a "designated heritage asset" as defined in subsection (2)(a)(vii) is an object, structure or site designated, registered or otherwise formally recognised under an enactment and that appears to the Secretary of State to be so wholly or partly because of historic, architectural, archaeological or artistic importance.

1761 Subsection (4) details the circumstances in which it would be expected for the relevant authority to include the information on the historic environment record.

1762 Subsection (5) specifies that relevant authorities must take such steps as it considers reasonable to (a) obtain information for inclusion in the historic environment record and (b) keep information included in its historic environment record up to date.

1763 Subsection (6) allows the Secretary of State by regulations to make provisions for (a) how information is to be stored or made available and (b) for and in connection with charging fees by relevant authorities in respect of (i) the provision of advice or assistance to persons making use, or proposing to make use, of an historic environment record, or (ii) the provision of documents copied or derived from an historic environment record.

1764 Subsection (7) states that under subsection (6)(a) the Secretary of State may, in particular, from time to time publish provisions requiring or enabling information to be stored or made available in accordance with specified standards.

1765 Subsection (8) sets out which authorities the section applies to.

1766 Subsection (9) details that (a) the Common Council includes the Inner Temple and the Middle Temple, (b) an area comprising a National Park for which there is a National Park authority is the area of that authority and no other relevant authority, and (c) the area comprising the Broads, as defined by section 2(3) of the Norfolk and Suffolk Broads Act 1998, is the area of the Broads Authority and no other relevant authority.

Section 231: Review of governance etc of RICS

Background

1767 The Royal Institution of Chartered Surveyors (RICS) is a professional body for surveyors. Its objective is to "maintain and promote the usefulness of the [surveying] profession for the public advantage in the United Kingdom"[13]. RICS commissioned an Independent Review into its governance and published a report of the review, led by Alison Levitt QC, in September 2021, which among other things articulated RICS' responsibility to the public and the public's "…interest in ensuring that RICS is well-managed."

Effect

1768 The section will enable the Secretary of State, from time to time, to appoint someone an independent person to review RICS to satisfy itself that RICS performs in the public interest. The review will look at the governance of RICS and its effectiveness in achieving its objective and any other matter specified in the appointment which is connected to those two review purposes. The independent reviewer must provide a written report setting out its results and recommendations to the Secretary of State, who will publish a copy of the report.

Section 232: Marine Licensing

Background

1769 This section creates a new fee charging powers which allow the Secretary of State and Scottish Ministers, as appropriate marine licensing authorities, to charge fees for the monitoring, variation (in certain circumstances), and/or transfer of a marine licences ("post-consent work") and for certain connected expenses.

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[13] https://www.rics.org/content/dam/ricsglobal/documents/about-rics/corporate-governance/royal-charter.pdf

1770 The Public Bodies (Marine Management Organisation) (Fees) Order 2014 sets out the fees chargeable for the marine licensing post consent work which has been delegated by the Secretary of State to the Marine Management Organisation. Legislative powers to amend the 2014 Order were repealed in 2017. This section revokes the 2014 Order and gives new powers to enable the Secretary of State to update fees for post-consent work. It also gives powers to the Scottish Ministers to set new fees for post-consent work.

Effect

1771 Section 232 amends sections 72A, 98, 107A, 107B, and 108 of the Marine and Coastal Access Act 2009 to give powers to the Secretary of State and the Scottish Ministers, where the Secretary of State or the Scottish Ministers are the appropriate licensing authority, to make regulations to charge fees for the monitoring of a marine licence and the variation and transfer of a marine licence, and for certain connected expenses.

1772 Subsection (2) amends section 72A of the Marine and Coastal Access Act 2009 to provide powers to the Secretary of State and the Scottish Ministers as appropriate licensing authority to make regulations to charge fees for monitoring of activities authorised under marine licences, and for variations and transfers of marine licences under section 72(3) or section 72(7) of that Act.

1773 Subsection (3) amends section 98 of the Marine and Coastal Access Act 2009 (delegation of marine licensing functions) to make consequential amendments to the definition of "expected functions" in subsection (6).

1774 Subsection (4) amends section 107A of the Marine and Coastal Access Act 2009 (deposits on account of fees payable). The power to require a deposit to be paid on account of fees payable is extended to apply to the Secretary of State and the Scottish Ministers as appropriate licensing authority.

1775 Subsection (5) amends section 107B of the Marine and Coastal Access Act 2009 (supplementary provision about fees). Section 107B is extended to apply to the Secretary of State and the Scottish Ministers as appropriate licensing authority.

1776 Subsection (6) amends section 108 of the Marine and Coastal Access Act 2009 (appeals against notices). Subsection (2A) is amended to require the Secretary of State and the Scottish Ministers to make regulations containing provision enabling applicants to appeal against notices for non-payment of monitoring fees or monitoring fee deposits under sections 72A(7) or 107A(4) of that Act.

1777 Subsection (7) amends section 110A of the Marine and Coastal Access Act 2009 (fees: oil and gas activities for which marine licence needed) to clarify the interaction between the different fee charging powers under Part 4 of that Act to provide that oil and gas fees will apply in the position where there is an overlap between general marine licensing fees and oil and gas fees for the same activity.

1778 Subsection (8) makes provision regarding the territorial extent of the amendments to the Marine and Coastal Access Act 2009 made by the Environment (Wales) Act 2016 (anaw 3).

1779 Under subsection (9) the Public Bodies (Marine Management Organisation) (Fees) (Order) 2014 (S.I. 2014/2555), is revoked.

Section 233: Power to replace Health and Safety Executive as building safety regulator

Background

1780 This section creates a delegated power for the Secretary of State to make regulations that replace the Health and Safety Executive as the Building Safety Regulator.

Effect

1781 Section 2(1) of the Building Safety Act 2022 specifies that the Health and Safety Executive is the Building Safety Regulator. Subsection (2) of this section specifies that the Secretary of State may replace this designation with regulations specifying an existing or new body.

1782 Subsection (3) of this section further specifies the matters that the regulations may cover, limiting them to transferring the functions of the Health and Safety Executive as the building safety regulator, establishing or modifying the constitutional arrangements and funding arrangements of the new regulator, and conferring a power on the Secretary of State to give directions.

1783 Subsection (4) of this section provides a power for regulations to amend specified Acts of Parliament in relation to transferring the Building Safety Regulator, limiting these to include the Health and Safety at Work etc. Act 1974, the Building Act 1984, TCPA 1990, section 54 of PCPA 2004, and the Building Safety Act 2022.

1784 Subsection (5) of this section specifies that any regulations under this section must be made no later than 24 months after the final report of the Grenfell Tower Inquiry is presented to Parliament in accordance with section 26 of the Inquiries Act 2005.

1785 Subsection (6) provides definitions for terms used elsewhere in this section.

Section 234: Transfer schemes in connection with regulations under section 233

1786 This section enables the Secretary of State to make one or more transfer schemes in connection with regulations under section 233(1). These transfer schemes will allow the transfer of property, rights or liabilities to the new regulator from the Health and Safety Executive.

1787 Subsection (3) specifies that the things may be transferred include property, rights and liabilities that could not otherwise be transferred, property acquired, and rights and liabilities arising, after the making of the scheme, and criminal liabilities. Subsection (4) specifies in detail what the transfer scheme may do, including consequential, supplementary, incidental or transitional provisions. Subsection (5) specifies that the transfer scheme may provide for specified modifications of the transfer scheme. Subsections (6) to (9) provide various definitions relevant to this section.

Section 235: Transfer of land by local authorities

Background

1788 This section inserts a new paragraph (9A - Compulsory transfer to trustees) into Schedule 1 to the Academies Act 2010. Schedule 1 makes provision about land in relation to academies. Part 1 of the Schedule concerns land held by a local authority.

1789 The new paragraph inserted by the section relates to new premises provided by a local authority for an academy school for which site trustees already hold existing premises. For example, the premises of a Church of England school may be held on a charitable trust linked to the parish or diocese. (Not all site trustees are connected with a particular faith or denomination.) An individual landowner may have donated the existing land long ago for specific purposes – i.e. for a church school in the example already given; and the site trustees may hold the premises on a special trust which requires them to be used for those purposes. (Such site trustees should not be confused with academy trust companies that hold land as corporate property, to which the section would not apply.)

Effect

1790 Subsection (1) of the section inserts the new paragraph 9A into Part 1 of Schedule 1. Paragraph 9A has the following effects:

a. Sub-paragraph (1) sets out the circumstances in which the new arrangements apply.

b. The four conditions (Conditions A to D) set out in sub-paragraphs (2) to (5) must all be met.

1791 Condition A (sub-paragraph (2)) is that the local authority are providing premises for an academy school. Typically, a local authority may do so where it has been locally agreed that it is advantageous for an academy to relocate to a new site for example, in order that the academy can expand or because its current buildings are no longer suitable and the local authority are willing to provide new premises on that site.

1792 Condition B (sub-paragraph (3)) is that the premises being provided are alternative premises for the academy school or for an academy, sixth form college, or maintained school the academy school is to replace e.g. as a result of a merger of institutions.

1793 Condition C (sub-paragraph (4)) is that the existing premises are held by site trustees.

1794 Condition D (sub-paragraph (5)) is that the site trustees are prepared to pay the local authority the proceeds of sale of the existing premises in exchange for the new premises. The sum paid should be just when compared with the value of the interest the local authority are transferring but should not exceed the total of the proceeds of sale plus any interest on those proceeds. Alternatively, the site trustees may transfer their interest in the existing premises to the local authority if the authority agree. Since the paragraph only applies where conditions A to D are all met, site trustees could decide to retain the current site in order to use it for other charitable purposes if the terms of the trust under which the land is held are wide enough, or if they are able to agree this with the Charity Commission. If however they were to do so, the local authority would no longer be under the duty to transfer the new site.

a. Where all four conditions are met, sub-paragraph (6) requires the local authority to transfer their interest (which will usually be a freehold) in the new premises to the site trustees. The intended effect is that a local authority will receive either cash or land in exchange for transferring the new premises, and the trustees will not have to surrender their interest in their existing land without receiving the new premises in return. This ensures that the existing charity will be preserved, and the trustees will continue to hold land for the academy school or one that is replacing existing institutions.

b. Sub-paragraph (7) requires the local authority to pay the site trustees' costs in connection with the transfer e.g. legal or other professional fees. The costs must be reasonable.

c. Sub-paragraphs (8) to (10) contain provisions for either the local authority or the site trustees to refer matters relating to the transfer to the schools adjudicator in the event that they cannot reach agreement. These matters include issues such as the extent of premises to be transferred by the authority to the site trustees; the amount to be paid by the site trustees from proceeds of sale or any interest accrued on those proceeds; and the identity of site trustees. Sub-paragraph (10) places the local authority and site trustees under a duty to provide any information the adjudicator requests in connection with the transfer.

d. Sub-paragraph (11) relates to sites provided under the School Sites Act 1841. Section 2 of that Act enables a landowner to provide a site for a school or other educational purposes under a statutory charitable trust. It also provides that, if the land ceased to be used for the school (or the other purposes), it would revert to the donor or heirs by operation of law, although section 1 of the Reverter of Sites Act 1987 has now replaced statutory reverter with a statutory trust of the net proceeds of sale of the land for the donor or heirs. Section 14 of the 1841 Act allows such a site to be sold or exchanged and any money arising from such a sale or exchange to be applied in the purchase of a new site for the school (without triggering reverter). Sub-paragraph (11) provides that payment by trustees of any proceeds

of sale to the local authority under sub-paragraph (5)(a) is to be treated as a sum applied in the purchase of a site for the school under section 14 of the 1841 Act. The intention is to avoid statutory reverter or a statutory trust arising under the Reverter of Sites Act 1987.

e. Sub-paragraph (12) makes clear that the land the local authority must transfer to the site trustees excludes playing fields.

1795 Subsections (2) to (4) make consequential amendments to the School Standards and Framework Act 1998 ('SSFA'):

a. Subsections (2) and (3) of the section amend section 25 of, and Schedule 5 to, the SSFA, which make provision for the appointment and role of schools adjudicators. They insert a reference to the new paragraph 9A, in order to extend the adjudicators' role to cover the function of resolving disputes over these statutory transfers.

b. Paragraph 5 of Schedule 22 to the SSFA includes a requirement that if site trustees of a closing school hold land acquired or enhanced in value at public expense by, for example, a local authority or the Secretary of State. they must apply to the Secretary of State for a decision on what should happen to the land once the school has closed. If closure is to enable the school's merger with another institution to form a new academy, new paragraph 9A may apply if the local authority are providing new premises for that academy and the site trustees have already agreed that the land they hold will be sold and proceeds given in exchange for a transfer to them of the new premises. If so, the requirement in paragraph 5 of Schedule 22 to the SSFA for the site trustees to apply to the Secretary of State for a decision on what should happen to the land of the closing school is not needed. Subsection (4) therefore disapplies paragraph 5 of Schedule 22 if paragraph 9A applies (but not otherwise).

Section 236: Open access mapping

Background

1796 The Countryside and Rights of Way Act 2000 (CROW) gives the public a right of access to most mountain, moor, heath, down and registered common land, collectively known as 'open access land'. CROW also sets out limitations on what activities can be carried out on open access land and makes provisions for some types of land (for example arable) to be automatically excepted from the rights. Where there is a conflict between the land's use and public access, formal directions to exclude or restrict access can be made.

1797 Open access rights flow from official maps that constitute the legal record of such areas. Where open access rights apply, they allow people to wander freely over the land in question rather than being confined to linear paths.

1798 Eight 'conclusive maps' were produced for this purpose by the Countryside Agency for different regions of England and published during 2004 and 2005. Natural England (NE) currently has a statutory duty to review the conclusive maps in their entirety every 20 years. This is a large undertaking which is in the main unnecessary, as much of Open Access land was mapped correctly the first time. There were, however, some mistakes made during the initial mapping process and a first review of these areas is required to establish an accurate baseline.

Effect

1799 A new provision is inserted into CROW regarding when Natural England must carry out reviews following the issue of open access maps, which will change the system from a full review every twenty years and replace it with a selective first review followed by a limited continuous review system. The amendments also make provision for regulations to set out the procedure on a review

and makes consequential amendments. This will allow Natural England to undertake proportionate reviews, which will reduce administrative burdens on Government and avoid unnecessary expenditure.

1800 Subsection (2) creates a new section 9A in CROW. In England, section 9A applies to the map review process in place of the existing section 10, which (as provided in subsection (3) of the new section) only applies in Wales:

a. Subsection 9A(2) provides that the existing review duty is to be discharged, to the extent that Natural England consider appropriate, before a new unified national deadline of 1st January 2031. This is in place of the current staggered deadlines during 2024 and 2025.

b. Subsection 9A(3) enables Natural England to carry out further reviews, after the completion of the first review, to the extent permitted by regulations. The intention is for regulations to create a limited continuous review system at that later stage, rather than a full review of the maps being required every twenty years as it is at present.

1801 Subsection (4) amends CROW section 11:

a. to enable regulations to make provision about a section 9A review in England, including about the period for representations about it to Natural England and the way in which they may be made;

b. to enable such regulations to set out an appeals regime: this may optionally be based on (or apply with variations) the Coastal Access objection regime set out in Schedule 1A to the National Parks and Access to the Countryside Act 1949; and

c. to enable such regulations to replicate for the purposes of a mapping review a specific boundary discretion that CROW made available to the original mapping process. This is to ensure that areas depicted as open country on the reviewed maps can relate clearly to visible physical features on the ground, whether the effect is to add or remove land as open country.

Section 237: Childcare: use of non-domestic premises

1802 Subsection (1) amends the definitions of "early years childminding" and "later years childminding" in sections 96(4) and (8) of the Childcare Act 2006 respectively, by removing the requirement that at least half of the provision must be provided on domestic premises.

1803 Subsection (2) introduces Schedule 23 (use of non-domestic premises for childcare registration) which makes further amendments to Part 3 of the Childcare Act 2006 relating to the registration of persons providing childminding wholly on non-domestic premises.

Section 238: Childcare: number of providers

1804 This section amends sections 96(5) and (9) of the Childcare Act 2006, substituting the word "three" with "four". This increases the number of other childminders or assistants that childminders can work with from two to three (four people in total). It also increases, from four to five, the minimum number of people that must work together to provide 'childcare on domestic premises' (provision that would be childminding but for the operation of sections 96(5) and (9) of the Childcare Act 2006).

Section 239: Amendments of Schedule 7B to the Government of Wales Act 2006

1805 This section makes amendments to certain general restrictions on the Senedd Cymru in relation to concurrent powers that are contained in the Government of Wales Act 2006.

1806 Subsection (2) adds Chapter 1 of Part 3 (planning data) and Part 6 (environmental outcomes reports) of this Act to a list of enactments that are excepted from the general rule in paragraph 8(c) of Schedule 7B to the Government of Wales Act 2006 that the Senedd Cymru cannot confer, modify or remove functions exercisable in relation to reserved authorities without the consent of an appropriate Minister of the Crown. This addition enables Welsh Ministers to make regulations under the planning data powers in Chapter 1 of Part 3 and environmental outcomes reports powers in Part 6 without this rule applying.

1807 Subsection (3) amends paragraph 11 of Schedule 7B to the Government of Wales Act 2006. Paragraph 11(1)(a) imposes a requirement to obtain the consent of the appropriate Minister before an Act of the Senedd may remove or modify specific functions of a Minister of the Crown that relate to water (in its broadest definition),drainage and certain marine management functions. The effect of subsection (3) is that this requirement does not apply to Acts of the Senedd, or subordinate legislation made under them by Welsh Ministers, where the function to be removed or modified was conferred by regulations made under Chapter 1 of Part 3 (planning data) or Part 6 (environmental outcomes reports).

1808 Subsection (4) makes technical amendments to correct numbering errors in paragraph 11(6) of Schedule 7B to the Government of Wales Act 2006 which arose from its amendment by recent Acts of Parliament. A reference to the Trade (Australia and New Zealand) Act 2023 was included in paragraph 11(6) by that Act with incorrect numbering ((ix) instead of (x)). Subsection (4) corrects this.

1809 The Trade (Australia and New Zealand) Act 2023 is subsequently to be repealed by the Procurement Act 2023 (section 119 and Schedule 7), which comes into force after this Act. The Procurement Act 2023 also amends paragraph 11(6) of Schedule 7B to the Government of Wales Act 2006 to insert a reference to itself. In order that the references in paragraph 11(6) are correct both before and after the Procurement Act 2023 comes into force, subsection (4) corrects the numbering of this reference and inserts a paragraph in Schedule 7 of the Procurement Act 2023 to repeal the reference to the Trade (Australia and New Zealand) Act 2023 which is inserted in paragraph 11(6) by this Act.

Section 240: Blue plaques England

1810 This section extends the express statutory power of the Historic Buildings and Monuments Commission for England to provide and erect blue plaques in Greater London to the whole of England.

1811 It substitutes 'Greater London' for 'any area in England' in paragraph 4 of Schedule 2 to the Local Government Act 1985.

Section 241: Powers of local authority in relation to the provision of childcare

1812 This section amends section 8 of the Childcare Act 2006 by omitting subsections (3) to (5) and associated wording from subsection (1)(c). These amendments remove restrictions on a local authority providing childcare (other than childcare provided by the governing body of a maintained school or the provision of daycare for children in need), unless no other person is willing to provide the childcare, or it is otherwise appropriate in the circumstances for the local authority to provide the childcare.

Section 242: Report on enforcement of the Vagrancy Act 1824

Background

1813 This section requires the Government to publish a report on the impact of the Vagrancy Act 1824 on levelling up and regeneration. This report must be published within 12 months of this section coming into force.

Effect

1814 Subsection 1 requires the Government to publish a report on the impact of the Vagrancy Act 1824 on levelling up and regeneration.

1815 Subsection 2 requires this report to be published within 12 months of this section of this coming into force.

1816 Subsection 3 means that this section ceases to have effect when section 81 of the Police, Crime, Sentencing and Courts Act 2022, which repeals the Vagrancy Act, comes into effect, i.e. the report will not be published if the Vagrancy Act has been repealed.

Section 243: Qualifying leases under the Building Safety Act 2022

Background

1817 Prior to the commencement of this section, most of the leaseholder protections in Part 5 of and Schedule 8 to the Building Safety Act 2022 only applied to long leases of dwellings that were granted before 14 February 2022. These are called 'qualifying leases' under the Building Safety Act. This meant that, where leaseholders were granted leases after 14 February 2022 to replace their qualifying leases, those new leases were not in scope of the protections.

1818 To rectify this issue, this section amends section 119 of the Building Safety Act 2022 by providing that a "connected replacement lease" is also a qualifying lease, and inserts into that Act a new section 119A which defines "connected replacement lease". A connected replacement lease is a qualifying lease even though it was granted on or after 14 February 2022 so long as it meets the other conditions in the section.

1819 Now, where a leaseholder has extended their qualifying lease, varied their qualifying lease to add property to the lease or has replaced their former qualifying lease with an entirely new lease, that extended/varied/new lease will be in scope of the statutory protections by virtue of this section. The permitted maximum (capping leaseholder contributions) and all other provisions in relation to the statutory protections provided by the Act will apply to the new lease (as if a new lease had not been granted).

1820 The protections will apply even if there are successive replacement leases. This is described as a 'chain of qualifying leases' in new section 119A. This is where, for example, a qualifying leaseholder under the Building Safety Act extends their lease (first replacement lease) and a few years later adds a parking space to their flat and is thus granted another new lease (second replacement lease). The protections will apply to all of these leases as if there was a single long lease, provided the conditions in the new section 119A are met.

1821 This section has retrospective effect from 14 February 2022. This means that, where leaseholders have varied or extended their previously qualifying leases since that date, their new lease is also in scope of the statutory protections. This section will also override any new leases that contain terms inferior to the statutory protections.

Effect

1822 This section amends the definition of 'qualifying lease' under section 119 of the Building Safety Act 2022 by inserting a new section 119A into the Act, which defines a 'connected replacement lease', as well as a new section 119(3A) to introduce the new section. The amendment applies the protections set out in sections 122 to 125 of and Schedule 8 to the Building Safety Act to connected replacement leases.

New section 104D: Review of combined authority's constitutional arrangements

1823 Subsection (1) of the new section 119A defines a 'connected replacement lease'.

1824 Subsection (2) specifies that a replacement lease can only replace an existing lease/s if the replacement lease substitutes for the existing lease/s (i.e. begins during the term of the existing lease) or begins immediately after the end of the term of that lease.

Example 1

A leaseholder owns a qualifying lease for their flat which was granted before 14 February 2022. On 1 January 2023, the leaseholder is granted a replacement lease because the term remaining on the original lease has fallen below 70 years. The new lease is a 'connected replacement lease' and therefore retains its qualifying status.

1825 Subsection (3) specifies some of the circumstances in which a replacement lease substitutes for an existing lease within the scope of the protections, including where there is a surrender and regrant of the existing lease.

1826 Subsection (4) provides a definition of 'continuity in the property let' under subsection (1)(e), to account for scenarios where new property is added to existing property under a replacement lease, where that expands the property (a property combination) or diminishes the property (a property reduction).

1827 Subsection (5) clarifies, using the definitions set out in subsection (4) of a "property combination" and a "property reduction", that there is no continuity let in certain chains of replacement leases (i.e. where there is a series of successive replacement leases including where a lease which was previously a property combination lease is subsequently replaced with a new lease which reduces the scope of the lease of the property). The resultant separate leases will not be qualifying leases for the purposes of the building safety protections.

1828 Subsection (6) relates back to subsection (5) and provides detail on what counts as a relevant chain of qualifying leases.

1829 Subsection (7) provides that, if a new lease is specifically granted to rectify an error in relation to the previous lease, the new lease is in scope of the building safety protections.

1830 Subsection (8) replicates section 119(3) of the Building Safety Act 2022. This provides that where a dwelling was let under two or more leases after 14 February 2022, any lease which is superior to any other lease is not a qualifying lease. This ensures that it is always the lease at the end of any chain of leases that qualifies for the protections, rather than any superior landlord.

1831 Subsection (9) provides that the protections apply where there is a chain of qualifying leases.

1832 Subsections (10) and (11) set out a regulation-making power by which the Secretary of State may amend the meaning of 'connected replacement lease'.

1833 Subsection (12) allows for regulations made under new section 119A to include consequential amendments to the Building Safety Act 2022.

1834 Subsection (13) defines the terminology used in the new section 119A.

1835 Section 243(4) provides that Regulations under new section 119A(10) will be subject to the affirmative procedure.

1836 Section 243(5) provides that the amendments made by section 243 are to be treated as having come into force on 28 June 2022.

Section 244: Road user charging schemes in London

Background

1837 Until the commencement of this section, under the Greater London Authority Act 1999 ('the GLAA') London Borough Councils have no formal statutory role in implementation of road user charging schemes proposed by Transport for London ("TfL").

Effect

1838 This section amends Schedule 23 to the GLAA to enable London borough councils to opt out of certain road user charging schemes provided that they meet specified conditions.

1839 Subsection (2) defines "national obligations" for the purposes of this section.

1840 Subsection (3) inserts paragraphs 3A and 3B into Schedule 23 to the GLAA. Paragraph 3A applies to any proposal where TfL propose to significantly vary an existing road user charging scheme or to create a new scheme where the purpose, or one of the purposes, is the improvement of air quality.

1841 Where paragraph 3A applies a relevant London borough council may give notice to TfL and the Secretary of State that it wishes to opt out of the scheme.

1842 A relevant London borough council will only be eligible to opt out if it has complied with duties imposed under or by virtue of the Environment Act 1995. This means that no part of the council's area should be designated as an air quality management area. Alternatively, where part of the council's area is so designated, the council must have an alternative plan, approved by the Secretary of State, in order to be eligible to opt out.

1843 Paragraph 3B sets out the procedure for the Secretary of State to review and approve any alternative plans put forward by London borough councils for the improvement of air quality. It also confers a power of direction upon the Mayor of London to secure the implementation of alternative plans, where required.

1844 Subsections (4) and (5) make changes to Schedule 23 consequential upon the changes under subsection (3).

1845 Subsection (6) inserts paragraph 4A into Schedule 23. Paragraph 4A confers an intervention power upon the Secretary of State which may be exercised within sixty days of the publication of any revised order by TfL to prevent any inconsistencies with national policies or obligations relating to air quality.

1846 Subsections (7) and (8) make further changes consequential upon the changes under the preceding subsections.

Section 245: Protected landscapes

1847 This section amends the relevant sections of the National Parks and Access to the Countryside Act 1949 ('the 1949 Act') in accordance with subsections (2) and (3). The changes made by this section do not apply to Wales.

1848 Subsection (3) inserts new wording in section 11A of the 1949 Act so that certain relevant authorities 'must seek to further' the purposes of National Parks in England. It provides that only the existing duty to have regard to the purposes of a National Park in England applies to devolved Welsh authorities. Subsection (3)(d) would allow the Secretary of State to make regulations which set out how a relevant authority is to comply with the new duty.

1849 Subsection (3)(e) confirms that the meaning of 'devolved Welsh authorities' is the same as that set out in section 157A of the Government of Wales Act 2006.

1850 Subsection (4) provides that the Secretary of State may make regulations requiring National Park Management Plans for National Parks in England to contribute to meeting any target set under the Chapter 1 of part 1 of the Environment Act 2021 and setting out how such Management Plans must further the purposes of the National Park. Subsection (4) also provides that the Secretary of State may make regulations requiring relevant authorities (but not devolved Welsh Authorities, see above for definition) to contribute to the preparation (for a new National Park), implementation or review of National Park Management Plans in England and setting out how they should do so. Subsection (4) provides that the regulations are to be made by Statutory Instrument and sets out how the regulation making powers may be exercised.

1851 The section also amends the relevant sections of the Countryside and Rights of Way Act 2000 ("the 2000 Act") in accordance with subsections (6) to (10).

1852 Subsection (6) inserts new wording in section 85 of the 2000 Act so that certain relevant authorities 'must seek to further' the purpose of Areas of Outstanding Natural Beauty in England. It provides that only the existing duty to have regard to the purpose of an AONB in England applies to devolved Welsh authorities. Subsection (6)(c) would allow the Secretary of State to make regulations which set out how a relevant authority is to comply with the new duty. Subsection (6)(d) confirms that the meaning of 'devolved Welsh authorities' is the same as that set out in section 157A of the Government of Wales Act 2006.

1853 Subsection (7) changes section 87 of the 2000 Act so that English AONB Conservation Boards are required 'to seek to further' the purposes of the AONB. Subsection (7) also provides that any Conservation Boards established in relation to a Welsh AONB are the subject only of the existing duty to have regard to the purpose of the AONB.

1854 Subsection (8) enables the Secretary of State to make regulations requiring English AONB Management Plans to contribute to meeting any target set under the Chapter 1 of part 1 of the Environment Act 2021 and setting out how an English AONB Management Plan must further the purpose of the AONB.

1855 Subsection (9) enables the Secretary of State to make regulations which would require relevant authorities (but not devolved Welsh Authorities, see above for definition) to contribute to the preparation (for a new AONB), implementation or review of English AONB Management Plans and set out how they should do so.

1856 Subsection (10) provides that the regulations under the 2000 Act are to be made by Statutory Instrument and sets out how the regulation making powers may be exercised.

1857 The section also provides for changes to sections 17A and 17B of the Norfolk and Suffolk Broads Act 1998 ("the 1998 Act") in accordance with subsections (12) to (15).

1858 Subsection (12) provides that the Secretary of State may make regulations which require the Broads Plan to contribute to meeting any target set under the Chapter 1 of part 1 of the Environment Act 2021 and which set out how the Broads Plan must further certain of the purposes of the Broads.

1859 Subsection (13) inserts new wording in section 17A of the 1998 Act so that a relevant authority 'must seek to further' the purposes of the Broads. It also allows the Secretary of State to make regulations which can specify how a relevant authority is to comply with the new duty.

1860 Subsection (14) allows the Secretary of State to make regulations requiring a relevant authority (but not devolved Welsh Authorities, see above for definition) to contribute to the implementation or review of the Broads Plan and setting out how a relevant authority may or must do so.

Part 13: General

Section 246: Data protection

Effect

1861 Section 246 makes explicit provision for the compatibility of the Act with data protection legislation.

1862 Subsections (1) and (2) provide that, where the Act operates to create a requirement or ability to disclose information, those requirements and abilities do not override data protection legislation although their existence is a relevant factor in determining compatibility of disclosure with data protection legislation (except for section 86 (power to require certain planning data to be made publicly available), for which see section 86(2)).

1863 Subsection (3) provides that "data protection legislation" should be interpreted in accordance with the definition of "data protection legislation" in section 3 of the Data Protection Act 2018.

Section 247: Crown application

Effect

1864 Section 247 set out the effect of the Act on the Crown.

1865 Subsection (1) provides for the measures in the Act to bind the Crown, subject to subsection (2) which provides that measures which amend existing legislation do not bind the Crown unless the legislation being amended also binds the Crown.

1866 Subsection (3) excludes Crown Land as defined in Part 13 of the TCPA 1990 from the effect of Part 10 (Letting by Local Authorities of Vacant High-street Premises).

1867 Subsection (4) excludes land belonging to His Majesty in right of His private estates (for which see section 1 of the Crown Private Estates Act 1862) from the effect of Part 11 (Information about Interests and Dealings in Land).

Section 248: Amendments of references to 'retained direct EU legislation'

1868 This section provides that the reference in this to "retained direct EU legislation" is to be replaced by a reference to "assimilated direct legislation".

Section 249: Abbreviated references to certain Acts

Effect

1869 Section 249 sets out the abbreviations of Acts which are used in the Act.

Section 250: Power to make consequential provision

Effect

1870 Section 250 provides a power to make amendments to primary legislation which are necessary to maintain the effect of that legislation in consequence of this Act.

1871 Subsection (1) provides for consequential amendments to be made as a result of, or under, this Act.

1872 Subsection (2) provides for those amendments to be made to any primary legislation passed before or during the same session as this Act.

1873 Subsection (3) defines primary legislation for the purposes of this power as including Acts, Acts or measures of Senedd Cymru, Acts of the Scottish Parliament and Northern Ireland legislation.

Section 251: Power to address conflicts with the Historic Environment (Wales) Act 2023

Background

1874 The Historic Environment (Wales) Act 2023 (HEWA) which was enacted on 14 June 2023 amends many of the same heritage provisions as this Act.

1875 Section 251 gives the Secretary of State the power to make technical amendments to this Act (or any Act amended by this Act) to address any consequential issues arising as a result of the HEWA. This is necessary to ensure that the heritage provisions in this Act work as intended notwithstanding the enactment of HEWA.

Effect

1876 Subsection (1) gives the Secretary of State the power to make any necessary amendments to this Act, or other Act amended by it, through regulations.

1877 Subsection (2) makes clear that the power in relation to other Acts includes amendments to serve in place of those contained in this Act.

1878 Subsection (3) makes clear that any amendments to other Acts must produce substantially the same effect as this Act's provision would have done had the HEWA provision been ignored.

1879 Subsection (4) provides definitions of terms used in this section.

Section 252: Regulations

Effect

1880 Section 252 makes ancillary provision regarding regulation making powers provided for under this Act.

1881 Subsection (1) provides for regulations under this Act to be able to make different provision for different purposes and different areas and to make provision arising from, and in connection with, the main provisions.

1882 Subsection (2) provides that regulations for the purposes of Combined County Authorities may amend, apply, disapply, repeal or revoke any enactment. This does not apply to regulations which deal with:

a. proposals for the creation of, or changes to, a CCA;

b. removing regulations restricting the general power of a CCA; or

c. imposing conditions on the use of a CCA's general power or imposing conditions on a CCA undertaking commercial activities.

1883 Subsection (3) provides for how to make regulations under this Act.

1884 Subsections (4) and (5) require that draft regulations listed in subsection (5) must be laid before, and approved by a resolution of, both Houses of Parliament before they may be made.

1885 Subsections (6) to (10) provide that regulations set out under subsections (8) and (9) can be annulled by a resolution of either House of Parliament unless previously approved by a resolution of both Houses except where those regulations are made under Chapter 1 of Part 3 (Planning Data) or Part 6 (Environmental Outcomes Reports) for which different provisions apply under Schedule 24.

1886 Subsection (11) provides for regulations in connection with CCAs, and registration of short-term lets, to proceed without engaging any procedure attaching to hybrid instruments under the standing orders of either House of Parliament where otherwise they would.

1887 Subsection (12) excludes regulations for the purposes of the commencement or transition as a result of commencement, for which section 255 makes provision, from the effect of this section.

1888 Subsection (13) defines primary legislation for the purposes of this section as including Acts, Acts or measures of Senedd Cymru, Acts of the Scottish Parliament and Northern Ireland legislation.

Section 253: Financial provisions

Effect

1889 Subsections (1) and (2) of section 253 authorises expenditure arising from the Act which is either new or increases expenditure under other Acts.

Section 254: Extent

Effect

1890 Section 254 provides for the territorial extent of measures in the Act, for the detail of which see Annex A.

Section 255: Commencement and transitional provision

Effect

1891 Section 255 makes provision for the commencement of provisions in the Act.

1892 Subsections (1)(a), (2)(a), (2)(e), (2)(g), (2)(i), (2)(k), (2)(o), (2)(q), (8) and (10)(a) provide for the provisions set out to commence on the day this Act is passed.

1893 Subsections (1)(b), (2)(c), (2)(d), (2)(f), (2)(h),(2)(j), (2)(l), (2)(n), (2)(s), (3)(a), (5), (6) and (9)(b) provide for the provisions set out to commence two months after this Act is passed.

1894 Subsection (2)(b)(i) provides for the commencement of certain amendments made by Schedule 4 where the legislation being amended has not come into force within two months of this Act being enacted. In that circumstance the amendments made by Schedule 4 commence concurrently with the amended legislation coming into effect. In any other case the amendments to which subsection (2)(b)(i) relate commence two months after this Act is passed.

1895 Subsections (2)(b)(ii), (2)(m), (2)(p), (2)(r), (3)(b), (4), (7) and (9)(a) provide for the Secretary of State to set the date on which provisions set out commence. Subsection (11) permits that power to be used so that commencement for those provisions can be different in different areas and for different purposes.

1896 Subsection (10)(b) provides for section 248 (which substitutes "assimilated direct legislation" for the reference in this Act to "retained direct EU legislation") to commence at the end of the calendar year 2023.

1897 Subsection (12) allows regulations to make provision in connection with the commencement of any provision in this Act. Subsection (13) permits that power to be used differently for different areas and purposes and allows the Secretary of State to determine how matters covered by those regulations are to be treated. Subsection (14) provides for how to make regulations under subsection (12).

Section 256: Short title

Effect

1898 Section 256 sets the short title of this Act.

Schedule 1: Combined county authorities: overview and scrutiny committees and audit committee

Background

1899 Schedule 1 requires all combined county authorities (CCAs) to establish one or more overview and scrutiny committee(s) and an audit committee, with the functions and powers specified. It also sets out the way in which such committees will be comprised and operate.

Effect

1900 Schedule 1 provides that an overview and scrutiny committee for a CCA has the power to review and scrutinise decisions made, or action taken, by the CCA and, in the case of a mayoral CCA, the mayor on behalf of the CCA. The committee may also make reports and recommendations in respect of the discharge of functions of the CCA and about any matters that affect the authority's area or its inhabitants. An overview and scrutiny committee will be able to call-in a decision which has been made but not implemented, direct that the decision cannot be implemented while it is called in, and recommend that the decision be reconsidered. Paragraph 3(2)(i) gives the Secretary of State the power to provide for a minimum or maximum call-in period.

1901 Schedule 1 includes provisions about the membership and structure of an overview and scrutiny committee for a CCA. Paragraph 2(1) provides that an overview and scrutiny committee may appoint one or more sub-committees to discharge its functions. The Schedule provides that the majority of members of an overview and scrutiny committee must be members of constituent councils of the CCA area and the membership may not include any member of the CCA.

1902 Paragraphs 3(1) and 3(2) enable the Secretary of State to make provision by regulations about the overview and scrutiny committee(s) of a CCA. This provision may include: details about the membership of an overview and scrutiny committee and the voting rights of such members; the payment of allowances to members; the person who is to be chair of such a committee; the appointment of a scrutiny officer of an overview and scrutiny committee; the circumstances in which matters may be referred to an overview and scrutiny committee; obligations on persons to respond to reports or recommendations made by an overview and scrutiny committee; the publication of reports, recommendations or responses; and the information which must, or must not, be disclosed to an overview and scrutiny committee.

Schedule 2: Mayors for Combined County Authority areas: further provisions about elections

Background

1903 Schedule 2 makes provisions about the election of mayors of CCA areas.

Effect

1904 Schedule 2 (paragraph 2) provides a default term of office of four years for an elected mayor, and the default dates on which elections for the return of a mayor will take place. It enables the Secretary of State to make further provision on the timing of elections, for example the date on which an election is to be held and the length of a mayor's term.

1905 Schedule 2 (paragraph 4) details that the voting system for an elected mayor will be by simple majority. The Schedule sets out that those entitled to vote are those that would be entitled to vote at local government elections.

1906 Schedule 2 (paragraph 6) provides that an elected mayor for the area of a CCA cannot also be a councillor and sets out the qualification and disqualification criteria for people to be able to stand for election or hold the office of elected mayor of the area of a CCA.

1907 Schedule 2 (paragraph 12) also provides that the Secretary of State, after consulting the Electoral Commission, may make provision about the conduct and the questioning of the elections for elected CCA mayors.

Schedule 3: Mayors for Combined County Authority areas: PCC functions

Background

1908 Schedule 3 makes provisions in relation to regulations made under section 33(1) providing for a mayor of a CCA to exercise the functions of a police and crime commissioner.

Effect

1909 Schedule 3 (paragraph 1 and 2) enables the Secretary of State to provide by regulations that the mayor of a CCA may exercise all functions of a police and crime commissioner or a specified number of those powers. The Schedule further provides that some functions that must always be exercisable by the mayor (including holding the relevant chief constable to account and issuing a police and crime plan).

1910 Schedule 3 (paragraph 3) also details a number of essential matters that, where functions of a police and crime commissioner are transferred to a mayor, the Secretary of State must put in place by regulations. These include: enabling the mayor to appoint a deputy mayor for functions of a police and crime commissioner, to be known as a deputy mayor for policing and crime; requiring the establishment of a scrutiny panel for policing matters (under paragraph 4); giving the panel the power to suspend the mayor from exercising functions of a police and crime commissioner (paragraph 8); and requiring the mayor to keep a police fund and prepare an annual budget in relation to the exercise of functions of a police and crime commissioner (paragraph 7).

1911 Schedule 3 provides that a police and crime panel may have scrutiny functions over any general functions of the mayor which have been arranged for the deputy mayor for policing and crime to exercise, ensuring scrutiny of these functions is undertaken by the appropriate body (paragraph 5). The Secretary of State may by regulations make provision about the payment of allowances by members of a police and crime panel (paragraph 6).

1912 The Secretary of State is also required to make provision in respect of the conduct of the mayor and the deputy mayor for policing and crime as "relevant officers" for the purposes of regulations made under section 31(1)(a) to (c) of the Police Reform and Social Responsibility Act 2011, regarding the making and handling of complaints about, the recording of matters in the case of which there is an indication that a relevant office holder may have committed a criminal offence, and the manner in which qualifying complaints and conduct matters are investigated or otherwise dealt with (paragraph 9).

1913 Where a mayor is to exercise functions of a police and crime commissioner, paragraph 10 of Schedule 3 requires the Secretary of State to apply the same disqualification criteria to persons being elected or holding office as a mayor as currently apply to police and crime commissioners. These provisions will be additional to the criteria that already exist in relation to mayors (paragraphs 7 and 8 of Schedule 2) and therefore mean that more stringent qualification and disqualification criteria can be applied to CCA mayors that exercise functions of a police and crime commissioner, in line with the criteria that currently apply in relation to police and crime commissioners.

1914 The Secretary of State must require the mayor to have regard in the exercise of police and crime commissioner functions to the policing protocol issued under section 79 of the Police Reform and Social Responsibility Act 2011 (paragraph 11).

1915 The Secretary of State may also make provision for the application of enactments to apply to the mayor, in the exercise of police and crime commissioner functions, as though the mayor were a police and crime commissioner.

Schedule 4: Combined county authorities: consequential amendments

Effect

1916 Schedule 4 makes provisions for consequential amendments to existing legislation. This includes amendments to the Local Government Act 1972 and 2003, Local Transport Act 2008, Local Democracy, Economic Development and Construction Act 2009, Local Government Act 1989, Local Government Act 1999, Cities and Local Government Devolution Act 2016, Equality Act 2010 and Localism Act 2011 amongst others to include combined county authorities among the bodies specified in this legislation.

Schedule 5: Alteration of street names: consequential amendments

Background

1917 The current legislation governing the process of changing the name of a street is found in the Public Health Acts Amendment Act 1907 ('the 1907 Act') and the Public Health Act 1925 ("the 1925 Act"), the Greater London by the London Building Acts Amendment Act (LBAAA) of 1939 ('the 1939 Act') and the Local Government Act 1972 ('the 1972 Act').

Public Health Acts Amendment Act 1907

Background

1918 Paragraph 1 amends section 21 of the Public Health Acts Amendment Act 1907. Under section 21 of the 1907 Act, the local authority must gain consent of at least two-thirds of the local council tax or ratepayers before modifying the name of a street.

Effect

1919 Paragraph 1 disapplies section 21 of the 1907 Act.

Public Health Act 1925

Background

1920 Paragraph 2 amends section 18 of the Public Health Act 1925 Act. This Act stipulates that the Local Authority, referred to as the 'urban authority' in the Act, may at any time alter the name of a street or part of a street subject to providing a month's notice, displayed prominently in the street concerned. The public are then permitted to appeal the decision.

Effect

1921 Paragraph 2 disapplies the 1925 Act in relation to the renaming of streets in England.

London Building Acts (Amendment) Act 1939

Background

1922 Paragraph 3 amends section 6 of the London Building Acts Amendment Act of 1939. The current legislation obliges local authorities in London to provide a month's notice following a street-name-change proposal to enable objections, which the council must then consider.

Effect

1923 Paragraph 3 disapplies the notice and duty to have regard to objections.

Local Government Act 1972

Background

1924 Paragraph 4 amends paragraph 26(c) of Part 2 to Schedule 14 to the Local Government Act 1972. These paragraphs have the effect of allowing local authorities outside of London to choose whether the 1907 Act or the 1925 Act should apply in their area and requiring the 1939 act to apply in Greater London.

Effect

1925 Paragraph 4 omits the reference to section 21 as a result of it no longer applying in England.

Schedule 6: Determinations and other decisions: having regard to national development management policies

Town and Country Planning Act 1990

1926 Paragraph 1 gives effect to the amendments made by paragraphs 2-13 to the TCPA.

1927 Paragraph 2 amends section 59A(11) to include relevant national development management policies (NDMPs) in the considerations local authority must have regard to in directing that a permission in principle shall not have effect until the specified date.

1928 Paragraph 3 amends section 70 to include NDMPs in the list of matters which a local planning authority must take into consideration and provides for this to be in England only.

1929 Paragraph 4 amends section 70A to include NDMPs in the list of matters which, if there has been no significant change in England regarding those matters, allow the local planning authority not to decide an application for permission.

1930 Subparagraph (a) of paragraph 5 includes derogations from NDMPs in England in the matters which a development management order or direction under a development management order may authorise a local planning authority to make.

1931 Subparagraph (b) of paragraph 5 includes NDMPs in the matters which the mayor of London must take into consideration in directing a local planning authority to refuse an application.

1932 Paragraph 6 amends section 91(2) such that in setting a period after which permission for development expires, local planning authorities must take NDMPs into consideration, in addition to the development plan and other material considerations.

1933 Paragraph 7 provides that where authorities granting outline planning permission make provision for time periods after which the outlying planning permission expires, that authority must have regard to NDMPs in addition to the development plan and any other material considerations.

1934 Paragraph 8 amends section 97(2) to provide that in England the considerations which a local planning authority must take into account in deciding whether to modify or revoke a permission, should include NDMPs in addition to the development plan and any other material considerations.

1935 Paragraph 9 amends section 102(1) and inserts new subsection (1A) such that in deciding whether to require changes of use, the removal of works or the imposition of conditions upon use of land, a local planning authority must have regard to NDMPs in addition to the development and any other material considerations.

1936 Paragraph 10 amends section 172(1B) such that in England the issuing of an enforcement notice must take into account NDMPs in addition to the development plan and any other material considerations.

1937 Paragraph 11 amends section 177 to replace subsection (2) so that in deciding an appeal against an enforcement notice the Secretary of State must take into account NDMPs in addition to the development and any other material considerations.

1938 Subparagraph (a) of paragraph 12 mends Schedule 4B 5(5) to insert NDMPs into the list of matters which, if there has been no significant change regarding those matters, allow a local planning authority to treat proposals for neighbourhood development orders as repetitious.

1939 Subparagraph (b) of paragraph 12 amends Schedule 4B 8(2) to insert paragraph (da) to require neighbourhood development orders to be in general conformity with NDMPs.

1940 Paragraph 13 amends Schedule 9 1(1) and inserts new subparagraph (1A) such that in deciding whether to require that land should cease to be used or subject to conditions or buildings, works or plant and machinery be removed or altered, an authority in England must have regard to NDMPs in addition to the development plan and any other material considerations.

Planning (Hazardous Substances) Act 1990

1941 Paragraph 14 amends section 9(2) of the Planning (Hazardous Substances) Act 1990 to insert paragraph (ca) which adds NDMPs into the list of matters, which a hazardous substances authority must have regard to in deciding whether to grant a hazardous substance consent.

Greater London Authority Act 1999

1942 Paragraph 15 amends section 337(2) of the Greater London Authority Act 1999 to insert paragraph (ca) which adds NDMPs into the list of matters which may require a modification of the mayor of London's spatial development strategy prior to its publication.

Schedule 7: Plan making

Joint spatial development strategies

Section 15A: Agreements to prepare joint spatial development strategy

Background

1943 This section creates a new power for at least two local planning authorities to work jointly together to produce a joint Spatial Development Strategy (SDS). Local planning authorities agreeing to produce a joint SDS will be referred to as participating authorities. The power is available to all local planning authorities outside of Combined Authorities, Mayoral Combined Authorities and Greater London. The power is optional for local planning authorities to use at their discretion.

Effect

1944 Section 15A(1) sets out that there must be at least two participating authorities but there is no upper limit on the number of authorities that can agree to produce a joint SDS.

1945 Subsection (2) sets out the local planning authorities that are eligible to be participating authorities in preparing a joint SDS.

1946 Subsection (2)(b) sets out that any local planning authorities within a combined authority area cannot enter into arrangements to produce a joint SDS. The principle being that either the combined authority already has a duty to produce an SDS or that it could seek the duty to produce an SDS through a devolution agreement.

1947 Subsection (2)(e) set out that any local planning authorities already covered by a joint SDS cannot enter into arrangements to produce a separate SDS, unless the existing joint SDS is withdrawn, or they withdraw from the existing joint SDS.

1948 Subsection (4) defines the terms "preparation agreement", "participating authorities" and "joint strategy area."

Example (1): Authorities agreeing to produce a joint SDS

Three district councils and a unitary authority could agree to produce a joint SDS, as long as none of the authorities were covered by a combined authority, or mayoral combined authority, or were within the Greater London area. The area to be covered need not include the whole of the county (or counties if there were more than one) but would need to cover the whole of the area of the relevant districts within the county.

Section 15AA: Contents of joint spatial development strategy

Background

1949 Section 15AA mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out what a joint spatial development strategy must and may include. The permitted content of a joint SDS is the same as those for the Mayor of London and Mayoral Combined Authorities.

Effect

1950 Setting out the permitted content of a joint SDS will ensure that they focus purely on strategic matters and not cover ground that is better suited to either local plans or national policy, and also reduce their size making them quicker to produce.

1951 Subsections (1) – (3) set out what a joint SDS must and may include.

1952 Subsection (5) also enables the Secretary of State to set out further in regulations any matters that a joint SDS may or must include.

1953 Subsection (4) sets out when a matter may be of strategic importance.

1954 Subsection (6) provides that a joint SDS must include whatever diagrams, illustrations etc that are prescribed in regulations as being required.

1955 Subsection (7) provides that different provisions can be made for different parts of the joint strategy area.

1956 Subsection (8) provides that a joint SDS must be designed to secure that the use and development of land in the joint strategy area contribute to the mitigation of, and adaptation to, climate change.

1957 Subsection (9) requires a joint SDS to take account of any local nature recovery strategy that relates to any part of the joint strategy area concerned.

1958 Subsection (10) sets out what a joint SDS cannot do, including requiring any land to have a particular planning designation nor identifying any specific sites for development. This does not prevent the joint SDS from identifying more generic areas which are suitable for or have capacity for development. A joint SDS cannot be contrary to or repeat any national development management policy.

Example (1): Identifying capacity for development (sections 15AA(9)

A joint SDS could identify a broad area for an approximate scale of development, such as, to the north-west of town x and the south of river y there is scope for new development of at least xx new homes, capacity of yy new jobs, and the provision of 2 new schools, a health facility, expansion of waste water treatment capacity and the provision of a new railway station.

The SDS could not however specify that, for example, the railway station will be on land bounded by features w,x,y, or shown on map z or that any specific piece of land was to be used or protected for a specific purpose.

Section 15AB: Consultation on draft strategy

Background

1959 Section 15AB mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London.

Effect

1960 Subsection (1) sets out the minimum requirements for publicising, consulting on and considering any representations made during the consultation (details of which will be set in regulations).

1961 Subsections (2) and (3) set out the organisations or individuals that should receive a copy of the draft joint SDS.

1962 Subsection (4) sets out that when sending a copy of the draft joint SDS, or making a copy available for inspection, notice must also be given as to the period of consultation.

1963 Subsections (5) – (7) set out that anyone may make representations during the consultation and the requirements for those representations to be properly made.

1964 Under section 15LE of the PCPA 2004 the Secretary of State may set down more specific details regarding consultation on a joint SDS.

Section 15AC: Public examination

Background

1965 Section 15AC mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out the procedure for examination of a joint SDS. A joint SDS is examined to assess whether it has been prepared in accordance with legal and procedural requirements and is consistent with national policy. The person/panel appointed by the Secretary of State to conduct the examination is responsible for deciding which matters need to covered, and will report their findings to the participating authorities. The intention is that the examination should provide a non-adversarial opportunity for the discussion and testing in public of the justification for selected policies and proposals; it will not be a hearing of objections, nor need it cover every aspect of the proposals.

Effect

1966 Subsections (1) to (3) states that an examination in public in relation to the joint SDS, conducted by a person or persons appointed by the Secretary of State, must be held before the joint SDS can be adopted, unless the Secretary of State directs otherwise.

1967 Subsections (4) and (5) provides that the person or persons conducting the examination will determine the matters to be considered at the examination and make a report to the participating authorities.

1968 Subsections (6) and (7) provides that no organisation or individual has a right to appear at the examination. This is regardless of whether they have made representations during the consultation or have land or other interests that they feel may be affected by the joint SDS. The participating authorities, and anybody invited to do so by the person or persons conducting the examination, may take part in the examination.

Section 15AD: Adoption of strategy

Background

1969 Section 15AD mirrors, with some differences, the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. Section 15AD sets out the provisions for participating authorities to adopt a joint SDS and the powers of the Secretary of State in relation to adoption.

Effect

1970 A joint SDS is not permitted to be adopted until all representations made in response to the consultation exercise have been considered, the report from the examination in public has been received, and any directions given by the Secretary of State have been complied with. The Secretary of State is able to give directions requiring the modification of the joint SDS to secure consistency with national policies or if they feel that the joint SDS would be detrimental to any areas outside the joint strategy area. Subsection (1) sets out that each of the participating authorities may adopt the joint SDS individually as there is no overarching organisation which can do this on behalf of all the participating authorities.

1971 Subsections (2) - (4) set out the form which a joint SDS must be in when adopted and that a joint SDS can only be adopted once all representations made during consultation (or if no representations were received, at the expiry of a period to be prescribed in regulations) and the examiners report have been taken into account.

1972 Subsection (5) provides that a joint SDS cannot be adopted by an authority where a joint SDS is already operative in relation to their area.

1973 Subsections (6), (7) and (8) set out the role of the Secretary of State with regard to the adoption of a joint SDS. The Secretary of State's role is limited to any matters which involve inconsistencies with national policy or where the joint SDS may be detrimental to areas outside of the joint strategy area. The Secretary of State's role enables him/her to exercise powers in these respects, rather than requires him/her to exercise powers in these respects. Where the Secretary of State gives a direction under subsection (7), the joint SDS may not be adopted unless the participating authorities have complied with the direction or it has been withdrawn.

1974 Subsection (9) sets out that a joint SDS becomes operative on a date after all the participating authorities have adopted the joint SDS.

1975 Subsection (10) states that the "prescribed period" may be set in regulations.

Section 15AE: Review and monitoring

Background

1976 Section 15AE mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out the requirements for participating authorities to review and monitor a joint SDS once it is operative. In practice it is anticipated that this will involve sharing/consolidating monitoring reports that constituent local planning authorities create for their local plans. It is therefore not mandatory to publish an individual monitoring report for a joint SDS.

Effect

1977 Subsection (1) provides that, once a joint SDS is operative, it must be reviewed and monitored.

1978 Subsection (2) and (3) requires the participating authorities that have adopted a joint SDS to keep the relevant matters affecting the joint strategy area under review. If any of those matters lie outside the area of the joint SDS, the participating authorities must consult the relevant local planning authority.

1979 Subsection (4) requires the participating authorities to review the joint SDS from time to time. No timeframe is specified given that the strategy may look forward a number of years.

1980 Subsection (5) sets out that the Secretary of State has the power to direct the participating authorities to undertake a review of the joint SDS at any point in time. The Secretary of State may also direct a timetable for the review and whether it is the whole joint SDS or specific parts of it that are to be reviewed.

1981 Subsection (6) sets out that the participating authorities are required to monitor the implementation of the joint SDS and collect information relevant to the joint SDS.

Section 15AF: Alteration of strategy

Background

1982 Section 15AF mirrors the equivalent provisions in the GLA Act 1999 (as amended) which are applicable to London. It sets out the procedure for altering an adopted joint SDS. Alterations can be made voluntarily by participating authorities or if directed to by the Secretary of State. In developing proposals for altering the strategy the same consultation procedures and other provisions apply as for the original strategy, unless both of the two circumstances set out in subsection (4) apply.

Effect

1983 Subsection (1) sets out that the participating authorities may prepare and adopt alterations to an adopted joint SDS.

1984 Subsection (2) enables the Secretary of State to direct the participating authorities to make amendments.

1985 Subsection (3) provides that the preparation and adoption of any such amendments are subject to the same consultation, examination and adoption requirements as the original joint SDS, namely the provisions within sections 15AB to 15AD.

1986 Subsection (4) provides that where the alterations are in response to the withdrawal of a participating authority, but that the joint SDS for the remaining authorities is substantially the same, then no further consultation (under 15AB) or examination (under 15AC) is required.

Section 15AG: Withdrawal before strategy becomes operative

Background

1987 Section 15AG sets out the procedures for withdrawing from a joint SDS before it is operative.

Effect

1988 Subsection (1) and (2) sets out that a participating authority may withdraw from the joint SDS agreement at any point before a draft strategy is published for consultation.

1989 Subsection (3) sets out that a participating authority may withdraw from a joint SDS agreement after a joint strategy has been published for consultation but only after providing a minimum of 12 weeks' notice to the other participating authorities.

1990 Subsection (4) (read with subsection (1)) provides that a participating authority may withdraw from a joint SDS agreement after it has passed a motion to adopt the strategy and before the joint SDS becomes operative, but only if they have rescinded the motion to adopt the strategy.

1991 Subsection (5) provides that an authority must give notice of its intention to withdraw from the joint SDS agreement under subsections (2) or (3) to all of the other participating authorities. It is expected that this notice is in writing.

1992 Subsection (6) (read with subsection (1)) provides that if all of the participating authorities are in agreement, they can cancel the agreement to produce a joint SDS at any point prior to the joint SDS becoming operative.

1993 Subsection (7) provides that, if participating authorities withdraw from the agreement to produce a joint SDS, such that there are fewer than two remaining participating authorities, the joint SDS agreement is deemed to have been cancelled.

1994 Subsections (8) and (9) provide that a joint SDS may be withdrawn during consultation by the participating authorities and they must do so if the preparation agreement has been cancelled. When withdrawing a proposed strategy copies made available for inspection must be withdrawn and notice of withdrawal given to all persons listed in section 15AB(1)(c) and any person who made representations during consultation. Subsection (10) clarifies that where subsections (8) and (9) are being applied in the instance of a joint SDS agreement being cancelled, the 'participating authorities' mean the authorities that were the participating authorities immediately before the cancellation.

1995 Subsection (11) makes provision such that, if following the withdrawal of one or more participating authorities from the agreement, the remaining participating authorities intend to continue with a joint SDS, but that SDS would be substantially different to the version previously published for consultation, then the remaining participating authorities must withdraw the proposed SDS (and therefore publish a new joint SDS for consultation and examination should they wish to do so).

1996 Subsection (12) provides that, when a draft joint SDS is made available for inspection under section 15AB(1)(b) or sent to any person under section 15AB(1)(c), it is considered "published for consultation."

1997 Subsection (13) provides that, if all participating authorities agree to withdraw the draft joint SDS, even once consultation has begun, or been completed, then the requirement in section 15AG(3) to provide 12 weeks' notice can be ignored.

Section 15AH: Withdrawal after strategy becomes operative

Background

1998 Section 15AH sets out the procedures for the withdrawal of a joint SDS after it becomes operative.

Effect

1999 Subsection (1) sets out that this section applies if a joint SDS is operative. Subsection (2) provides that once the joint SDS becomes operative no single participating authority can withdraw from it until a period of 5 years has elapsed, and that authority has given at least 12 weeks' notice of its intention to

withdraw to the other participating authorities. This is to provide some stability once a joint SDS is in place, given that emerging local plans in the area need to be in general conformity with it.

2000 Subsection (3) provides that notice must be given to all other participating authorities to withdraw from a joint SDS.

2001 Subsection (4) provides that if all the participating authorities are in agreement, the joint SDS can be withdrawn at any point after it becomes operative.

2002 Subsection (5) provides that if all but one of the participating authorities withdraw from the joint SDS, then the joint SDS is to be treated as having been withdrawn.

2003 Subsection (6) provides that the Secretary of State may direct that the joint SDS is withdrawn at any point if the Secretary of State feels it is unsatisfactory.

2004 Subsection (7) provides that if a participating authority withdraws from the strategy the other participating authorities must consider either altering or withdrawing the strategy.

2005 Subsection (8) provides that a joint SDS ceases to be operative in the area of a participating authority if they withdraw from it.

Section 15AI: Effect of creation of combined authority in joint strategy area

Background

2006 This section creates new provisions for a circumstance where a combined authority is created in an area where one or more authorities are already in an arrangement to produce, or have produced a joint SDS. The principle is that no area should be subject to more than one SDS, and where a new combined authority is created, it has the ability to seek powers to produce an SDS.

Effect

2007 Subsection (1) applies this section if an order is made under section 103 of the Local Democracy, Economic Development and Construction Act 2009 establishing a combined authority the area of which includes, or is the same as, the area of a participating authority.

2008 Subsections (2) to (4) provide that if a new combined authority is created prior to when a joint SDS is published for consultation and at least two of the joint SDS participating authorities are outside the area of the combined authority, then each of the participating authorities within the new combined authority are deemed to be no longer participating in the joint SDS. If none or only one of the joint SDS participating authorities is/are outside the area of the new combined authority, then production of the joint SDS must cease.

2009 Subsections (5) to (7) provide that if a new combined authority is created after a joint SDS has been published for consultation but before it has become operative and at least two of the joint SDS participating authorities are outside the area of the combined authority, then each of the participating authorities within the new combined authority are deemed to be no longer participating in the joint SDS and to have rescinded any resolution to adopt the strategy. If none or only one of the joint SDS participating authorities is/are outside the area of the new combined authority, then production of the joint SDS must cease.

2010 Subsections (8) to (10) set out the procedure if a joint SDS is operative and a combined authority adopts an SDS that overlaps with the strategy area of the joint SDS. If at least two of the joint SDS participating authorities are outside the area of the combined authority, then each participating authority within the new combined authority area are deemed to have withdrawn from the joint SDS once the combined authority's SDS is adopted. If none or only one of the joint SDS participating authorities is/are outside the area of the combined authority, then the joint SDS is deemed to have been withdrawn once the combined authority's SDS is adopted.

2011 Subsection (11) provides that once a decision has been made to withdraw an SDS, prior to adoption, the fact that it was published for consultation can be disregarded for the purposes of subsections (2) and (5).

Plan timetables

Section 15B: Local plan timetable

Background

2012 Former section 15 of the Planning and Compulsory Purchase Act 2004 enabled the Secretary of State or Mayor of London to: prepare a local development scheme and direct the local planning authority to bring that scheme into effect; direct the authority to make amendments to the scheme; or direct the authority to revise the scheme. A direction to amend the scheme must be for the purpose of ensuring full and effective coverage both geographically and with regard to subject matter of the authority's area by the development plan documents (taken as whole) for that area, whilst a direction to revise the scheme may only be given if the person giving it thinks that the revision is necessary for such purposes.

2013 New section 15B retains the concept of a public timetable for a local plan, any supplementary plans the authority are to make, and a minerals and waste plan timetable if the local planning authority are the minerals and waste planning authority for the area. This is set out in a document prepared by a local planning authority and retains the intervention powers of former section 15 of the Planning and Compulsory Purchase Act 2004. However, the intention is to achieve, by prescribing via regulations under subsection (5)(a) and drawing on broader data standards powers in Chapter 1 of Part 3 (Planning Data), a shift from a "document" based requirement to one that will make the relevant data publicly available in a prescribed digital format. This will ensure the timetable is clearer and simpler for local planning authorities to update.

Effect

2014 Section 15B(1) and (2) set out that all local planning authorities are required to prepare and maintain a local plan timetable which must specify matters including the geographical area that a local plan will cover and a timetable for its production. Amongst other things, local planning authorities are also required to specify any supplementary plans that they intend to produce, their subject matter and geographical extent. The Secretary of State may prescribe the form and content of the local plan timetable and further matters which the local plan timetable must deal with.

2015 Subsection (3) establishes that timetables for any joint plans must be consistent with the individual local plan timetables of each constituent authority.

2016 Subsection (4) sets out that a local plan timetable may incorporate a minerals and waste plan timetable where the local planning authority is also a minerals and waste planning authority.

2017 Subsection (5) gives the Secretary of State the power to prescribe the form and content of the timetable and any further matters that they must address.

2018 Subsections (6) and (7) provide the Secretary of State or Mayor of London with the power to prepare a local plan timetable for an authority which doesn't have one and direct the authority to bring that timetable into effect, and also to direct the local planning authority to amend an existing timetable.

2019 Subsections (8) and (9) explain how a local planning authority can bring a timetable into effect, and that once in effect, the local planning authority must comply with it.

2020 Subsection (10) provides the Secretary of State with a power to set out in regulations when, or the circumstances in which, a timetable must be revised. Where regulations make such provision, there is also a power for the regulations to confer a direction making power. If exercised this would enable directions to be given to local planning authorities to revise their timetables.

2021 Subsection (11) clarifies that the provision in subsections (1) to (9) and section 15BA also apply to the revision of a timetable.

2022 Subsection (12) confirms that section 15BA contains further provisions in relation to directions given under subsections (6) and (7).

Section 15BA: Local plan timetable: further provision about directions under section 15B

Background

2023 Section 15BA sets out the things that the Secretary of State or Mayor of London must do (or may do) where they make directions under section 15B(6) or (7).

Effect

2024 Subsection (1) sets out that the Mayor of London can only give directions under section 15B(6) or (7), where the authority is a London borough council. It also requires the Mayor to have regard to any guidance issued by the Secretary of State. Subsection (2) requires the Secretary of State (or the Mayor of London) to give reasons for any such direction. Subsection (3) requires the Mayor to send a copy of the direction to the Secretary of State, while also setting out that the direction is not permitted to be given effect until such time as may be prescribed through regulations.

2025 Subsection (4) provides the Secretary of State with the power to direct a local planning authority to disregard any such directions made by the Mayor of London, or to give effect to any direction with modifications. Any such direction must be given within such time as may be prescribed through regulations. Subsection (5) requires the Secretary of State to give reasons for any direction given under subsection (4), while subsection (6) requires that they send a copy to the Mayor of London.

2026 Subsection (7) clarifies that section 38(1) of the Greater London Authority Act 1999 does not apply where the Mayor of London gives directions under section 15B(6) or (7).

Section 15BB: Minerals and waste plan timetable

Background

2027 Former section 16 of the Planning and Compulsory Purchase Act 2004 required that county councils prepare and maintain a 'minerals and waste development scheme'. Section 15 of the Act (with some exceptions) relating to local development schemes applied in relation to a minerals and waste development scheme as it applied in relation to a local development scheme.

2028 The scheme must specify (among other matters) the development plan documents that the county council intends to prepare and the timetable for their preparation. The minerals and waste development scheme helps local communities and other interested stakeholders to understand which documents are due to be prepared and the stages at which they can get involved.

2029 To replace former section 16 of the Planning and Compulsory Purchase Act 2004, new section 15BB retains the concept of a public timetable for plans relating to minerals and waste and retains the intervention powers. However, the intention is to use regulations under section 15B(5)(a) (which, by virtue of section 15BB(4), applies to minerals and waste plan timetables) and data standards powers in Chapter 1 of Part 3 (Planning Data) to require minerals and waste planning authorities to make the relevant data publicly available in a prescribed digital format.

Effect

2030 Subsection (1) sets out that all minerals and waste planning authorities (MWPAs) are required to prepare and maintain a minerals and waste plan timetable for their area.

2031 Subsection (2) sets out the range of matters which the minerals and waste timetable must specify, including the matters to be dealt with by the minerals and waste plan and the geographical area that

a minerals and waste plan will cover and a timetable for its production. Subsection (2) further sets out that MWPAs are required to specify within their timetable any supplementary plans that they intend to produce, their subject matter and geographical extent. Finally, subsection (2) requires MWPAs to set out whether their minerals and waste plans and any supplementary plans are to be joint plans with other MWPAs, and if so, name the other MWPAs they will be working with.

2032 Subsection (3) establishes that timetables for any joint minerals and waste plans (or joint supplementary plans prepared by MWPAs) must be consistent with the individual minerals and waste plan timetables of each constituent authority.

2033 Subsection (4) sets out that sections 15B(5) – (12), 15BA and 15LE apply in relation to a minerals and waste plan timetable as they apply in relation to a local plan timetable. See the separate explanatory notes on these sections for further details.

Local, minerals and waste and supplementary plans

Section 15C: Local plans

Background

2034 The measures in this section simplify the structure of the overall development plan for an area, as defined in the Planning and Compulsory Purchase Act 2004. Section 15C replaces the concept of a suite of development plan documents, as set out in former section 19 of the Planning and Compulsory Purchase Act 2004, with a requirement for each local planning authority to prepare a single local plan and which defines what a local plan must, must not, and may optionally contain. The primary requirement is for the local plan to establish the amount, type, locations and timetable for the implementation of development in the local planning authority's area.

2035 An express restriction is imposed such that only one local plan may be in effect at a given time in a local planning authority's area.

2036 The requirement in former section 19 of the Planning and Compulsory Purchase Act 2004 for an authority's development plan documents to ensure development and the use of land contributes to the mitigation of, and adaptation to, climate change, is reflected in the revised requirements for preparing a local plan, minerals and waste or supplementary plan.

2037 The established principle that the local plan may contain policies relating to minerals and waste matters, where the local planning authority is also responsible for minerals and waste planning, is also explicitly retained in the context of new provisions for minerals and waste plans at section 15CB.

Effect

2038 Subsections (1) and (2) require a local planning authority to prepare a single local plan and stipulates that only one local plan may be in force in a local planning authority's area at any one time.

2039 Subsection (3) sets out that a local plan must set out the authority's policies for development in the area of the plan, setting out the amount, type, location, and timeframe for delivery of that development.

2040 Subsection (4) sets out that a local plan may include: other land use or development related policies in relation to particular characteristics or circumstances of their area; details of any infrastructure and affordable housing requirements and specific design requirements that would need to be met (across the area and/or in particular locations) in order for planning permission to be granted.

2041 Subsection (5) introduces a power for the Secretary of State to prescribe by regulations further matters that a local plan must, or may, deal with. This would enable provision to be made as to further requirements for local plans or what is permissible allowing, for example, the Secretary of State to be able to adapt or respond flexibly to matters of national importance.

2042 Subsection (6) requires a local plan to be prepared so that development and the use of land contributes to the mitigation of, and adaptation to, climate change.

2043 Subsection (7) requires a local plan to take account of any local nature recovery strategy that relates to any part of the area of the local planning authority preparing the plan.

2044 Subsection (8) imposes a requirement for local plans to take account of an assessment of the amount, and type, of housing that is needed in the local planning authority's area. This includes the amount of affordable housing that is needed (for the definition of "affordable housing", see section 15LH).

2045 Subsection (9) prevents a local plan from including anything not explicitly permitted or required in this section and requires that the plan is not inconsistent with or essentially repeats any national development management policy (as defined at section 94 which inserts section 38ZA into the Planning and Compulsory Purchase Act 2004).

2046 Subsection (10) provides that where the local planning authority is also the minerals and waste planning authority (for example, a unitary authority), the local plan may also incorporate policies pertaining to minerals and waste matters. In this case, a standalone Minerals and Waste Plan (defined at section 15CB) might not be required.

Section 15CA: Local plans: preparation and further provision

Background

2047 The former provisions for the preparation of a local plan are set out in the Planning and Compulsory Purchase Act 2004 section 17 and section 19. New section 15CA consolidates various existing powers and provisions set out in the existing legislation and replaces terminology associated with the existing development plan framework, referring instead to the local plan and its associated timetable (provision for which is made in sections 15C and 15B respectively).

2048 New section 15CA introduces requirements in relation to how a local planning authority prepares local plans. As in the former Planning and Compulsory Purchase Act 2004 section 19(2), local planning authorities must have regard to various other documents and considerations in preparing local plans, to ensure consistency across different parts of the development plan and other spatial plans prepared by the devolved nations. A new requirement is introduced to ensure authorities have adequate regard to the view of their communities.

2049 New section 15CA also sets out the areas for which the Secretary of State may make regulations in relation to the local plan process; some former powers (set out in Planning and Compulsory Purchase Act 2004 section 17(7) and section 19(6)) are retained, with new powers to introduce, via regulations, mandatory local plan preparation gateway checks and a mandatory timetable for local plan preparation.

Effect

2050 Subsection (1) requires the local plan to be prepared in accordance with the relevant local plan timetable.

2051 Subsection (2) requires that local plans must be in general conformity with the spatial development strategy, if one is operative in relation to the relevant area.

2052 Subsection (3) sets out that a local planning authority must seek observations or advice in relation to a proposed local plan, from an independent person appointed by the Secretary of Sate, at prescribed times. Any observations or advice received must be published by the local planning authority as soon as reasonably practicable, as set out in subsection (4).

2053 Subsection (4) allows the Secretary of State to require a local planning authority to reimburse the Secretary of State for expenditure incurred in connection with appointing a person to provide observations or advice on a proposed local plan or to pay any fees and expenses of that person.

2054 These collectively, together with subsection (6)(a), (which requires the local planning authority to have regard to any observations or advice received under subsection (3)), and subsections (8)(c)-(e), (which allow the Secretary of State to introduce regulations around the nature of the advice or observations, any information or documents to be provided by the authority, and the form and content of this information and the advice), enable the introduction of mandatory local plan gateway checks by an independent person during the preparation of the local plan. The intention is to introduce, via regulations, details of local plan gateway checks, that will take place before a local plan is submitted for examination to support local planning authorities and reduce that risk that plans are found unsound at examination.

2055 Subsection (6) requires a local planning authority, in preparing its local plan, to have regard to a number of other things listed (under subsections (6)(a)-(i)): other parts of the development plan and polices of the devolved administrations if an authority is adjacent to another authority in Scotland or Wales; national development management policies (as defined at section 38ZA of the Planning and Compulsory Purchase Act 2004, inserted by section 94 of this Act); any response to plan consultations; any relevant neighbourhood priorities statements ; any other national policies and advice published by the Secretary of State in guidance; any other part of the development plan operative in the authorities area; and such other matters as may be prescribed by the Secretary of State in regulations.

2056 Subsection (7) clarifies that a local plan only has effect once adopted or approved under Part 2 of the Planning and Compulsory Purchase Act 2004.

2057 Subsection (8) sets out various matters which regulations made by the Secretary of State in relation to this section may do. These include a power to regulate the form and content of the plan and other documents prepared in connection with the plan ((a) and (b)), which may be used to define an indicative table of contents for a plan, prescribe templates which may be used by a local planning authority, or set out parameters around the map-based elements of the plan (as set out in regulation 9 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (S.I. 2012/767)). The power at (f) may be used to prescribe when the local planning authority is to have regard to something mentioned in subsection (6), while the power at (g) would enable the Secretary of State to set out when a local planning authority must do something in connection with preparing plans, to allow fixed timeframes to be established for different parts of the plan preparation process.

Section 15CB: Minerals and waste plan

Background

2058 Minerals and waste plans form part of the development plan and are a key part of the plan led system. Their role is to set the strategy and provide the local planning policy framework for minerals and waste development in the area.

2059 Under the former provisions of the Planning and Compulsory Purchase Act 2004 (Part 2, section 17), Minerals and Waste Plans were prepared as Local Development Documents (LDD) relating to a specific theme/topic area.

2060 The approach provided for in new section 15CB means that minerals and waste plans are distinct from local plans in legislation, which emphasises the important role they play within the development plan.

2061 The former requirement in the Planning and Compulsory Purchase Act 2004 under section 19 for an authority's development plan documents to ensure development and the use of land contributes to the mitigation of, and adaptation to, climate change, is reflected in the context of the new requirements for minerals and waste plans.

Effect

2062 Subsection (1) requires each minerals and waste planning authority (MWPA) to prepare one or more documents which are to be known collectively as the minerals and waste plan. This enables plans to be produced as follows:

a. Combined (i.e., A minerals and waste plan);

b. Separately (i.e.,1. A minerals plan and 2. A waste plan);

c. Where possible through local government structure, a minerals and waste plan may be incorporated into a local plan (see section 15C(10)).

2063 Subsection (2) sets out that a minerals and waste plan must include policies setting out the amount, type, location, and timeframe for delivery of relevant development.

2064 Subsection (3) sets out things that a minerals and waste plan may include optionally, including relevant policies in relation to the particular characteristics and circumstances of the area (or part of it), non-mineral/waste development (where this is designed to enable minerals and waste development to take place), and relevant infrastructure requirements.

2065 Subsection (4) introduces a power for the Secretary of State to prescribe by regulations further matters that a minerals and waste plan must, or may, deal with. This would enable provision to be made as to further requirements for minerals and waste plans, or what is permissible, to adapt or respond flexibly to matters of national importance for example.

2066 Subsection (5) requires a minerals and waste plan to be prepared so that minerals and waste development contributes to the mitigation of, and adaptation to climate change.

2067 Subsection (6) requires a minerals and waste plan to take account of any local nature recovery strategy that relates to any part of the relevant area.

2068 Subsection (7) prevents a minerals and waste plan from including anything not explicitly permitted or required by this section and requires that the plan is not inconsistent with or essentially repeats any national development management policy (as defined at s.38ZA of the Planning and Compulsory Purchase Act 2004, inserted by section 94 of this Act).

2069 Subsection (8) provides that Part 2 of the Planning and Compulsory Purchase Act 2004 applies in relation to a minerals and waste plan as it applies in relation to a local plan and subsection (9) indicates that subsection (8) is subject to much modification of Part 2, as it applies in relation to minerals and waste plans, as may be prescribed by regulations.

2070 Subsection (10) outlines the exceptions to which subsection (8) does not apply.

Section 15CC: Supplementary plans

Background

2071 Supplementary Plans are a new type of document that may be prepared by a relevant plan-making authority (as defined in section 15LH(2)), and replace 'supplementary planning documents' prepared under existing legislation, which did not have the weight of the previous development plan (and whose status can, in practice, be uncertain). New section 15CC sets out the legislative basis for supplementary plans, including the nature of the policies that they may contain. Section 15DB

out the process for the independent examination of supplementary plans. There are certain limits on the allowable scope of supplementary plans (either by subject matter or geographically), so that they do not subvert the role of the local plan as the principal planning policy framework for the area of a local planning authority.

Effect

2072 Subsection (1) has the effect that all local planning authorities, the Mayor of London and minerals and waste planning authorities may prepare one or more supplementary plans.

2073 Subsection (2) enables the Mayor of London to prepare supplementary plans in respect of design matters for the whole of Greater London.

2074 Subsection (3) provides the subject matters that a supplementary plan can address when prepared by a local planning authority. These echo those for local plans set out in section 15C, but are limited geographically to matters relating to a specific site or two or more nearby sites; other than in the case of design matters, which may cover a wider area. This will allow supplementary plans to address site-specific needs or opportunities which require a new planning framework to be prepared quickly (like a new regeneration opportunity), and to act as a vehicle for setting out authority-wide or other design codes.

2075 Subsection (5) sets out the matters that a supplementary plan can address when prepared by a minerals and waste planning authority.

2076 Subsection (6) enables the Secretary of State to prescribe in regulations further matters that a supplementary plan may deal with.

2077 Subsections (7) and (8) set out that authorities preparing a supplementary plan must have regard to other relevant parts of the development plan, and ensure supplementary plans are in general conformity with any relevant spatial development strategy.

2078 Subsection (9) provides that supplementary plans must, so far as the authority consider appropriate, be designed to contribute to the mitigation of, and adaptation to, climate change. It also sets out that a supplementary plan must, so far as the authority considers appropriate, take account of any local nature recovery strategy that relates to the area to which the plan relates (either in whole or in part) or an area in which a site to which the plan relates is situated.

2079 Subsection (10) provides that a supplementary plan must not include anything that is not permitted by this section or be inconsistent with or repeat any national development management policy.

2080 Subsections (11) and (12) provide the Secretary of State with the power to make provision about the preparation, withdrawal or revision of supplementary plans in regulations, and that any such regulations must require that any proposed plan is subject to public consultation.

2081 Subsection (13) confirms how a supplementary plan is to have effect.

Examination of plans

Section 15D: Independent examination: local plans

Background

2082 Former section 20 of the Planning and Compulsory Purchase Act 2004 set out matters relating to the procedure for a range of powers relating to the conduct of the independent examination of development plan documents. Plans are examined to determine whether they are 'sound' via an examination in public.

2083 New section 15D maintains the established principle that a local plan is submitted to the Secretary of State for independent examination, to ensure that plans adopted by authorities are 'sound'. It retains former powers for the Secretary of State to appoint an independent "examiner" (Inspector) to conduct the examination process, as well as various established practices around how the examination is conducted, including the "right to be heard".

2084 In addition, section 15D creates a new power enabling the Inspector, at any point during the examination of a plan, to pause the examination where certain matters need to be dealt with to make the plan sound. This pause enables the local planning authority to undertake further remedial work to deal with these matters.

Effect

2085 Section 15D replaces former section 20 of the Planning and Compulsory Purchase Act 2004, but to a large extent replicates former arrangements. Subsections (1) and (2) maintain the general principle that local plans, and other documents or information (as may be prescribed by the Secretary of State in regulations), are submitted by the local planning authority to the Secretary of State for independent examination in public. The local plan must only be submitted once the local planning authority has been advised by a person appointed by the Secretary of State under section 15CA(3) that it meets the prescribed requirements.

2086 Subsection (3) introduces a new power for the Secretary of State to prescribe in regulations how anything that is to be sent under subsections (1) or (2) must be sent.

2087 Subsections (4) and (5) maintain the existing principles that an examination will be carried out by an independent Inspector ("the examiner") appointed by the Secretary of State, to determine whether the local plan is "sound".

2088 Subsection (6) retains and updates the established principle that any person who makes representations during consultation on the local plan proposal will be able to appear before and be heard by the Inspector at the examination, should that person so request to do so.

2089 Subsection (7) provides a power for the examiner, at any time prior to the conclusion of the examination, to pause the examination if certain matters which need to be dealt with for the plan to be capable of being sound could be dealt with by a pause for the local planning authority to undertake further remedial work.

2090 Subsection (8) replicates the existing power for the Secretary of State to issue a holding direction to the independent Inspector during the examination of the local plan. This may be done to: require the Inspector to consider any specified matters (such as any policy or procedural process relating to the local plan considered at the examination); provide opportunity for a specified person to appear and 'be heard' by the Inspector; and/or require the Inspector to undertake a procedural step relating to the conduct of the examination, as specified by the Secretary of State.

2091 Subsections (9) to (12) set out the steps an Inspector must take once the examination has concluded, which broadly mirror the former provisions. Where the examiner considers that the local plan is sound, they must recommend that the plan is adopted. Where, subject to modifications being made, the plan can be considered sound, the examiner must recommend such modifications are made and that the plan is then adopted. Where the plan is not sound, it is considered that modifications could not make the plan sound, and no decision is made under subsection (7), to pause the examination, the examiner must recommend the plan is withdrawn. The examiner must give reasons for all recommendations under these subsections.

2092 Subsection (13) replicates the former requirement for the local planning authority to publish any recommendations and reasons received.

Section 15DA: Pause of independent examination for further work

Background

2093 Section 15DA introduces new provisions and procedures relating to the pause of an independent examination. The local planning authority must, during the pause period, take steps as necessary to deal with the matters notified to them by the Inspector and, prior to the end of the pause period, document and evidence how they have addressed these matters.

Effect

2094 Section 15DA introduces a new power that an independent Inspector can use to help make a local plan sound by pausing an examination for further work. This section applies if the examiner pauses the examination under section 15D(7).

2095 Subsection (2) sets out that the examiner must notify the local planning authority and the Secretary of State of the decision under section 15D(7), the matters that need to be dealt with during the pause, and the duration of the "pause period".

2096 Subsection (3) sets out when the pause period is to begin and enables the Secretary of State to prescribe in regulations the maximum length of time that the "pause period" may be.

2097 Subsection (4) suspends the examination of the plan from the beginning of the pause period.

2098 Subsections (5)-(7) require the local planning authority to take steps to deal with the matters notified to them by the examiner under subsection (2)(b) and, before the end of the period, produce a document setting out what they have done to deal with the matters and any modifications to the plan proposed (or stating that they do not propose to make any modifications as the case may be). This must be sent to the examiner and published, together with any further evidence in support of the soundness of the plan that the authority has.

2099 Subsection (8) sets out the steps an examiner must take at the end of the pause period. The examiner must recommend the plan is withdrawn and give reasons if they consider that the matters have not been dealt with and there is no prospect of the plan being found sound. Otherwise, subsection (9) provides that the examination under section 15D is resumed.

2100 Subsection (10) requires the local planning authority to publish any recommendations and reasons received under this section.

Section 15DB: Independent examination: supplementary plans

Background

2101 Section 15DB sets out the process for the independent examination of supplementary plans.

Effect

2102 Subsections (1) and (2) set out that relevant plan-making authorities must submit supplementary plans for independent examination to either the Secretary of State, or an appropriately qualified person.

2103 Subsections (3) to (8) set out procedural matters for the independent examination of supplementary plans. These include the purpose of the examination, the general rule that examinations of supplementary plans must take the form of written representations, the circumstances in which the examiner must hold a hearing and the functioning of the "right to be heard".

2104 Subsections (9) to (12) cover the conclusions that may be reached by the examiner. They set out when the examiner must recommend that a plan is adopted, adopted with modification or that the plan is withdrawn.

2105 Subsection (13) requires relevant plan-making authorities to publish the recommendations and reasons they receive from an examiner under this section.

Section 15E: Withdrawal of a local plan

Background

2106 The former provisions of the Planning and Compulsory Purchase Act 2004 set out that a local planning authority may withdraw a local development document at any time before it is adopted.

2107 New section 15E retains the concept of withdrawal, applying it to local plans (in the context of changes to the development plan framework made elsewhere in the sections). The key change from former provisions in the Planning and Compulsory Purchase Act 2004 is the removal of the flexibility for a local planning authority to withdraw a plan from examination; a local plan may only be withdrawn from examination if the examiner recommends it (under provisions in new sections 15D or 15DA) or if the Secretary of State directs it.

Effect

2108 Subsection (1) enables a local planning authority to withdraw a local plan at any time before they are required to submit the plan for independent examination.

2109 Subsection (2) stipulates that a local planning authority may only withdraw a plan after it has been submitted for examination if the examiner recommends it (and no direction has been given by the Secretary of State that the plan is not to be withdrawn), or if the Secretary of State directs it.

2110 The Secretary of State's power to direct withdrawal of a local plan after it has been submitted for examination, but prior to the local planning authority adopting it, is provided in subsection (3).

Section 15EA: Adoption of local plan or supplementary plan

Background

2111 Section 15EA broadly replicates former section 23 of the Planning and Compulsory Purchase Act 2004, which allows plans to be "adopted"; meaning they come into force as part of the development plan for the relevant area.

2112 Section 15EA introduces greater clarity around the modifications which may be made by the plan-making authority prior to a plan being adopted. The established principle that a local plan or minerals and waste plan is adopted by a resolution of the relevant authority is retained, whilst a new provision is made for the Mayor of London to adopt a supplementary plan (prepared under section 15CC).

2113 The new provisions now exclude reference to the previous development plan framework (local development documents and development plan documents), instead referring to local plans, minerals and waste plans and supplementary plans.

Effect

2114 Subsections (1) and (3) enable a relevant plan-making authority to adopt a local plan or supplementary plan as submitted or with modifications provided these do not materially affect the contents of the plan, if no modifications are recommended by the independent examiner.

2115 Where the person appointed to examine a local plan or supplementary plan finds the plan sound subject to modifications, subsections (2) and (4) enable a relevant plan-making authority to adopt a local plan or supplementary plan with those modifications, or with those modifications and additional modifications if these do not materially affect the contents of the plan.

2116 Subsection (5) prevents a relevant plan-making authority from adopting a local plan or supplementary plan unless in accordance with subsections (1), (2), (3) or (4).

2117 Subsection (6) provides that a plan is adopted by a local planning authority or a minerals and waste planning authority if it is adopted by a resolution of the authority.

2118 Subsection (7) sets out how a supplementary plan may be adopted by the Mayor of London.

Requirement in relation to design code

Section 15F: Design code for whole area

Background

2119 The former provisions of the Planning and Compulsory Purchase Act 2004 required that the person or body which exercises any function under Part 2 of the Planning and Compulsory Purchase Act 2004 in relation to local development documents, for the purposes of section 39(2), must (in particular) have regard to the desirability of achieving good design.

2120 New section 15F introduces a new duty for local planning authorities to prepare a local design code at the spatial scale of their authority area, which will set the design requirements development must follow.

2121 Local planning authorities will be able to prepare and adopt local design codes as either a supplementary plan or as part of their local plan, giving the design requirements set within them the weight of the development plan in decision making.

2122 The duty applies to local planning authorities as defined in section 15LF.

Effect

2123 Subsection (1) of section 15F has the effect of introducing a duty on local planning authorities to ensure that design requirements, set out in the form of a design code, are prepared at the spatial scale of their authority area.

2124 Subsection (2) clarifies that, for the duty in subsection (1), local planning authorities are not required to include design requirements for every type of development for every part of their area or for every aspect of design.

2125 Section 15F should be read in conjunction with sections 15C, 15CC, 15D, 15DB, 15HB and 15B(2)(e).

2126 Section 15C(4)(c) enables local planning authorities to include design codes (requirements) as part of their local plan.

2127 Section 15CC enables local planning authorities to prepare and adopt local design codes as a supplementary plan, meaning they will become part of the development plan and will be afforded the same weight as a local plan.

2128 Design codes prepared as a supplementary plan will be subject to at least one round of consultation (as per section 15CC(12)(b)), and an independent examination (section 15DB).

Revocation and revision of plans

Section 15G: Revocation of local plans and supplementary plans

Background

2129 Former section 25 of the Planning and Compulsory Purchase Act 2004 enabled the Secretary of State to revoke local development documents (including local plans) if a local planning authority requests that it is revoked. Section 15G broadly replicates this but updates the wording to reflect changes to the terms used in the wider plan framework.

Effect

2130 Subsection (1) sets out that a local plan is automatically revoked when a new local plan for the relevant area is adopted or approved.

2131 Subsection (2) provides the Secretary of State with the power to revoke local plans and supplementary plans at any time, at the request of the relevant plan-making authority. It also introduces a specific power (at (2)(c)), for the Secretary of State to prescribe in regulations types of supplementary plans that may be revoked by the relevant plan-making authority themselves.

Section 15GA: Revision of local plan

Background

2132 The former provisions relating to plan revision were set out in section 26 of the Planning and Compulsory Purchase Act 2004. Provisions set out under section 15GA largely replicate those set out in section 26, updating the language to refer to the local plan rather than a local development document.

Effect

2133 Subsection (1) allows a local planning authority to prepare a revision of a local plan at any time after it has come into effect.

2134 Subsection (2) places a requirement on a local planning authority to prepare a revision of the local plan if the Secretary of State directs it to do so, in accordance with any specific timetable as directed by the Secretary of State.

2135 Subsection (3) sets out that subsection (4) will apply if any part of the area of the local planning authority is part of an enterprise zone scheme, which should be construed in accordance with the Local Government, Planning and Land Act 1980 (as set out in subsection (6)).

2136 Subsection (4) sets out what an authority must do if a 'relevant event' occurs, as defined in subsection (5). If an enterprise zone is designated or an enterprise zone scheme is modified, the authority must consider whether their local plan should be revised in light of this and, if so, prepare the revision.

2137 Subsection (7) provides that Part 2 of the Planning and Compulsory Purchase Act 2004 applies to a revision under this section as it applies to a local plan (subject to any prescribed modifications).

Intervention powers in relation to plans

Section 15H: Power to require Secretary of State approval

Background

2138 The former provisions of the Planning and Compulsory Purchase Act 2004 relating to local plan intervention provided the Secretary of State with a range of powers to intervene in local plan making if considered necessary. The new sections inserted into the 2004 Act by this Act maintain and consolidate all former interventions powers.

2139 Section 15H replicates the former power in former section 21(4) that enabled the Secretary of State to direct a local planning authority to submit a Local Plan to the Secretary of State for approval.

Effect

2140 Subsections (1) and (2) replicate the former section 21(4) of the Planning and Compulsory Purchase Act 2004. They enable the Secretary of State to direct a relevant plan-making authority to submit their emerging local plan or supplementary plan (or any part of it) to the Secretary of State for approval.

2141 Subsections (3) to (8) further broadly replicate former section 21 of the Planning and Compulsory Purchase Act 2004 by setting out what must happen where the Secretary of State issues directions under subsection (1) or (2), including holding an examination, giving reasons for any action and having regard to the relevant local plan (or minerals and waste plan) timetable.

Section 15HA: Secretary of State powers where local planning authority are failing etc

Background

2142 Section 15HA consolidates the other provisions in the former sections 21 and 27 of the Planning and Compulsory Purchase Act 2004 into one section. These powers enable the Secretary of State to take various steps including giving directions in relation to the preparation or adoption of the plan or taking over preparation of the plan.

Effect

2143 Subsection (1) consolidates the current provisions in the former section 21(1) and 27(1) of the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to intervene if they think that: a local planning authority are failing to do anything it is necessary or expedient for them to do in connection with the preparation, adoption or revision of a local plan; a local plan or a supplementary plan is going to be or may be unsatisfactory; or a proposed revision to a local plan or a supplementary plan will, or may, result in the plan becoming unsatisfactory.

2144 Subsection (2) sets out what action the Secretary of State may take in these circumstances, including giving directions in relation to the preparation or adoption of the plan or taking over preparation of the plan.

2145 Subsection (3) introduces the new concept of a local plan commissioner, who would act on behalf of the Secretary of State. A local plan commissioner may be appointed to investigate and report back to the Secretary of State or to take any of the actions listed in subsection (2), including giving directions in relation to the preparation or adoption of the plan or taking over preparation of the plan.

2146 Subsections (4) to (11) set out what must happen where the Secretary of State or a local plan commissioner takes over the preparation of a plan or the revision of a plan.

2147 Subsection (5) requires the Secretary of State or local plan commissioner to publish a timetable for the preparation of the plan and details of any intended departure from anything specified in a local plan timetable in relation to the plan. Subsection (6) requires that an examination is held. Where this happens, subsections (7) and (8) confirm that the relevant provisions in sections 15D and15DA, or 15DB, apply to the examination of a local plan or supplementary plan. Subsections (9) and (10) set out that, following the examination, the recommendations of the examiner must be published and that the Secretary of State or a local plan commissioner may then either approve the plan (so that it comes into force), direct the authority to consider adoption or reject the plan. Subsection (11) sets out that subsections (5) to (10) also apply to the revision of a plan.

2148 Subsections (12) to (14) set out that the Secretary of State or a local plan commissioner may take account of anything they think is relevant when using intervention powers and must give reasons for the use of any intervention powers.

2149 Subsection (15) defines 'relevant authority'.

Section 15HB: Secretary of State powers where local planning authority fails to ensure design code

Background

2150 Section 15HB provides intervention powers for the Secretary of State to enable the Secretary of State to take action where a local planning authority fails to meet the new legal requirement to ensure their development plan includes a design code for their area.

Effect

2151 Subsection (1) enables the Secretary of State to intervene if they think a local planning authority are unlikely to comply, or have not complied, with the requirement in section 15F(1) which requires the development plan for each area to include a design code.

2152 Subsections (2) and (3) set out what action the Secretary of State may take and a requirement for the Secretary of State to give reasons for any use of intervention powers under this section.

Section 15HC: Liability for Secretary of State's costs of intervention

Background

2153 Section 15HC updates the former provisions on liability for the Secretary of State's costs relating to interventions.

Effect

2154 Subsections (1) and (2) update the former provisions in former section 27(9) and 27(10) of the Planning and Compulsory Purchase Act 2004. Subsection (1) provides a power for the Secretary of State to require the relevant authority whose plan was the subject of intervention under any of sections 15H to 15HB to reimburse the Secretary of State for any expenditure relating to such intervention action, or to pay the costs of a local plan commissioner directly where they are appointed under section 15HA(3). Subsection (2) provides that, in the case of a joint local or supplementary plan, the Secretary of State may apportion liability for the intervention between the authorities.

2155 Subsection (3) defines the meaning of "relevant authority" in this section.

Section 15HD: Default powers exercisable by Mayor of London, combined authority, combined county authority or county council

Background

2156 Section 15HD introduces Schedule A1 of the Planning and Compulsory Purchase Act 2004 whereby the Mayor of London, a combined authority, combined county authority or a county council can be invited to prepare a plan.

Effect

2157 Section 15HD gives effect to Schedule A1.

2158 Schedule 8 to this Act makes consequential amendments to Schedule A1 to the Planning and Compulsory Purchase Act 2004. Schedule A1 (as amended by this Act) enables the Secretary of State to invite a county council, combined authority, combined county authority or in London the Mayor of London, to prepare or revise a plan where they think that a local planning authority are failing to do anything it is necessary or expedient for them to do in connection with the preparation, adoption or revision of a local plan. It also provides the Secretary of State with powers to intervene where those bodies have been invited to prepare a plan.

Section 15HE: Temporary direction pending possible use of intervention or default powers

Background

2159 Section 15HE replicates the former section 21A of the Planning and Compulsory Purchase Act 2004 which enabled the Secretary of State to issue a temporary holding direction to prevent a local planning authority from taking any step in relation to a plan, where the Secretary of State is considering the use of intervention powers.

2160 Procedural details relating to plan-making when intervention has occurred are set out in regulations, pursuant to the general regulation-making powers in former section 36 of the Planning and Compulsory Purchase Act 2004. As with intervention powers, this approach has been carried forward.

2161 Local plan intervention powers are used sparingly but remain an important deterrent to help ensure compliance with statutory plan-making duties.

Effect

2162 Subsection (1) replicates former section 21A of the Planning and Compulsory Purchase Act 2004 to provide the Secretary of State with a power to issue a holding direction where they are considering whether to intervene under sections 15H, 15HA or 15HB, or Schedule A1. The provision requires that a relevant plan-making authority does not progress work on their plan until the holding direction expires or is withdrawn.

2163 Subsection (2) clarifies that a plan that is subject to a holding direction has no effect while the direction is in force.

2164 Subsection (3) sets out the circumstances where a holding direction will cease to have effect. This includes where a local plan commissioner either gives a direction to the authority under section 15HA(3)(b) or approves the plan under section 15HA(10)(a).

Joint plans

Section 15I: Joint local plans by agreement or direction

Background

2165 Section 15I updates the former arrangements set out in former sections 28 and 28A of the Planning and Compulsory Purchase Act 2004 which enable the preparation of joint local development documents and enable the Secretary of State to direct two or more local planning authorities to produce a joint local plan.

Effect

2166 Subsections (1) and (2) enable two or more local planning authorities to prepare a joint local plan together for their combined areas, either voluntarily (by agreement), or when directed by the Secretary of State to do so (a "joint local plan direction") under subsection (3).

2167 Subsection (4) sets out that the Secretary of State may direct the preparation of a joint local plan, even in the case where a local planning authority's local plan timetable specifies otherwise.

2168 Subsection (5) provides that the Secretary of State may only give a joint local plan direction if the Secretary of State considers that it will result in the more effective planning of development and use of land in the area of at least one of the local planning authorities to whom the direction is to be given.

2169 Subsection (6) says that the direction may specify the timetable for the preparation of a joint local plan.

2170 Subsection (7) provides that where a joint local plan direction is given, the Secretary of State must notify the authorities to which it applies of the reasons for doing so.

2171 Subsection (8) enables the Secretary of State to direct the relevant authorities to amend their local plan timetable to reflect the joint local plan direction.

2172 Subsection (9) enables the Secretary of State to modify or withdraw a joint local plan direction by notifying the relevant local planning authorities in writing. Where the Secretary of State modifies or withdraws a joint local plan direction, they must provide the relevant local planning authorities with reasons for doing so under subsection (10).

Section 15IA: Joint local plans: application of Part

Background

2173 Section 15IA sets out procedural matters relating to the preparation of joint local plans and where joint local plan directions are given by the Secretary of State

Effect

2174 Subsections (1), (2) and (3) set out that local planning authorities preparing a joint local plan (either by agreement or where a joint local plan direction has been given) are required to do anything that would otherwise be required in relation to a local plan, including completing all the steps associated with the preparation, examination and adoption of the joint local plan.

2175 Subsection (4) allows the Secretary of State to modify the way Part 2 of the Planning and Compulsory Purchase Act 2004 applies to joint local plans.

2176 Subsection (5) sets out that where a spatial development strategy is also operative in the joint local plan area, or any part of it, the joint local plan will have to be in general conformity with the relevant spatial development strategy, however the effect of the strategy only applies to those parts of the joint plan area that are covered by the strategy.

2177 Subsection (6) defines the meaning of "relevant authority" for the purposes of this section.

Section 15IB: Joint local plan agreement or direction: withdrawal or modification

Background

2178 Section 15IB deals with a situation in which a local planning authority withdraws from a joint local plan agreement, or the Secretary of State withdraws a joint local plan direction or it ceases to have effect for one or more parties. In such circumstances, the examination of a joint local plan is suspended. These provisions broadly mirror the former arrangements which were provided for in the Planning and Compulsory Purchase Act 2004.

Effect

2179 Subsection (1) states that this section applies where a relevant authority withdraws from a joint local plan agreement, or if the Secretary of State withdraws or modifies a joint local plan direction so that it ceases to apply to at least one of the relevant authorities to which it was given.

2180 Subsection (2) states that any step taken in relation to the joint local plan must be treated as a step taken by the relevant authorities for corresponding local plans or corresponding joint local plans. This means that things done as part of the old joint local plan count as steps taken towards the local plan or joint local plan that replaces it.

2181 Subsection (3) provides that where the joint local plan has already been submitted for examination, the examination must be suspended. Subsection (4) provides the Secretary of State with a power to direct recommencement of the examination in relation to any corresponding local plan or

corresponding joint local plan, and that any step previously taken in relation to the suspended examination has effect for the purposes of the resumed examination. This power is exercisable where a relevant authority has requested the Secretary of State to do so before the end of a period of time, to be prescribed in regulations.

2182 Subsection (5) enables the Secretary of State to define in regulations what is meant by a "corresponding local plan" or a "corresponding joint local plan" for the purposes of this section, for example, to deal with a change in geographical coverage of the joint local plan where a local planning authority withdraws from a joint local plan agreement.

2183 Subsection (6) clarifies what references to the joint local plan in this section relate to. It explains that they refer to the joint local plan which the joint local plan agreement or joint local plan direction (which have either been withdrawn or ceased to have effect) related to.

2184 Subsection (7) clarifies that the relevant authorities are local planning authorities who were party to a joint local plan agreement before the authority set out in subsection (1)(a) withdrew from it, or to whom the joint local plan direction applied before it was modified or withdrawn by the Secretary of State.

Section 15IC: Joint supplementary plans by agreement

Background

2185 Section 15IC enables the preparation of joint supplementary plans.

Effect

2186 Subsection (1) enables two or more local planning authorities to agree to prepare a joint supplementary plan together, and if they do, references to the area of the local planning authority in section 15CC(3) means the combined areas of the relevant authorities involved.

2187 Subsection (2) enables two or more minerals and waste planning authorities to agree to prepare a joint supplementary plan, in which case references to the relevant area in subsection (5) of section 15CC (content of minerals and waste supplementary plans) means the combined relevant areas of the relevant authorities.

2188 Subsection (3) sets out that the provisions within Part 2 of the Planning and Compulsory Purchase Act 2004 about steps in relation to a supplementary plan also apply in relation to a joint supplementary plan.

2189 Subsection (4) provides that any step that must be taken in relation to the preparation of the joint supplementary plan, must be taken by all the relevant authorities involved in the joint supplementary plan.

2190 Subsection (5) allows the Secretary of State to prescribe (in regulations) modifications to Part 2 of the Planning and Compulsory Purchase Act 2004 as it applies to joint supplementary plans.

2191 Subsection (6) sets out that where a spatial development strategy is also operative in the joint supplementary plan area, or any part of it, the joint supplementary plan will have to be in general conformity with the relevant spatial development strategy, however the effect of the strategy only applies to those parts of the joint supplementary plan area that are covered by the strategy.

2192 Subsections (7) to (10) set out procedural details that apply if one of the relevant authorities withdraws from a joint supplementary plan agreement.

2193 Subsection (11) provides the Secretary of State with regulation making powers to define a 'corresponding supplementary plan' or a 'corresponding joint supplementary plan' for the purposes of this section.

2194 Subsections (12) and (13) define joint supplementary plans and relevant authorities for the purposes of this section.

Joint Committees

Section 15J: Joint committees

Background

2195 Section 15J provides for the establishment of joint committees, which can be formed by one or more local planning authorities (as defined in section 15LF) with one or more county councils in relation to any area of the county council for which there is also a district council. The joint committee, formed by regulations made the Secretary of State, becomes the local planning authority for the area agreed between the relevant parties.

Effect

2196 As under former section 29 of the Planning and Compulsory Purchase Act 2004 , section 15J(1) permits one or more local planning authorities to agree with one or more county councils to establish a joint committee to become the local planning authority for the area set out in the agreement and for the purposes specified.

2197 Subsections (2) to (5) broadly replicate former powers for the Secretary of State to constitute a joint committee to be the local planning authority for the area by regulations and set out what the regulations must or may do. They must set out the local planning authorities and county councils that will make up the joint committee (the "constituent authorities"). They may also set out other matters which the Secretary of State considers are necessary or expedient for the joint committee to carry out its functions, which might include provisions corresponding to relevant provisions in the Local Government Act 1972, applying other relevant legislation that may be appropriate, or modifications as to how Part 2 of the Planning and Compulsory Purchase Act 2004 is applied in relation to the joint committee.

2198 Subsection (6) sets out that if regulations relating to a joint committee are annulled by a resolution of either House of Parliament, the joint committee will cease to exist from the date of that resolution. From that date, all local planning authorities that were once a member of the joint committee must carry out the functions of a local planning authority on their own and must update their local plan timetable accordingly.

2199 Under subsection (7), this section does not confer on a local planning authority constituted by virtue of regulations under this section any function under section 13 or 14 of Planning and Compulsory Purchase Act 2004 (survey of area).

2200 Subsection (8) provides that this section (i.e. 15J) and section 15JA are subject to the requirement in section 15C(2). This permits only one local plan to have effect in a local planning authority's area at any one time.

2201 Subsection (9) requires that if the joint committee adopts a local plan or supplementary plan, the policies contained therein apply across all of the constituent authorities which are local planning authorities.

2202 Subsections (10) and (11) clarify that references to a local planning authority's local plan timetable, local plan or supplementary plan must be construed as including references to the timetable or plan of the joint committee, as far as relates to any planning function conferred.

Section 15JA: Joint committees: additional functions

Background

2203 Section 15JA replicates and updates former section 30 of the Planning and Compulsory Purchase Act 2004 on joint committee timetables where the joint committee takes additional functions.

Effect

2204 Subsection (1) applies the section to situations where a joint committee's constituent authorities agree that the joint committee will be the local planning authority (for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004) for something that is not set out in regulations or had been agreed before. Subsections (2) and (3) set out procedural details in relation to the requirement for each constituent authority of the joint committee to revise their local plan timetables, and give effect to the joint committee becoming the local planning authority for the area or purpose specified.

Section 15JB: Dissolution of joint committee

Background

2205 Section 15JB replicates and updates former section 31 of the Planning and Compulsory Purchase Act 2004 which provides for the dissolution of joint committees via a revocation request by a constituent authority to the Secretary of State.

Effect

2206 Subsections (1) and (2) set out that a constituent authority may request that the Secretary of State revokes the regulations that constituted a joint committee and that the Secretary of State may revoke those regulations (if they have been so requested).

2207 Subsection (3) provides that where regulations constituting a joint committee are revoked, a step taken about a plan or timetable which meets the definition of a corresponding plan or timetable must be treated as being done by the successor authority.

2208 A successor authority is defined in subsection (4) as a local planning authority which were a constituent authority of the original joint committee or a newly constituted joint committee for the remaining authorities. Subsection (7) allows the Secretary of State to define corresponding timetable or plan for the purposes of this section in regulations.

2209 Subsections (5) and (6) set out the procedural requirements that apply if the regulations constituting a joint committee are revoked during the independent examination of a local plan or supplementary plan prepared by the joint committee.

Neighbourhood priorities statements

Section 15K: Neighbourhood priorities statements

Background

2210 Neighbourhood planning was introduced through the Localism Act 2011 and gave local communities new rights and powers to develop a shared vision for their neighbourhood and shape the development and growth of their local area.

2211 Through a neighbourhood plan a parish council, or a neighbourhood forum in an unparished area, can set out plan policies and, where they wish, allocate land for development, for their designated neighbourhood plan area. Proposals are shaped by consultation with the wider community and subject to independent examination, before they are put to referendum. If approved at a local referendum, the neighbourhood plan becomes part of the wider development plan, which is the basis for decisions on individual planning applications.

2212 The take-up of neighbourhood plans is uneven across the country and is generally low in urban and more deprived areas. Communities in these areas face additional barriers which makes it more difficult for them to progress a neighbourhood plan, including a lack of an established governance structure or finding volunteers to help prepare the plan This section seeks to address this by introducing a new simpler neighbourhood planning tool called a "neighbourhood priorities statement". This will allow communities to identify their key priorities for their local area, including their development preferences, and will provide a simpler and more accessible way for them to participate in neighbourhood planning.

Effect

2213 Subsection (1) states that any qualifying body is able to make a "neighbourhood priorities statement" and sets out that it can cover a summary of the community's needs and views in relation to certain prescribed 'local matters'.

2214 Subsection (2) provides the Secretary of State with a power to set out, within the parameters specified in paragraphs (a) to (g), what 'local matter' are in regulations.

2215 Subsection (3) states that a qualifying body has the power to modify or revoke a statement covering their neighbourhood area.

2216 Subsection (4) specifies that a priorities statement will come into effect when it is published by the local planning authority and ceases to have effect when the authority publishes a notice stating that it has been revoked by the qualifying body.

2217 Subsection (5) specifies that any modification of a priorities statement by the qualifying body will come into effect when it is published by the local planning authority.

2218 Subsection (6) sets out that the Secretary of State may prescribe by regulations the requirements that a priorities statement must meet in order to be made or published.

2219 Subsection (7) specifies that regulations made under subsection (6) or section 15LE(2)(k), can state that requirements or procedures can be met or complied with, before a group is designated as a qualifying body.

2220 Subsection (8) sets out that regulations made under subsection (6) and section 15LE must (between them) require a qualifying body to publicise their neighbourhood priorities statement (or any proposed material modification to a statement); require the local planning authority to publish the neighbourhood priorities statement (or a modified version of that statement) where relevant statutory requirements have been met; and notify the public when a neighbourhood priorities statement has been revoked.

2221 Subsection (9) sets out that subsection (10) applies if a change to the boundary of a neighbourhood area results in a neighbourhood priorities statement relating to more than one neighbourhood area.

2222 Subsection (10) sets out that where a statement has been modified or revoked for one neighbourhood area, it still has effect in the other neighbourhood area(s) where it relates to.

2223 Subsection (11) sets out that regulations made under section 61G(11) of the principal Act (designation of areas as neighbourhood areas) (the TCPA 1990) can set out the consequences of the changes to neighbourhood areas on draft or published neighbourhood priorities statements (or modifications of statements).

2224 Subsections (12) and (13) set out that the types of authorities listed in subsection (13) are a 'relevant planning authority' for the purposes of a neighbourhood priorities statement, when some or all of the neighbourhood area to which the statement relates is within the area of that authority.

2225 Subsection (14) provides definitions to terms that are relevant to neighbourhood priorities statements.

General

Section 15L: Exclusion of certain representations

Background

2226 Former section 32 of the Planning and Compulsory Purchase Act 2004 allowed the Secretary of State or a local planning authority to disregard representations made through consultations on local development documents, when the representation related to schemes or orders dealt with through other certain other legislation. This provision is retained in new section 15L and applies to local plans; supplementary plans; and minerals and waste plans (by virtue of section 15CB(8)).

Effect

2227 Section 15L replicates the former provision in legislation for the Secretary of State or a local planning authority to disregard a representation made in relation to a local plan, supplementary plan or minerals and waste plan if, in substance, such representation is made in respect of anything that is done or proposed under certain orders or schemes made under the Highways Act 1980 or the New Towns Act 1981.

2228 This might include, for example, comments relating to a trunk road scheme as defined in the Highways Act 1980, or an area designated under the New Towns Act 1981. Those Acts set out specific procedures for considering the representations and objections concerned.

Section 15LA: Development corporations: power to disapply provisions

Background

2229 Former section 33 of the Planning and Compulsory Purchase Act 2004 allowed the Secretary of State to direct that Part 2 of the Act relating to local plan making and regulations made under section 14A regarding the preparation of a brownfield register did not apply to the area of an Urban Development Corporation. If such a direction was made for example, the local planning authority would not be required to prepare a local development scheme, local development documents or a brownfield register in respect of the area. In addition, there might be circumstances in the future in which it is decided that old Part 2 of the Planning and Compulsory Purchase Act 2004 and certain regulations made under section 14A should apply to an urban development corporation, but not in their entirety.

2230 This former provision is being retained and expanded to include a New Town Development Corporation. This allows the planning powers under section 7 of the New Towns Act 1981 and section 148 of the Local Government, Planning and Land Act 1980 to work in practice.

Effect

2231 Section 15LA grants a power for the Secretary of State to direct that Part 2 of the Planning and Compulsory Purchase Act 2004 or any regulations made under section 14A do not apply to the area of a New Town Development Corporation or Urban Development Corporation.

Section 15LB: Guidance

Background

2232 Former section 34 of the Planning and Compulsory Purchase Act 2004 required local planning authorities to have regard to any guidance the Secretary of State issues, and required the Secretary of State to issue guidance about housing needs resulting from old age or disability. New section 15LB retains this provision but updates the wording to reflect changes to the terms used in the wider plan framework.

Effect

2233 Subsections (1) and (2) broadly replicate the provision in former section 34 of the Planning and Compulsory Act 2004, with references to local development documents replaced with the local plan and any supplementary plans.

Section 15LC: Monitoring information

Background

2234 Former section 35 of the Planning and Compulsory Purchase Act 2004 required the preparation of Authority Monitoring Reports, which detail the implementation of the local development scheme and the extent to which the policies set out in the local development documents are being achieved.

2235 Section 15LC replaces the former requirement to produce a standalone document, instead enabling the Secretary of State to prescribe, via regulations, information relating to monitoring that local planning authorities must make available to the public and provide to the Secretary of State, how they must do this, and the form of such information.

Effect

2236 Subsection (1) enables the Secretary of State to prescribe information within subsection (3) that local planning authorities must make available to the public.

2237 Subsection (2) enables the Secretary of State to prescribe information within subsection (3) that local planning authorities must provide to the Secretary of State.

2238 Subsection (3) sets out the monitoring information that is relevant to subsections (1) and (2). Information may pertain to the implementation of a local planning authority's local plan timetable or policies contained in their local plan, minerals and waste plan (by virtue of section 15CB(8)) and any supplementary plans they have prepared. Information may also pertain to the implementation of any policies which relate to the local planning authority's area, in any spatial development strategy operative in their area, or the extent to which environmental outcomes (as defined in Part 6 Environmental Outcomes Reports) are being delivered in relation to the authority's area.

2239 Subsection (4) makes provision allowing the Secretary of State to prescribe in regulations the form of the monitoring information set out in subsection (3) and how it must be made available or provided.

Section 15LD: Policies map

Background

2240 Section 15LD introduces a new requirement for a local planning authority to ensure a map is prepared and maintained for the area, incorporating all elements of the development plan, and sets out requirements to be met by local planning authorities, as well as powers for the Secretary of State to prescribe things in relation to the map. The provisions provide flexibility around how the map is delivered; for example, several authorities may join together to produce consolidated maps across their collective area.

2241 Separately, section 92 amends section 38 of the Planning and Compulsory Purchase Act 2004 to include this policies map as part of the development plan.

Effect

2242 Subsection (1) requires a local planning authority to ensure that a policies map for its area is prepared and maintained, illustrating the geographic application of the allocations, policies and/or designations contained within any part of the development plan (as defined in section 38 of the Planning and Compulsory Purchase Act 2004, as amended by section 92. This includes the local plan, the minerals and waste plan, and any spatial development strategies, supplementary plans and neighbourhood plans as may be applicable to the area.

2243 Subsection (2)(a) and (b) provide powers for the Secretary of State to prescribe, in regulations, the required form of, and content to be included in, the policies map, and when and under what circumstances it must be revised. The intention is that secondary legislation made under these powers may incorporate similar elements to the current requirements outlined in regulation 9(1)(a) of the Town and Country Planning (Local Planning) Regulations 2012 which, for example, require the use of Ordnance Survey maps; or additionally require a local planning authority to update the policies map when part of the development plan is revised.

2244 Subsection (2)(c) requires that the policies map be made available to the public.

Section 15LE: Regulations

Background

2245 Section 15LE sets out a range of regulation making powers in relation to joint spatial development strategies, local plans, minerals and waste plans, supplementary plans and neighbourhood priorities statements. Under the former provisions of the Planning and Compulsory Purchase Act 2004, many of these powers were contained within former section 36. The powers in former section 36 covered a variety of areas but can be summarised as enabling the Secretary of State to produce regulations that give more detail and certainty to the process of producing local development documents, as well as data standards relating to them.

2246 Section 15LE sets out a similar broad range of regulation making powers as former section 36. It enables the Secretary of State to deliver secondary legislation that will provide detail on the process for producing different parts of the development plan, including the requirements for public consultation. Section 15LE includes powers to make regulations in relation to the form and content of, and the process for producing, new voluntary joint spatial development strategies and supplementary plans.

2247 Powers relating to data standards, previously in section 36 of the Planning and Compulsory Purchase Act 2004, are replaced by new general powers in relation to data standards for planning data, set out in Chapter 1 of Part 3 (Planning Data).

Effect

2248 Subsection (2) sets out the list of matters that the Secretary of State may in particular make provision as to in regulations (the power to make regulations having been provided within subsection (1)). Subsection (4) notes that any such regulations may make different provisions for different areas.

Section 15LF: Meaning of 'local planning authority' etc

Background

2249 Former section 37 of the Planning and Compulsory Purchase Act 2004 - subsections (4), (5), (5ZA), (5ZB), (5A) and (5B) - defined the meaning of a local planning authority for the purposes of Part 2 of that Act.

2250 Section 15LF broadly maintains the former definition, but simplifies the wording compared with the existing legislation and expands the types of development corporations that may be designated as a local planning authority for the purposes of Part 2 of the Planning and Compulsory Act 2004.

Effect

2251 Subsections (1) to (2) define a local planning authority, for the purposes of Part 2 of Planning and Compulsory Purchase Act 2004, as: a district council; a London borough council; a metropolitan district council; a county council in relation to any area in England where there is no district council.

2252 The following subsections set out instances where other authorities or bodies may be the local planning authority in place of another aforementioned authority or authorities, for all or part of their respective area or areas: a National Park authority (subsection (3)); the Broads Authority (subsection (4)); a development corporation, as constituted under s.149(1A) of the Local Government Planning and Land Act 1980 or s.7A(2) of the New Towns Act 1981 (subsections (5)-(6)); a Mayoral development corporation, where provided for by an order under section 198(2) of the Localism Act 2011 (subsection (6)(c)); the Homes and Communities Agency (Homes England), where a designation order is made under section 13 of the Housing and Regeneration Act 2008 (subsections (8)-(9)); and a joint committee (subsection (10)). A development corporation, a Mayoral development corporation or Homes England may be constituted as the local planning authority for some or all the purposes of Part 2.

2253 Subsection (11) clarifies that other references in Part 2 of the Planning and Compulsory Purchase Act 2004 to a local planning authority's 'area' relate to the area for which they are the local planning authority in accordance with Part 2.

Section 15LG: Meaning of 'minerals and waste planning authority' etc

Background

2254 Former section 37 of the Planning and Compulsory Purchase Act 2004 - subsections (4), (5), (5ZA), (5ZB), (5A) and (5B) - defined the meaning of a local planning authority for the purposes of Part 2 of that Act. Within this definition, some authorities listed (but not all) would be the planning authority for minerals and waste.

2255 Section 15LG introduces the new concept of a minerals and waste planning authority. Whilst this is a term used widely in practice, it is a new term in legislation.

2256 The provision states which authorities are responsible for minerals and waste planning and distinguishes them from the previous broader category of local planning authorities.

Effect

2257 Subsections (1) and (2) define a minerals and waste planning authority, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004 as: a county council in England; a London borough council; a metropolitan district council and a district council for any part of their area for which there is no county council.

2258 Subsection (3) outlines that a National Park Authority is the minerals and waste planning authority for the whole of its area, in place of any authority which, by virtue of subsection (2), would otherwise be the minerals and waste planning authority.

2259 Subsections (4) and (5) allows a development corporation to be made the minerals and waste planning authority for its area including a Mayoral development corporation.

2260 Subsections (6) clarifies the meaning of 'relevant area' for the purpose of this section.

Section 15LH: Interpretation

Effect

2261 Subsection (1) sets out that this section has effect for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004.

2262 Subsection (2) defines which authorities are relevant plan-making authorities for the purposes of Part 2: local planning authorities (as defined in section 15LF); minerals and waste planning authorities (as defined in section 15LG); and the Mayor of London.

2263 Subsection (3) defines terms used in Part 2, cross-referencing the relevant sections that deal with these terms.

Schedule 8: Minor and consequential amendments in connection with Chapter 2 of Part 3

Effect

2264 Paragraph 1 makes consequential amendments to the Local Government Act 1972.

2265 Paragraphs 2 to 12 make consequential amendments to the Town and Country Planning Act 1990.

2266 Paragraphs 13 to 16 make consequential amendments to the Greater London Authority Act 1999.

2267 Paragraphs 17 to 26 make consequential amendments to the Planning and Compulsory Purchase Act 2004.

2268 Paragraph 27 makes consequential amendments to the Commons Act 2006.

2269 Paragraphs 28 to 30 make consequential amendments to the Planning and Energy Act 2008.

2270 Paragraph 31 makes consequential amendments to the Marine and Coastal Access Act 2009.

2271 Paragraph 32 makes a consequential amendment to the Waste (England and Wales) Regulations 2011 (S.I. 2011/988).

2272 Paragraphs 33to 36 makes consequential amendments to the Housing and Planning Act 2016.

2273 Paragraphs 37 to 40 makes consequential amendments to the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012).

Schedule 9: Street votes: minor and consequential amendments

Background

2274 This Schedule makes the necessary changes to existing provisions relevant to the grant of planning permission so that they can be effectively applied to the arrangements for Street Vote Development Orders. For example, so that Local Planning Authorities can be required to place information about proposals and orders on the Planning Register which they are required to publish.

Effect

2275 Specifically, it makes minor and consequential amendments to the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Elections Act 2022 and the Conservation of Habitats and Species Regulations 2017.

Schedule 10: Crown development: consequential amendments

Background

2276 Section 1 inserts a new Schedule into the TCPA 1990 which updates certain provisions to reflect that the Act introduces two new routes for Crown land development, and that the existing section 293A route for Crown land development would no longer apply to England.

Effect

2277 The new Schedule has the effect of making consequential amendments to the TCPA, to reflect the new Crown land development provisions.

Schedule 11: Completion notices: consequential amendments

Background

2278 Sections 94 to 96 of the TCPA 1990 relate to completion notices. Local planning authorities can serve completion notices on unfinished developments where they are of the opinion that the development will not be completed in a reasonable period specifying that planning permission for any incomplete parts of the development will cease unless it is completed within the period specified in the notice.

2279 Under existing law, a served completion notice can only take effect once it has been confirmed by the Secretary of State – in effect, requiring the local planning authority to seek approval of the Secretary of State. A completion notice can also only be served after the deadline for commencement for a planning permission (typically introduced under section 91 and 92 TCPA 1990) has passed.

2280 This Act introduces reforms to the procedure for serving a completion notice. These provisions can be found in section 93H (Completion notices), 93I (Appeals against completion notices) and 93J (Effect of completion notices).

2281 These sections remove, in relation to completion notices served on land in England, the requirement for Secretary of State confirmation before a completion notice can take effect. A procedure for appeals against the service of a completion notice is also introduced. These provisions also allow for a completion notice to be served before the deadline for commencement of a planning permission has passed, providing development has begun.

2282 Schedule 11 provides for consequential amendments in relation to sections 93H, 93I, and 93J.

Effect

2283 Schedule 11 paragraph 2 amends section 56(3) of the TCPA 1990 (time when development begun) to include the new section 93H such that development should be considered to be begun on the earliest date on which any material operation has been carried out.

2284 Schedule 11 paragraphs 3, 4, 5, and 6 provide that sections 94, 95 and 96 of the TCPA 1990 (i.e. the existing legal provisions for completion notices) should apply only in relation to development of land in Wales.

2285 Schedule 11 paragraphs 7 through 15 incorporate the new sections relating to completion notices into the relevant planning appeals frameworks.

Schedule 12: Infrastructure Levy

Part 1 – Infrastructure Levy: England

Background

2286 This Part of Schedule 12 inserts a new Part 10A (Infrastructure Levy: England), comprising new sections 204A to 204Z2, into the Planning Act 2008. This enables the Secretary of State (with the consent of the Treasury) to make regulations providing for the imposition of a new charge in England, to be known as the Infrastructure Levy ("IL").

Effect

2287 Each new section of the new Part 10A has its own accompanying explanatory note. Where a section in the new Part 10A replicates all or part of equivalent provision in Part 11, the section in Part 11 is referenced and any substantive changes made by new Part 10A are stated throughout.

Part 2 – Consequential amendments

Background

2288 This Part of Schedule 12 makes consequential amendments to various Acts including the Planning Act 2008, that are required as a result of the new IL provisions contained in Part 10A.

Effect

2289 These consequential amendments consist of, for example, replacing "Part 11" with "Parts 10A and 11" in relevant sections of the statute book, and otherwise making changes which are required to treat IL in like manner to CIL.

Part 10A, Section 204A: The levy

Background

2290 New section 204A is a power which provides for the introduction of the Infrastructure Levy ("IL"). It replicates section 205 of Part 11 of the Planning Act 2008, with the following amendments: the purpose of IL is amended to include any purpose specified by the Secretary of State under new section 204N(5), 204O(3) or 204P(3): the table in subsection (3) is amended to reflect the new provisions of Part 10A; in section 204A(4) new definitions are included for affordable housing, IL and IL regulations.

Effect

2291 Subsection (1) is the general power for the Secretary of State, with the consent of the Treasury, to make IL regulations. This power is elucidated by subsequent provisions in the remainder of new Part 10A.

2292 Subsection (2) sets out the overall purpose of IL, which the Secretary of State must aim to ensure when making IL regulations under this part. The purpose is to ensure that costs incurred in:

a. supporting the development of an area (such as by the provision of infrastructure of the kinds listed in new section 204N(3)) and

b. achieving any purpose specified by the Secretary of State under new section 204N(5), 204O(3) or 204P(3) (which may allow the Secretary of State to specify circumstances when an authority may apply a specified amount of IL for other purposes) can be funded (at least in part) by owners or developers of land. This should be achieved in a manner that does not make development of an area economically unviable.

2293 The key provisions of the new Part 10A are listed in a table in subsection (3), and definitions are provided for the terms "affordable housing" (used in new sections 204G, 204N, 204R and 204Z), "IL", and "IL regulations" in subsection (4).

Part 10A, Section 204B: The charge

Background

2294 New section 204B provides for IL to be a compulsory charge for charging authorities. Local planning authorities ("LPAs") will ordinarily be the charging authorities with limited, defined exceptions. The meaning of LPA is given by Part 2 of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") and this is amended by section 97 (Plan making) and Schedule 7 of this Act.

2295 The provisions in new section 204B replicate those that exist currently for CIL in section 206 of the Planning Act 2008, with the following changes: IL will be a mandatory charge, whereas it is optional for a charging authority to charge CIL; no express provision is made here for the Broads Authority to be the only charging authority for its area – this is no longer necessary as the status of the Broads Authority as the local planning authority for its area is made clear by new section 15LF PCPA 2004;

IL regulations will not be able to provide for county borough councils to be a charging authority because such authorities do not exist in England; the Mayor of London will not be an IL charging authority; the Homes and Communities Agency will not automatically be a charging authority if designated as an LPA by a designation order under section 13 Housing and Regeneration Act 2008 but will instead be a charging authority to the extent provided in the relevant designation order; amendments are made to subsection (5) to reflect the fact that types of development corporation other than Mayoral development corporations may in future be local planning authorities and therefore may be IL charging authorities; amendment is made to subsection (6) to allow transitional provision in connection with any change in the charging authority for an area (not just a Mayoral development corporation); and definitions as they relate to Wales which will not apply to IL (IL will apply in England only) are not replicated.

Effect

2296 Subsection (1) mandates that a charging authority must, in accordance with IL regulations, charge IL in respect of development in its area.

2297 Subsections (2)-(5) then define which authorities are charging authorities. Subsection (2) provides that the charging authority for an area will be the LPA. LPA is given the meaning in new section 15LH PCPA 2004. Subsection (3) clarifies that the Council of the Isles of Scilly (a sui generis local authority) is the only charging authority for the Isles of Scilly, and that the Homes and Communities Agency will only become the charging authority for an area if and to the extent designated in a designation order under section 13 of the Housing and Regeneration Act 2008 (see also section 138 (Power to designate the Homes and Communities Agency as a charging authority).

2298 Subsection (4) provides a regulation-making power to depart from subsections (2) and (3) and provide for other entities in England to be charging authorities instead. These could be county councils, district councils, metropolitan district councils and London borough councils (within the meaning of the Town and Country Planning Act 1990).

2299 Subsection (5) states that the meaning of "local planning authority" is that given by section 15LH of the PCPA 2004. Under new section 15LF PCPA 2004, a development corporation may become the local planning authority for an area for some or all purposes of Part 2 PCPA 2004, in place of the authority that would otherwise be the local planning authority for that area and those purposes. Subsection (5) provides that a development corporation is only a charging authority for the purposes of IL if it is the local planning authority for the whole of its area and for all purposes of Part 2 PCPA 2004.

2300 Subsection (6) provides a regulation-making power to allow transitional provision to be made relating to any person or body becoming or ceasing to be a charging authority.

Example (1): An authority other than those defined may be the charging authority instead

A National Park authority may comprise two areas, one that is large, and a separate one that is very small and is encircled by the area of another district council. The National Park authority is an LPA for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004 and is therefore the charging authority by operation of s.204B(2) and (5), but for reasons of scale and efficiency, it might not be appropriate for them to be the charging authority for the small separate area, in which case provision could be made under s.204B(4) for the surrounding district council to be the charging authority.

Part 10A, Section 204C: Joint committees

Background

2301 The provision in new section 204C replicates that which exists currently for CIL in section 207 of the Planning Act 2008.

2302 Section 204C provides for IL regulations to make provision for circumstances where a joint committee that includes a charging authority is established under section 15J of the Planning and Compulsory Purchase Act 2004.

Effect

2303 Subsection (1) provides for the application of this provision where a joint committee is established under new section 15J of the Planning and Compulsory Purchase Act 2004 to act as the local planning authority for the purposes of Part 2 of that Act.

2304 Subsection (2) allows IL regulations to provide that a joint committee that includes a charging authority is to exercise specified functions in relation to the area of the committee on behalf of the charging authority.

2305 Subsection (3) provides supplementary powers to make provision corresponding to that which exists in Part 6 of the Local Government Act 1972 relating to joint committees of local authorities.

Part 10A, Section 204D: Liability

Background

2306 New section 204D makes provision about how liability to pay IL is incurred. New section 204E of the Planning Act 2008, mentioned below, is related insofar as it provides definitions and interpretations of key terms used in section 204D.

2307 The provisions in new section 204D replicate those that exist currently for CIL in section 208 of the Planning Act 2008, with the following minor changes: IL regulations may provide that by a specified deadline, liability must be assumed by an owner or developer of land or other specified person in circumstances where nobody else has assumed liability; a change is made to make clear that IL should be calculated by reference to the charging schedule in place at the point that development is first permitted; and also that IL regulations may make provision about exemptions from or reductions in liability.

Effect

2308 Subsection (1) provides that, where IL would arise in respect of a development, a person may assume liability for IL. This assumption may be made before development commences (subsection (2)(a)), though this must be done in accordance with any regulations about the procedure for assuming liability (subsection (2)(b)). The person who assumes liability for IL will become liable once development commences (subsection (3) – and as to when development is 'commenced', see new section 204E(3)).

2309 Where liability is not assumed before development commences, or in other specified circumstances (such as the insolvency of a company that may have claimed IL liability), subsection (4) provides that IL regulations must provide for an owner or developer of land, or another specified person, to be liable for IL.

2310 Subsection (5) states that IL regulations may make provision about liability as it relates to the ways in which liability may be shared and/or changed over time. These include: liability being held jointly; liability as it relates to partnerships; assumptions of partial liability; apportionment of liability; withdrawal or cancellation of an assumption of liability; and transfers of or exemptions from liability.

2311 Subsection (6) requires that the amount of any liability be determined by reference to the charging schedule which is in place at the time when planning permission first permits development. As to when planning permission 'first permits' development, see new section 204E(6).

2312 The general assumption in new section 204D is that development liable to IL will be the subject of a grant of planning permission. Subsection (7) provides a power to deal with cases where development which requires planning permission is commenced without it. This may be used to prevent development commencing unlawfully specifically to avoid IL.

2313 Subsection (8) allows IL regulations to make provision for development to be liable, where it previously was exempt from IL or subject to a reduced rate, and where the description or purpose of the development subsequently changes.

Example (1): Specified circumstances in which an owner or developer will assume liability for IL

IL regulations can specify circumstances, such as the insolvency of a person who had assumed liability, or their withdrawal, in which an owner or developer of land, or other specified person will become liable for IL.

Example (2) IL can be calculated by reference to the charging schedule in place when planning permission first permits development

IL rates will be set out in the charging schedule and the developer will know the rate that applies at the point in time when development is first permitted. However, this rate can be applied to elements that are not known at the point development is first permitted, such as the final sales value of the development.

Part 10A, Section 204E: Liability: interpretation of key terms

Background

2314 New section 204E provides definitions and interpretations for key terms used in new section 204D. It replicates provisions in section 209 of the Planning Act 2008, with the following amendment: the definition of development is expanded to more explicitly include material changes of use to an existing building, or part of a building, in order to ensure that IL can be charged on permitted development.

Effect

2315 Development that is liable to IL is defined in subsection (1) as "anything done by way of or for the purpose of the creation of a new building", "anything done to or in respect of an existing building", or "any change in use of an existing building or part of a building". Subsection (2) provides that IL regulations may refine this definition of development by excluding works or changes of use of a specified kind from it and providing for the creation of, or for anything done to or in respect of, a structure of a specified kind to fall within the definition.

2316 Subsection (3) stipulates that IL regulations must include provision for determining when a development is to be treated as having commenced. Subsection (4) states that regulations under subsection (3) may provide for a development to have commenced when a specified activity or event occurs which is not the development in subsection (1) but has a specified connection with the development in subsection (1). It is intended to allow for commencement of development to be

defined by reference to other works, such as those authorised by a planning permission which also authorises the works for the IL-liable building.

2317 Subsections (5) and (6) respectively provide that IL regulations must define "planning permission" and determine when a planning permission is treated as first permitting development. For instance, the regulations may make provision about outline planning permission, or general consents such as permission under the Town and Country Planning (General Permitted Development) Order 2015.

2318 Subsection (7) defines "owner" as a person who owns an interest in the land and "developer" as a person who is wholly or partly responsible for carrying out a development. Subsection (8) provides that IL regulations may allow for a person to be treated or not to be treated as an "owner" or "developer".

Example (1): Defining development for the purposes of IL

Subsection (1)(c) clarifies that material changes of use can be subject to IL. Subsection (2)(a) allows regulations to define whether something is not to be considered as development for the purposes of IL. This could include specific types of development where it is intended to retain the system of s106 planning obligations to secure developer contributions in full, such as minerals and waste development.

Part 10A, Section 204F: Charities

Background

2319 New section 204F concerns exemptions from, or reductions in, IL liability for charities.

2320 The provisions in new section 204F replicate those that exist currently for CIL in section 210 of the Planning Act 2008.

Effect

2321 Subsection (1) places a duty on the Secretary of State when making IL regulations to provide for an exemption from liability to pay IL to certain classes of charity (which are defined in subsection (4)). This duty applies where the person who is liable to pay IL is a relevant charity in England and Wales (i.e. a charity registered under section 29 Charities Act 2011, or a charity within the meaning of section 1(1) of the Charities Act 2011 but not required to be registered) and where the building or structure for which IL liability arises is to be used wholly or mainly for a charitable purpose of the charity concerned.

2322 Subsection (2) expressly provides two powers. First, a power for IL regulations to provide an exemption from liability to pay IL if the person is an institution established for charitable purpose. Second, a power allowing IL regulations to require charging authorities to make arrangements for an exemption or reduction in IL liability if the person who is otherwise liable is an institution established for charitable purpose. It is not essential, for the purpose of subsection (2), that the provision to be made under it apply only to 'relevant charities in England and Wales' – rather, the key criterion is that the institution must be 'established for charitable purpose'. Subsection (5) states that for the purposes of subsection (2) a charitable purpose is one falling within section 3(1) of the Charities Act 2011. It also provides that IL regulations may provide for an institution of a specified kind to be, or not be, treated as an institution established for a charitable purpose.

2323 Subsection (3) contains a power for IL regulations to prescribe conditions that must be met for a charity to not qualify for an exemption or reduction under subsection (1) or (2).

Part 10A, Section 204G: Amount

Background

2324 New section 204G requires a charging authority to, in accordance with IL regulations, issue a document, called a charging schedule, in respect of development in its area. This schedule will set out for the authority's area the IL rates, or other criteria, which will be used to calculate the amount of IL that must be paid.

2325 The provisions in new section 204G largely replicate those that exist currently for CIL in section 211 of the Planning Act 2008, with the following changes:

a. Under subsection (1), all charging authorities 'must' issue an IL charging schedule – whereas under existing section 211(1), it is for a charging authority to decide whether it proposes to charge CIL (and only if it does so propose, must it issue a CIL charging schedule)

b. Charging authorities, in setting rates or other criteria, must also have regard to some additional factors, changing the way in which rates are set from CIL. These include matters relating to the economic effects on land value of various aspects of the planning and development process (subsection (6)(b)); levels of IL revenues in an authority's area (subsection (6)(c)); and its infrastructure delivery strategy (subsection (6)(d)). It is no longer a requirement of the primary legislation that charging authorities consider the actual and expected costs of delivering infrastructure, or other sources of funding for infrastructure, when setting rates.

c. A new provision is added (subsections (2)-(5)), requiring that when setting rates, to the extent and in the manner specified in regulations, charging authorities must seek to ensure that the level of affordable housing that is funded by developers and the level of funding provided in this regard by developers can be maintained at a level which delivers at least the same amount of affordable housing and funding when compared with a previous specified period. This evaluation can include affordable housing delivered and funding for affordable housing which is provided under the current system of section 106 obligations. This duty does not apply if the local authority considers that complying with it would make development of their area economically unviable.

d. IL regulations may, in addition, permit charging authorities to provide for rates to change over time or when specified events occur (subsection (8)(f)).

e. IL regulations may, in addition, permit or require charging schedules to operate according to the kind of area/place, or existing use of the place, where development is undertaken (subsection (10)(c)), and permit or require any threshold below which IL is charged at a nil or reduced rate to be determined in a specified way (subsection (10)(g)).

f. The provision made in subsection (11) which allows IL regulations to require a charging authority to provide estimates in connection with IL chargeable in respect of development of land is amended.

Effect

2326 Subsection (1) stipulates that charging authorities must, in accordance with IL regulations, issue a charging schedule, which they may then revise or replace (subsection (12)). IL regulations will apply to any revised or replacement charging schedule as they do to the preparation of the original charging schedule (subsection (13)).

2327 Subsection (2) provides that charging authorities must consider affordable housing delivery and funding when setting rates. Subsection (2) sets out that charging authorities must, to the extent and in the manner specified by regulations, seek to ensure that developer-funded affordable housing delivery (and the level of funding provided by developers in this regard) can be maintained at a level that exceeds or equals affordable housing delivery and funding as compared with a previous specified period. Subsection (3) provides that this duty does not apply if the local authority concludes that complying with it would make development of their area economically unviable. Subsection (5) provides powers for IL regulations to make provision about how previous levels of affordable housing delivery and funding are to be measured for this purpose.

2328 Subsection (6) provides that charging authorities must also consider economic factors when setting rates. IL regulations may make provision about the manner and extent to which charging authorities are to have regard to such considerations. These factors include matters specified by IL regulations relating to the economic viability of development and the economic effects of development, including anything that impacts land value. The effect of this, compared to CIL, is to shift the focus of rate setting towards the capture of land value uplift, with the two chief constraints being the extent to which land value has increased and the viability of development in the area.

2329 Subsection (6)(c) also requires charging authorities to have regard to the amount of IL (and anything else specified in IL regulations) provided over a specified period. Subsection (6)(d) requires a charging authority to have regard to its infrastructure delivery strategy. This is a document to be produced under new section 204Q, which will include the authority's plans for spending IL.

2330 IL regulations may make other provision about how IL rates are to be set (subsection (7)).

2331 Subsection (8) provides examples of other factors that IL regulations may require charging authorities to have regard to in rate setting. For example, it might be the case that a particular development type may not generate IL revenues that are high enough to cover the costs of administering the IL liability, and provision could be made under subsection (8)(a) permitting or requiring charging authorities to take account of that when setting rates. Provision could be made under subsection (8)(b) would allow or require local authorities to consider how the external costs of development aside from infrastructure may impact upon the viability of IL rates.

2332 Subsection (9) provides powers for IL regulations to allow charging schedules to adopt specified methods of calculation, and subsection (10) provides examples of how the regulations might do this. For instance, charging schedules could operate based on descriptions of the type of development or according to the location of the development, or determine a threshold below which IL is charged at a nil or reduced rate (subsection (10)(g)). This could include items like build costs and the existing use value of the land, to consider a threshold value at which IL should not apply.

2333 A charging authority may be required to provide estimates of IL chargeable in respect development of land (subsection (11)). This includes estimates in connection with in-kind payments of IL, such as in the form of delivery of affordable housing.

Example (1): Setting stepped IL rates

The intention is that charging authorities will be able to set stepped rates, which increase at specified future points. This could provide charging authorities that are cautious about not making development in their area unviable with a buffer to ensure that rates are not set too high in the first instance. This buffer could be decreased over time using stepped rates. This would allow rates to be found that capture more land value uplift, particularly in areas with high land values, without making development unviable.

Part 10A, Section 204H: Charging schedule: consultation and evidence

Background

2334 Section 204H deals with the preparation of an IL charging schedule. It replicates provision made in relation to CIL in existing section 211 (7), (7A), and (7B) of the Planning Act 2008.

Effect

2335 Section 204H provides an express power for charging authorities to undertake preparatory work, including consultation, in respect of a charging schedule.

Example (2): Charging schedules determine a threshold below which IL is charged at a nil or reduced rate

It is envisaged that local planning authorities will set a threshold below which a nil IL rate will be charged, to account for build costs and other costs of development in an area. This will allow rates to be set that apply on development value above the minimum threshold. The minimum threshold can be set out on value per square metre basis, with the Levy being charged on any value above the threshold. Developments with value significantly above the minimum threshold will pay more than developments with value marginally above the minimum threshold.

2336 Subsection (2) provides that a charging authority must use appropriate available evidence to inform their preparation of a charging schedule. IL regulations may make provision under subsection (3) about the application of subsection (2). This includes determining the nature of evidence deemed appropriate, what is meant by available evidence, how that evidence can and cannot be used, and when and how evidence may be used to inform the preparing of a charging schedule.

Part 10A, Section 204I: Charging schedule: examination

Background

2337 New section 204I deals with the examination of an Infrastructure Levy charging schedule. It replicates the provision made in relation to CIL in section 212 of the Planning Act 2008.

Effect

2338 This section contains several provisions relating to the independent examination of a draft charging schedule and ensures that the examiner considers that the charging authority has complied with the relevant requirements.

2339 Before a charging schedule is approved, a draft of it must be examined by a person appointed for that purpose by the charging authority (subsection (1)). Subsection (2) requires the charging authority to satisfy itself that the person is independent and has appropriate qualifications and experience. The charging authority may also, with the agreement of the examiner, appoint persons to assist the examiner (subsection (3)).

2340 By subsection (5), the examiner is required to consider whether the "drafting requirements" have been complied with (and see also new section 204J). Subsection (4) defines the "drafting requirements" as the requirements of new Part 10A and of IL regulations insofar as relevant to the drafting of a charging schedule – in particular, the requirements to have regard to the matters listed in new section 204G(2) (regarding affordable housing), (6) (regarding economic factors of land value and viability) and (8) (other factors). The examiner must make recommendations (see new section 204J) and give reasons for their recommendations. Subsection (6) requires the charging authority to publish the recommendations and reasons.

2341 Subsection (7) provides that IL regulations must require a charging authority to allow persons to make representations about a draft schedule to be heard by the examiner. Subsection (8) allows IL regulations to provide for examiners to reconsider their decisions before or after approving a schedule, with a view to correcting errors. Subsection (9) provides that a charging authority may withdraw a draft charging schedule.

Part 10A, Section 204J: Charging schedule: examiner's recommendations

Background

2342 New section 204J replicates existing provisions set out in relation to CIL section 212A in the Planning Act 2008. It outlines the factors an examiner should consider when examining a charging schedule.

Effect

2343 There are three possible conclusions which an examiner of a charging schedule can reach, following an examination under new section 204I.

2344 The examiner may conclude that the drafting requirements (see new section 204I(4)) have not been complied with, in one or more respects, and that the non-compliance cannot be remedied by making modifications to the draft. If so, then under subsection (2) the examiner must recommend the rejection of the draft charging schedule.

2345 Or, the examiner may conclude that the drafting requirements have not been complied with, in one or more respects, but that the non-compliance could be remedied by making modifications to the draft. If so, then under subsections (3)-(4) the examiner must:

a. identify the non-compliance;

b. recommend modifications which the examiner considers would remedy the non-compliance; and

c. recommend the approval of the draft charging schedule with modifications which remedy the non-compliance (which may be, but do not have to be, those recommended by the examiner).

2346 Or, the examiner may conclude that the drafting requirements have been complied with. If so, under subsection (5) the examiner must recommend the approval of the draft charging schedule.

2347 Under subsections (6) and (7), where the examiner is recommending approval, the examiner is also entitled to make recommendations for modifications which are not necessary to remedy non-compliance with drafting requirements.

Part 10A, Section 204K: Charging schedule: approval

Background

2348 New section 204K deals with the approval of an IL charging schedule by a charging authority. It replicates provision in relation to CIL in section 213 of the Planning Act 2008.

2349 Minor amendments to wording relate only to references to sections of the Planning Act 2008, which now relate to equivalent provisions in amended legislation enacting IL.

Effect

2350 Subsections (1) - (6) prescribe the circumstances in which a charging authority may approve a charging schedule and how the authority is to approve one.

2351 Subsections (1)-(2) provide that a charging authority may only approve a charging schedule, having had regard to the examiner's recommendations and reasons, if the examiner has recommended

approval under new section 204J(4) (recommended approval with modifications) or (5) (recommended approval) – and may not approve a draft charging schedule which the examiner has recommended be rejected.

2352 Under subsection (3), if the examiner has recommended that modifications are needed in order to remedy non-compliance with the drafting requirements (see new sections 204I(4) and 204J(4)), then the charging authority may only approve the charging schedule with modifications which remedy the non-compliance (which may be, but do not have to be, those recommended by the examiner).

2353 Under subsection (4), if the examiner has recommended modifications which are not necessary to remedy non-compliance with the drafting requirements (see new section 204J(6)-(7)), the charging authority may approve the charging schedule with all, some or none of those recommendations.

2354 No other modifications may be made following the examination (subsection (5)).

2355 Subsection (6) provides that a charging authority must approve a charging schedule at a meeting of the authority and by a majority of votes of the members present.

2356 If the examiner recommended that modifications be made in order to remedy non-compliance with the drafting requirements, a report must be published by the charging authority covering how the approved schedule remedies the non-compliance (subsections (7)-(8)). IL regulations may make provision about the contents of such a report (subsection (9)).

2357 In addition, subsection (10) provides a regulation-making power for the correction of errors after a schedule is approved which would permit charging authorities to be able to correct errors in a charging schedule after it is approved (without having to formally review it).

2358 Subsection (11) confirms that the meaning of "examiner" in this section is the same as under new section 204I (that is, the same person who carries out the examination in 204I).

Part 10A, Section 204L: Charging schedule: application and effect

Background

2359 New section 204L replicates, with some amendment, section 214 of the Planning Act 2008. It provides for when an IL charging schedule can take effect, after approval. A charging schedule may not take effect before the charging authority issues the schedule by publishing it.

2360 As IL will be a mandatory charge, unlike CIL, it does not replicate section 214(3) of the Planning Act 2008 which provides that a charging authority can decide when its CIL charging schedule ceases to take effect.

Effect

2361 Subsection (1) provides that a charging schedule which has been approved may not take effect until it has been issued, by being published.

2362 Subsections (2)-(4) allow IL regulations to make provision about the publication and taking effect of an IL charging schedule, including when a charging schedule is to take effect (or not) and any documentation that must be published at the same time as the charging schedule.

Part 10A, Section 204M: Charging schedule: due date

Background

2363 New section 204M is a new provision. It allows for IL regulations to make provision about when a charging authority must issue an IL charging schedule. The Secretary of State must allow a 12-month period between giving written notice that a local authority must issue a charging schedule, and the point at which that authority must issue it. If a charging authority does not issue it's charging schedule as required under the regulations, then the Secretary of State can appoint a person to prepare and issue the charging schedule on behalf of that authority. IL regulations may make provision connected with this including the process surrounding this appointment and procedures to be followed by the appointed person when preparing and issuing a charging schedule.

Effect

2364 Subsection (1) provides that IL regulations may make provision for when a charging authority must issue (i.e., publish following approval) a charging schedule.

2365 Subsection (2) allows the Secretary of State to publish or provide written notice to one or more charging authorities, requiring that authority (or authorities) to issue their charging schedule. IL regulations must allow at least 12 months to elapse from the day on which such notice is given to an authority before the authority is required to issue its charging schedule.

2366 Where a charging authority does not issue its schedule in time, subsection (3) allows the Secretary of State to appoint a person to prepare and issue the schedule on behalf of that charging authority.

2367 Subsection (4) is a list of the kind of provision which may be made in IL regulations in connection with the person who is to be so appointed. This includes procedures for appointing the person, the conditions that need to be met prior their appointment, and the procedures to be followed when preparing and issuing the charging schedule. Regulations may also provide for when the person may be replaced, the appointment of assistants, the duties of a charging authority when a person is appointed to act on their behalf, and the liability of costs resulting from the appointment.

Example (1): Appointing a person to prepare a charging schedule

If the Secretary of State requires a charging authority to issue an IL charging schedule within a set period of no less than 12 months, and the charging authority does not do so, then the Secretary of State would be able to appoint a person to prepare and issue a charging schedule on the charging authority's behalf.

Part 10A, Section 204N: Application

Background

2368 New section 204N makes provision for how IL is to be spent. It largely replicates provision made in section 216 of the Planning Act 2008 in relation to CIL but with some amendment. There is a new subsection to enable regulations to provide for minimum spend on specific types of infrastructure, additions to the meaning of infrastructure, a new subsection to enable spend on non-infrastructure items and new cross-links to sections 204O, 204P and 204T.

Effect

2369 Subsection (1) provides that IL regulations must require the charging authority to apply IL to supporting the development of an area by funding the provision, improvement, replacement, operation or maintenance of infrastructure.

2370 A new provision is set out in subsection (2) to enable regulations to make provision about the extent to which charging authorities may or must apply of IL receipts to funding specific types of infrastructure. For example, provision could be made under this subsection 'ring-fencing' a proportion of a charging authority's IL receipts to be applied towards specific infrastructure – for instance, specifying that a minimum amount of IL receipts must be spent on providing affordable housing in an area or on roads.

2371 There is a non-exhaustive list of what is considered to be 'infrastructure' in subsection (3), which includes roads, schools, medical facilities and affordable housing (as defined in Part 2 of the Housing and Regeneration Act 2008 or any other description of housing that IL regulations may specify – see new section 204A(4)). Subsection (4) provides powers for IL regulations to amend this list and therefore, provides powers to guide the kinds of infrastructure which are captured within the IL context, at a national level.

2372 Subsection (5) is a new provision that provides for regulations to set out the circumstances where charging authorities would be allowed to spend a specified amount of IL on items that fall outside the requirements of subsection (1), for example, on non-infrastructure items.

2373 Subsection (6) provides further powers relating to the application of IL receipts. For example, it enables IL regulations to specify further details of what may or may not be funded by IL for the provision, improvement, replacement, operation or maintenance of infrastructure. Regulations may also specify what may or may not be funded by IL when the provisions of new section 204O or 204P apply, (meaning where IL regulations allow IL to be used to fund anything that is concerned with addressing demands that development places on an area). Subsection (6) also provides powers for regulations to specify what is or is not to be treated as funding.

2374 Powers are provided in subsection (7) to require charging authorities to prepare lists of projects which they propose will be funded by IL. Under this provision, IL regulations could require charging authorities to prepare a list of infrastructure to be funded through IL and, by exemption from that list, infrastructure that developers should expect to fund and provide outside of IL. This can be provided through the charging authority's infrastructure delivery strategy, as set out in new section 204Q. Subsection (7) also includes provision for setting out the circumstances in which IL can be spent on projects which are not listed.

2375 Subsection (8) is a list of the kind of provision which may be made by IL regulations when making provision about funding. It includes powers to permit IL to be used for the reimbursement of expenditure already incurred and for the giving of loans, guarantees and indemnities.

2376 Under subsection (9), regulations may:

a. require separate accounting of revenue from IL;

b. require monitoring and reporting on IL;

c. permit a charging authority to spend IL outside its own area (for example, on infrastructure which supports development of the charging authority's area but which is itself located outside the charging authority's area); and

d. permit a charging authority to pass money to another body (for example, in a two-tier area where a district council is the charging authority, to pass IL receipts to the county council as highway authority to deliver road infrastructure improvements).

Example (1): Allowing local authorities to borrow funds to deliver infrastructure

Subsection (8) gives a power for the relationship between IL and local authority borrowing to deliver infrastructure, to be set out in regulations. Provision made under this power could allow local planning authorities to borrow against future IL receipts in order to deliver infrastructure at the right time to support development. Authorities could be permitted to borrow money from the Public Works Loan Board or other funding sources, against future IL receipts, thereby using IL money as a reimbursement of the expenditure already occurred.

Example (2): Reporting on how receipts are spent

Subsection (9)(a)-(f) will enable regulations to set how charging authorities (and, potentially, anyone to whom IL receipts have been passed) should report on the expenditure of IL, including what proportion of receipts has been passed to other bodies, for example parish councils.

Part 10A, Section 204O: Duty to pass receipts to other persons

Background

2377 New section 204O deals with the duty of charging authorities to pass on IL receipts to other persons. It replicates provision that is made in section 216A of the Planning Act 2008.

2378 A new subsection (3) has been added to reflect the powers granted in 204N(5) which may in certain circumstances allow charging authorities to spend specified amounts of IL on specified purposes that are not related to the provision, improvement, replacement, operation or maintenance of infrastructure.

Effect

2379 Subsection (1) allows IL regulations to require that IL received in respect of development in an area is to be passed (whether in part or whole) to another person/body.

2380 Subsection (2) - where IL regulations establish such a requirement then IL regulations must stipulate that the money is to be spent on supporting the development of the area by funding:

a. the provision, improvement, replacement, operation or maintenance of infrastructure (i.e. equivalent to new section 204N(1)); or

b. anything else (for example, non-infrastructure items) concerned with addressing demands that development places on an area.

2381 Subsection (3) allows IL regulations to set out circumstances in which IL passed on in this way may be used for other purposes (i.e. not those specified in subsection (2)). This is to provide equivalence to the provision that is made in new section 204N(5) about spending of IL monies generally.

2382 The remainder of this section sets out the broad framework for this process, providing for regulations to set out the details including: who can receive the money or who cannot receive it, the amount and timings of payments; monitoring, accounting and reporting responsibilities of charging authorities; and when funding is to be returned to the charging authority.

Example (1): Passing a proportion of receipts to parish councils

This section allows IL regulations to require a charging authority to pass on a proportion of its IL receipts to parish councils, replicating the approach taken in CIL (pursuant to regulations 59A-59E of the Community Infrastructure Levy Regulations 2010), to allow spending on local priorities.

Part 10A, Section 204P: Use of IL in an area to which section 204O(1) duty does not relate

Background

2383 New section 204P deals with the use of IL in an area where the duty to pass on receipts, set out in section 204O subsection (1), does not apply. It replicates provisions made in section 216B of the Planning Act 2008. A new subsection (3) has been added to the provision to reflect the widening of IL spend provided for in new section 204N(5).

2384 New subsection 204N(5) enables IL regulations to allow charging authorities in certain circumstances to spend specified amounts of IL on specified purposes that are not related to the provision, improvement, replacement, operation or maintenance of infrastructure.

Effect

2385 New section 204O (see above) allows IL regulations to require that charging authorities pass on IL receipts (whether in part or whole) to another body. This new section 204P applies where IL regulations provide for a duty under new section 204O in respect of one or more areas, but there are also one or more areas to which that new duty does not apply ("the uncovered area/s").

2386 In such a case, the IL regulations must require that the IL received in respect of development in the uncovered area must be spent on:

a. Supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure (i.e. equivalent to new section 204N(1)); or

b. Supporting development of the uncovered area or any part of that area by funding anything else (for example, non-infrastructure items) that is concerned with addressing demands that development places on an area (i.e. equivalent wider spend flexibility like those under new section 204O(2)).

2387 Subsection (3) allows IL regulations to set out circumstances in which IL receipts may be used for purposes that are not specified in subsection (2). This is equivalent to the provision made in new section 204N(5) about spending of IL monies generally, and the equivalent provision in new section 204O(3).

Example (1): Passing a proportion of receipts in areas with no parish council

This section could allow charging authorities to allow a proportion of their IL receipts to be spent on local priorities other than infrastructure, in areas where there is no parish council (as is the case for CIL under regulation 59F of the Community Infrastructure Levy Regulations 2010).

Part 10A, Section 204Q: Infrastructure delivery strategy

Background

2388 New section 204Q is an entirely new provision. It sets out the new requirement for charging authorities to publish an infrastructure delivery strategy.

Effect

2389 Subsection (1) provides a new duty on IL charging authorities to prepare and publish an infrastructure delivery strategy for its area. This document will set out the authority's approach to infrastructure planning and will include a strategic plan for how IL money will be spent.

2390 Subsection (2)(a) sets out the requirement for infrastructure delivery strategies to include the strategic plans for how IL will be spent. Subsection (2)(b) provides powers for regulations to set out other information that infrastructure delivery strategies must contain.

2391 Subsection (3) elaborates on the kind of information that can be provided for through IL regulations, in particular, the requirement for a charging authority to set out its plans for the improvement, replacement, operation and maintenance of infrastructure.

2392 Subsection (4) enables charging authorities to revise or replace their infrastructure delivery strategy with a new one at any time. Subsection (5) stipulates that charging authorities must prepare and publish a replacement or revision of the IDS if it is necessary or expedient as a result of a revision or replacement of a charging schedule. For example, if there are major changes to the sites they have selected in their local plan.

2393 The requirement for IL regulations to provide for the independent examination of infrastructure delivery strategies is set out in subsection (6). An examination is the process by which an infrastructure delivery strategy will be approved. Subsection (7) provides that regulations must make provision for the examination of an infrastructure delivery strategy to be combined with the examination of either a charging schedule or a local plan.

2394 Subsection (8) gives examples of what provisions may be set out in regulations for the examination of an infrastructure delivery strategy, including details about the examiner, the process of examination and any circumstances in which an examination would not be required.

2395 Subsection (9) requires that charging authorities have regard to Secretary of State guidance on infrastructure delivery strategies.

2396 Subsection (10) enables IL regulations to provide that another public authority can carry out a function under this section, such as preparing and publishing an infrastructure delivery strategy in place of, or on behalf of, a charging authority. This would enable development corporations to prepare an infrastructure delivery strategy.

2397 Subsection (11) sets out what must be provided for in IL regulations, including the form and content of an infrastructure delivery strategy, how it should be published, any procedures that should be followed for its preparation, revision or replacement and who should be consulted as part of the process.

2398 Subsection (12) gives examples of further provision that may be made in IL regulations – such as the timings associated with preparation, replacement or revision of an infrastructure delivery strategy and how long it would be valid for; what evidence is needed to prepare the document, and the preparation of joint infrastructure delivery strategies.

Example (1): Contents of an infrastructure delivery strategy

Subsection (2)(a) requires that the infrastructure delivery strategy must set out the strategic plans for the application of IL. Subsection (11)(a) requires that IL regulations must make provision about the form and content of an infrastructure delivery strategy, including a strategic spending plan, setting out the high-level priorities for the charging authority in spending its IL.

Example (2): Examination of an infrastructure delivery strategy

Subsection (8) requires the regulations to make provision regarding what can be considered as part of an examination of an infrastructure delivery strategy. Under (8)(b) it is envisioned that regulations will seek a streamlined process, in which the examiner will test whether a charging authority has had regard to national policy and consulted with the correct parties.

Part 10A, Section 204R: Collection

Background

2399 This new section deals with the collection of IL. It replicates provision in section 217 of the Planning Act 2008, with the following amendments: subsection (4) sets out a wider range of examples of how the power to make provision about payment in kind may be used; subsections (5) and (6) require that IL regulations must permit payment of IL through the provision of on-site affordable housing; subsection (7), which enables IL regulations to make provision that corresponds to what is made in tax regulations (with or without modifications), has minor changes in wording to clarify how the power can be used.

Effect

2400 Subsection (1) provides that IL regulations must include provisions about the collection of IL. Subsections (2)-(4) and (7)-(9) provide instances of how that power may be exercised including making provision about-

a. payment on account or by instalment, which would allow for payments to be made prior to the completion of a development or a phase of development (subsection (2))

b. the repayment of IL, with or without interest, in the event of an overpayment (subsection (3))

c. payment of IL by in-kind payment rather than in money, for instance through the delivery of infrastructure (including affordable housing) or through making land available (subsection (4))

d. allowing a charging authority to collect funds on behalf of another charging authority (subsection (7))

e. making provision that corresponds, or applies (with or without modification) to enactments relating to the collection of a tax, to enable alignment between the approach taken to the Levy and the approach taken in the wider tax system (subsection (8)); and

f. the source of payments in respect of Crown interests (subsection (9)).

2401 Subsection (5) provides that IL regulations must include provision permitting charging authorities to require payment in the form of provision of affordable housing on the development site, but only if affordable housing is considered to be 'infrastructure' for the purposes of IL application as set out in s.204N(3) (as noted above, s.204N(4) provides a power for IL regulations to amend s.204N(3)). Subsection (6) defines 'development site' for this purpose as the site on which the development in respect of which the relevant IL is charged takes place.

Example (1): Payment in-kind

Provision under subsection (5) permits charging authorities to require the delivery of onsite affordable housing as an in-kind payment of IL. It is intended that a substantial portion of the value captured through IL will be delivered in this way. Where it is appropriate for IL liability to be paid by in-kind contributions towards infrastructure, this will be set out through regulations (including through provision made under 204Z) as an 'in-kind routeway'. Development deemed appropriate for this routeway would be able to make in-kind payments of infrastructure towards their IL liability.

Example (2): Payment by instalment or on account

It is intended that IL should be calculated on the basis of the final development value (under provision that will be made under new section 204G). Under this approach, the final levy liability would not be known until the completion of the development (or a phase of the development). Payment by instalment or on account would allow for earlier payments. This could be used to allow the charging authority to require payments prior to the completion/occupation of the phase/development. This would mean that payment could be enforced (see new section 204S) at a point when the developer was in control of the site, rather than at a point when it has been sold on, for instance to a homeowner. Early payment may also be used to support the early delivery of infrastructure. However, as this would also increase costs for developers, and may risk overpayments, restrictions may be placed on the use of such an approach.

Example (3): Crown interests

For example, under section 8 of the Duchy of Cornwall Management Act 1863 certain capital receipts received by the Duchy of Cornwall may only be spent for the purposes specified there. Subsection (7) allows IL regulations to provide that IL which is payable by the Duchy where development takes place on its land, may be paid out of these monies.

Part 10A, Section 204S: Enforcement

Background

2402 This section deals with enforcement in connection with IL. It replicates provision in section 218 of the Planning Act 2008 with the following amendments:

a. Subsection (2) makes it a requirement, for IL regulations to include enforcement provisions about the failure to assume liability, late payment and failure to pay.

b. Subsection 4(f) of section 218 is not replicated here as an equivalent power has been provided in new section 204Z(1)(c).

c. Subsection (5) of section 218 has been separated out into two separate subsections here ((5) and (7)).

d. Subsection (6) provides an express power for IL regulations to prohibit or restrict the occupation or use of a development pending payment of IL.

e. Subsection (8) replaces the word 'replicate' with 'make provision corresponding to' to clarify the power.

f. Subsection (10) sets the upper limits for surcharges or penalties, replicating subsection (8) of section 218 of the Planning Act. However, the maximum rates have been increased to reflect that IL amalgamates developer contributions derived from both section 106 planning obligations and CIL payments.

2403 Subsections (13) and (14) have been amended to reflect Magistrates' maximum sentencing powers following changes made by the Judicial Review and Courts Act 2022 and the potential future coming into force of section 281(5) Criminal Justice Act 2003.

Effect

2404 This section provides that IL regulations must include provisions on the enforcement of IL. In general, enforcement will only become necessary where there has been one or more failures to comply with IL processes.

2405 Regulations must make provision about the consequences of failing to assume liability, late payment and failure to pay (subsection (2)). Regulations may also make provision about the consequences of other breaches in connection with IL (subsection (3)).

2406 The types of provision which can be made through regulations on enforcement are set out in subsections (4) – (8). These include:

a. provision for the payment of interest; the imposition of a penalty or surcharge; the suspension or cancellation of a decision relating to planning permission, conferring a power of entry onto land; creating a criminal offence and conferring jurisdiction on a court to grant injunctive or other relief to enforce the provision of the regulations (subsection (4)).

b. provision for how actual or potential liability for IL should be registered and how the potential liable party is notified, whether or not in the context of late payment or failure to pay (subsection (5)).

c. prohibiting or restricting the use or occupation of all or part of a site pending payment of IL (subsection (6)).

d. registration of IL liability as a local land charge or in a statutory register (such as the register of planning applications which is maintained by local planning authorities under article 40 of the Town and Country Planning (Development Management Procedure) Order 2015). In addition, local land charges may be a device for charging liability to land and for ensuring that successive owners are liable for that charge.

e. providing for IL to be enforced similarly to the enforcement of any tax.

2407 Subsection (9) allows IL regulations to require that any interest, penalty or surcharge payable on application, collection and enforcement are to be treated as if they were IL (and so, for example, subject to the same rules about spending).

2408 The maximum surcharge or penalty is limited by subsection (10), but subsection (11) allows for more than one surcharge or penalty to be applied.

2409 A power is provided to make regulations creating criminal offences (subsection (4)(f)). However, subsection (13) provides for limits on the exercise of these powers. These relate to the maximum sentence that may be imposed in respect of any criminal offence.

Example (1): Defining enforcement surcharges, penalties and procedures

The CIL enforcement provisions in Part 9 of the 2010 CIL regulations enable local planning authorities to apply surcharges and penalties where the process of CIL is not followed, to serve notices to prevent the progress of development if CIL is not paid, and to recover CIL in the case of a non-payment. Examples include collecting surcharges where no party assumes liability before a development is commenced, where the notices are not served within the correct timeframe, late payments are made, or information notices are not complied with.

This section allows IL regulations to set out similar provisions for IL.

Part 10A, Section 204T: Compensation

Background

2410 This section deals with compensation that may be required as a result of enforcement action undertaken in section 204S with regards to IL. It replicates provision in section 219 of the Planning Act 2008, with an amendment made in subsection (2)(c) for an additional strand of enforcement action, which reflects the changes made in new section 204S.

2411 Regulations have not been made in respect of CIL under section 219 of the Planning Act 2008. However, IL will collect more revenue than CIL, as it is intended that it will replace much of what is currently also secured through s106 planning obligations. For this reason, it remains important to have the ability to regulate for the purposes of enabling compensation, for instance if enforcement action is taken improperly.

Effect

2412 Enforcement action may be undertaken by a charging authority or other local authority through regulations made under new section 204S. Where loss or damage is suffered as a result of enforcement action, subsection (1) allows IL regulations to require compensation to be paid to the affected parties.

2413 Regulations under this section cannot require the payment of compensation to a person who has failed to pay their IL liability (subsection (3)). IL regulations will be able to provide for other situations in which compensation will not be payable.

2414 Under subsection (4), IL regulations may also provide for the time and manner in which a claim for compensation must be made and how compensation is to be calculated. Powers are provided, in subsection (5) to permit or require charging authorities to use IL receipts to pay for any expenditure incurred under this section.

2415 If there is a dispute about the amount of compensation payable, subsection (6) provides powers to allow this to be referred to and determined by the Upper Tribunal.

2416 Subsection (7) applies section 4 of the Land Compensation Act 1961 to determinations by the Lands Tribunal under subsection (6) subject to any necessary modifications and to the provisions of IL regulations. Section 4 of the 1961 Act cover procedures on a reference to the Lands Tribunal and the award of costs by the Tribunal.

Part 10A, Section 204U: Procedure

Background

2417 This section provides powers for IL regulations to make provision for procedures that may need to be followed for IL. It replicates provision in section 220 of the Planning Act 2008, with the following amendments:

a. removal of the ability for IL regulations to make procedural provision about an authority proposing to stop charging IL (given that it is to be mandatory for a charging authority to charge IL and they will not be permitted to simply decide to stop doing so),

b. addition of an express ability for IL regulations to make provision about valuation and disputes (given that IL is proposed to be a value-based levy),

c. addition of an express general ability to make provision about timing;

d. an addition to subsection (3) to enable regulations to confirm what must or may be included on a charging schedule or elsewhere in relation to exemptions or reductions.

Effect

2418 Subsection (1) provides a power for IL regulations to make provision about the procedures to be followed in connection with IL.

2419 Subsection (2) provides particular examples of what IL regulations may contain. These include procedures on consultation, valuation, resolution of disputes and service of documents etc.

2420 Subsection (3) relates specifically to the procedure that may be followed where an exemption from or reduction of IL may be sought and what the procedures would apply in this circumstance.

2421 Subsection (4) provides that where there is a power elsewhere in Part 10A to make 'procedural provision', this encompasses all the types of provision which may be made under subsection (2).

2422 Subsection (5) confirms that powers related to publication also provide powers to make a published document available for inspection.

2423 Sections 229 to 231 of the Planning Act 2008 do not apply to this Part, but subsection (6) allows IL regulations to make similar provision.

Example (1): Combining the creation of a charging schedule with other requirements

Subsection (2)(s) provides power to combine procedures in connection with IL with procedures for another purpose of a charging authority. An example of the use of this power might be to combine the procedures for producing a draft charging schedule with the procedures for preparing development plan documents.

Part 10A, Section 204V: Appeals

Background

2424 This new section deals with appeals in connection with IL. It consolidates and extends the provision made in section 215, section 208(5)(d)(ii) and section 218(6)(b) of the Planning Act 2008, with the following amendments:

a. Subsections (1)-(2) and (4) provide general powers for regulations to provide for appeals in connection with IL. This will encompass existing appeal provisions in Part 11 of the Planning Act 2008 which are separated out in terms of different types of appeal. Section 215(1) of the 2008 Act requires that regulations provide for a right of appeal in relation to the calculation of CIL, section 208(5)(d)(ii) enables appeals against the apportionment of liability and section 218(6) enables appeals against enforcement.

b. Subsection (3) expressly replicates section 215(1) requiring regulations to provide for a right of appeal on a question of fact in relation to matters for the calculation of IL. The new provision specifies that this includes matters relating to valuation. Unlike the provision in section 215, it is not mandatory that the appeal must be to HMRC Commissioners. Instead, provision may be made under subsection (2)(c) regarding the person to whom the appeal is made and under subsection (4) regarding who is to be the defendant in the event of judicial review proceedings in respect of a decision on such an appeal.

Effect

2425 Subsection (1) provides regulation-making powers for, or in connection with, IL appeals. The appeals system for IL will therefore be similar to the existing CIL system (see box below).

2426 Subsection (2) elaborates on the kind of appeal provisions that can be provided for through IL regulations, in particular: who may make an appeal; the grounds on which an appeal is made; the court, tribunal or other person who is to determine the appeal; the period within which a right of appeal may be exercised; the procedure on an appeal; and the payment of fees and award of costs, in relation to an appeal.

2427 Subsection (3) requires IL regulations to provide for a right of appeal on a question of fact relating to the methods for calculating IL. This includes an appeal on a question of valuation for the purposes of IL.

2428 Subsection (4) enables regulations to specify who the defendant will be in the case of a judicial review against an appeal decision.

Example (1): Grounds for appeal

The wide power provided in subsection (1) will enable provision to be made that includes all the separate appeal provisions set out in the CIL appeal powers, in addition to grounds for appeal that may be IL specific. For example the final valuation of a development's gross development value. Examples of grounds for appeal that could be replicated through this power include the calculation of the chargeable amount, the apportionment of liability, application of relief or surcharges or application to a residential extension or annexe.

Part 10A, Section 204W: Secretary of State: Guidance

Background

2429 This new section deals with issuing statutory guidance on IL. It replicates the powers in respect of CIL in section 221 of the Planning Act 2008.

Effect

2430 This section gives the Secretary of State power to issue statutory guidance for charging authorities or any other public authority about any matter connected with IL. Such authorities must have regard to that guidance.

Example (1): Giving guidance to an independent person carrying out an examination

This power would enable the Secretary of State to give guidance to charging authorities or any other public authority about any matter connected with IL. This could be about, for example, guidance on the collection of IL, how to carry out an independent examination into an IL charging schedule or any other function which is carried out in the IL system. If the Secretary of State issues guidance under this section, the authority to whom the guidance is given would need to have regard to it.

Part 10A, Section 204X: Secretary of State: power to permit alteration of IL rates and thresholds

Background

2431 This new section gives the Secretary of State powers to permit charging authorities to alter IL rates and thresholds in particular circumstances. This power could be applied on a national basis or to a specific charging authority. Section 204X is a new provision in the Planning Act 2008.

Effect

2432 Subsection (1) sets out the circumstances which must pertain for the Secretary of State to permit such changes. Such circumstances are when the levy rate has impaired, or there is a substantial risk that it will impair, the economic viability of development (or development of a particular description) in the charging authority's area. Subsection (1) also provides that IL regulations may specify other circumstances in which the Secretary of State may permit an amendment to the charging schedule.

2433 If these conditions are met, the Secretary of State can publish a notice which allows a specified charging authority (or more than one such authority) to amend its charging schedules to reduce IL rates or increase the threshold below which Il is charged at a reduced rate or a nil rate, for a specified period. Subsection (2) also enables the Secretary of State to allow charging authorities to (a) cancel or delay planned increases in IL rates or decreases in nil rate/reduced rate thresholds, for a specified period; and (b) cancel or delay for no longer than a specified period, revisions or replacements of a charging schedule which would have resulted in increases in IL rates or decreases in nil rate/reduced rate thresholds.

2434 Subsection (3) allows the Secretary of State to include provision in the notice which is issued under subsection (2), which confers a discretionary power on a charging authority as to how it can amend its charging schedule to comply with the notice and as to whether to allow for any recalculation of IL liability which arose prior to the publication of the notice.

2435 Where amendments are made to a charging schedule under subsection (2), section 204G(11) does not apply (subsection (4)).

2436 Subsection (5) provides that regulations may specify the criteria that must be met by a charging authority or procedures that they must follow in order for a charging schedule to be amended.

2437 Subsection (6) enables regulations to restrict the use of the power in subsection (2), for example by restricting how much rates may be reduced by or to what level the minimum threshold should be increased.

2438 Subsection (7) allows regulations to make supplementary provision in connection with the application of subsection (2).

Example (1): Amending charging schedules in a financial crisis

In the event of a financial crisis, this power would enable the Secretary of State to permit amendments to IL charging schedules, if there was a significant risk that IL rates were impacting the economic viability of development or the viability of a particular development. A charging authority could amend its charging schedule to reduce IL rates for a specified time period, to prevent development from stalling. This allows rates to be adjusted without the normal procedural requirements such as re-examination.

Part 10A, Section 204Y: Secretary of State: power to require review of charging schedules

Background

2439 This section deals with circumstances where the Secretary of State can require a charging authority to review its charging schedule. Section 204Y is a new provision in the Planning Act 2008.

Effect

2440 Subsection (1) sets out the circumstances in which the Secretary of State may direct a charging authority to review its charging schedule. Such circumstances include situations where the Secretary of State considers that the levy rate has significantly impaired, or there is a substantial risk that it will significantly impair, the economic viability of development or the economic viability of a particular development. In addition, there may be circumstances where a significant period of time has elapsed since the issue, review or replacement of a charging schedule; or any other circumstances that may be specified in IL regulations.

2441 If a charging authority is directed to review its charging schedule by the Secretary of State, it must, under subsection (2), consider whether to revise or replace the charging schedule under section 204G(12) and notify the Secretary of State of its decision. If it considers a revision or replacement is required, it must undertake this within a reasonable time period (subsection (3)).

2442 If a direction for review is issued by the Secretary of State and the charging authority does not carry out the review within a reasonable time period, or to an acceptable standard, subsection (4) allows the Secretary of State to appoint a person to do so on behalf of the charging authority.

2443 If this person reviews the schedule and considers there is a need for the schedule to be revised or replaced, subsection (5) requires that this be done by the charging authority within reasonable time. If the charging authority does not complete the review within that time, then subsection (6) allows the Secretary of State to appoint someone to do this on their behalf.

2444 Subsection (7) allows IL regulations to specify further details- including matters relating to the person to be appointed by the Secretary of State and also what constitutes a reasonable time period in this context.

Example (1): Directing a review of a charging schedule

If a charging schedule was set in a recession and the economy has since improved, IL may not be capturing full value from planning permissions. Such a situation could be captured in regulations made under 204Y(1)(c) and this would enable the Secretary of State to require the charging authority to review their charging schedule under this section.

Example (2): Non-compliance with a charging schedule

If a charging authority does not comply with a direction to review its schedule, subsection (4) would allow Secretary of State to appoint a person to review the schedule on behalf of the charging authority. If this person considers that a review is required, and the charging authority doesn't undertake this review within a reasonable time period, subsection (5) would allow Secretary of State to appoint a further person to review the schedule on behalf of the charging authority.

Part 10A, Section 204Z: Parliamentary scrutiny: affordable housing

Background

2445 This new section places a duty on the Secretary of State to prepare a report that contains information on the effect of IL on the funding and provision of affordable housing. The Secretary of State must lay this report before Parliament (and publish it) within the five-year period after the first IL charging schedule has taken effect.

Effect

2446 Subsection (1) places a duty on the Secretary of State to prepare a report and sets out the information that must be included. The report must provide information on the amount of affordable housing that has been funded by IL for each charging authority and assess whether the charging of IL has resulted in the provision of more or less affordable housing. The report may include other relevant information that is related to affordable housing or other infrastructure.

2447 The Secretary of State must lay this report before Parliament within the five-year period after the first charging schedule has taken effect (subsection (2)).

2448 The Secretary of State must publish the report after it has been laid before Parliament (subsection (3)).

Part 10A, Section 204Z1: Regulations: general

Background

2449 This section provides a number of supplementary powers in relation to the making of IL regulations. It replicates provision in relation to CIL in section 222(1)-(3) of the Planning Act 2008, with some amendment – it allows IL regulations to make provision requiring the provision of information in connection with IL and to make provision treating CIL as if it were IL. This section also sets out the parliamentary procedure that applies to IL regulations.

Effect

2450 Subsection (1) gives additional powers to the Secretary of State to design elements of IL through regulations. This includes paragraph (c) which will allow for the Secretary of State to disapply IL in relation to an area or charging authority, so that the infrastructure levy does not have to be charged in that area or (as the case may be) by that authority. In such a case the charging authority may use section 106 planning obligations to obtain developer contributions.

2451 Subsections (2)-(3) provides for IL regulations to be made by statutory instrument subject to the affirmative resolution procedure (in the House of Commons only).

Example (1): Creating exemptions

Paragraphs (e) and (f) in subsection (1) provide for exceptions and confer discretionary powers. In combining these powers, it would be possible to give charging authorities a degree of discretion in deciding whether to create exceptions to a charging schedule.

Part 10A, Section 204Z2: Relationship with other powers

Background

2452 This section provides that IL regulations may include provision about how powers, including those under Part 11 of the Planning Act (CIL regime), sections 70 and 106 of the Town and Country Planning Act 1990 ("TCPA") and section 278 of the Highways Act 1980 may or may not be used alongside IL.

2453 This section replicates powers granted in relation to CIL under section 223 of the Planning Act 2008, with the following amendments:

a. Part 11 of the Planning Act 2008 is added to subsection (1), to provide power to make provision about the relationship between CIL and IL (given that, for a time at least, the two systems will operate in tandem).

b. section 70 of the TCPA is added to subsection (1) to enable the interrelationship between the planning conditions regime and IL to be provided for in regulations.

c. Subsection (3) has been added to provide powers for IL regulations to specify when a specific matter may or may not constitute a reason for granting planning permission or to specify that planning permission may or may not be granted subject to a specified condition; and

d. paragraph (a) has been added to subsection (5), permitting provision or guidance under subsections (1)-(3) to be made or issued in consequence of or to supplement provision under new section 204Z1(c) (provision disapplying any provision of new Part 10A in relation to a specific area or charging authority).

Effect

2454 Subsection (1) provides that IL regulations may include provision about how the following powers may be exercised - Part 11 of the Planning Act 2008 (which relates to CIL), section 70 of the TCPA (which relates to planning conditions) section 106 of the TCPA (which relates to planning obligations) and section 278 of the Highways Act 1980 (which relates to agreements with highways authorities for highways works).

2455 It also provides power to make IL regulations about the exercise of any other power relating to planning and development (subsection (2)) and for the Secretary of State to give guidance to charging and other authorities on the exercise of such powers (subsection (4)).

2456 Subsection (3) is a power for the Secretary of State to determine through IL regulations whether a specified matter may or may not be a reason for granting planning permission in specified circumstances; and also, whether planning permission may or may not be granted subject to a specified condition.

2457 The purposes to which any of these regulation-making or guidance giving powers may be put are circumscribed by subsection (5). For example, they may be used to enhance the effectiveness or use of IL regulations or to prevent or restrict the entering into of agreements under section 106 of the TCPA or section 278 of the Highways Act 1980 in addition to CIL. Finally, subsection (6) provides powers for IL regulations to control the exercise of powers to give directions or guidance.

Example (1): Creating different routeways for planning applications to allow in-kind payment of IL

Combining the powers in new section 204Z2(1) with new section 204R will allow the creation of the so-called "in-kind" routeway, where the provision of infrastructure through section 106 planning obligations will act as an in-kind payment of the Levy. Combined with subsection (3), IL regulations will be able to provide for the provision of infrastructure in this way to be a reason for planning permission to be granted.

Example (2): Limiting the use of S106 agreements

On sites where infrastructure is not to be used as a payment of IL, IL receipts will be used to deliver infrastructure which is required as a result of the cumulative impact of planned development. Subsections (1) and (3) will allow the use of S106 agreements to be restricted to only cover certain purposes.

Part 2 – Consequential amendments

Background

2458 This Part of Schedule 12 makes consequential amendments to various Acts, including the Planning Act 2008, that are required as a result of the new IL provisions contained in Part 10A.

Effect

2459 Section 101(6) of the Local Government Act 1972 provides that local authorities cannot delegate a function in relation to levying rates to a committee, sub-committee, officer or other local authority, but s.101(6A) provides that CIL is not a 'rate' for these purposes (so CIL functions can be so delegated). Paragraph 2 of Part 2 of Schedule 12 inserts a new paragraph (6ZA) into section 101 providing that IL is not a 'rate' for these purposes either, and so IL functions can likewise be delegated.

2460 Section 70(2)(c) of the Town and Country Planning Act 1990 provides that 'local finance considerations' are a material consideration when determining planning applications. Section 70(4) provides (among other things) that any CIL received or receivable is a local finance consideration. Paragraph 3 of Part 2 of Schedule 12 amends this so that any IL received or receivable is also a local finance consideration and therefore can be a material consideration.

2461 Section 70 of the Deregulation and Contracting Out Act 1994 allows a Minister to make a statutory instrument permitting local authorities to 'contract out' certain of their functions (i.e. authorize a person to carry out those functions on its behalf). However, section 71(1)(c) provides that functions which are a power or right of entry, search or seizure cannot be 'contracted out' in this way. But section 71(3)(i) then provides that CIL is an exception – so, for example, the power of entry in regulation 109 of the Community Infrastructure Levy Regulations 2010 can be 'contracted out'. Paragraph 4 of Part 2 of Schedule 12 makes an amendment to section 71 treating IL the same way, such that any powers or rights of entry, search or seizure included in IL regulations could be 'contracted out', if a statutory instrument is made to that effect under section 70.

2462 Paragraphs 5-7 of Part 2 of Schedule 12 replace "Part 11" with "Parts 10A and 11" in relevant sections of the Planning Act 2008, in order to ensure that IL is treated in like manner to CIL.

Schedule 13: Regulations under Chapter 1 of Part 3 or Part 6: restrictions on devolved authorities

Background

2463 This Schedule contains provisions about the restrictions on devolved authorities when making regulations under Chapter 1 of Part 3 or Part 6.

Effect

2464 Paragraph 1 prohibits devolved authorities from making regulations under Chapter 1 of Part 3 of Part 6 unless the provisions are within their devolved competence, as described in paragraphs 5-7.

2465 Paragraph 2 sets out that consent of a Minister of the Crown or Secretary of State is required if a devolved authority is making a provision using the powers in Chapter 1 of Part 3 or Part 6 and the provision would otherwise require consent if it were being made under other powers. That could be where the relevant devolved legislature's legislative powers were subject to a consent requirement, or where the devolved authority would normally require consent to make such a provision via secondary legislation. This requirement for consent will not apply if the devolved authority already has power to make such provision using secondary legislation or otherwise without needing the consent of the Minister of the Crown.

2466 Paragraph 3 sets out that, where a devolved authority would normally only be able to make legislation jointly with the UK Government, the devolved authority will still have to make such legislation jointly when exercising the powers in Chapter 1 of Part 3 or Part 6.

2467 Paragraph 4 requires consultation with the Government on legislation made by a devolved authority in the exercise of the powers in Chapter 1 or Part 3 or Part 6, where the devolved authority would normally be required to consult with the Government when making those kinds of provisions in legislation.

2468 Paragraphs 5 to 7 define devolved competence for the purposes of exercising the power in Chapter 1 of Part 3 and Part 6.

2469 Paragraph 8 provides definitions of terms used in this Schedule (Minister of the Crown, Northern Ireland devolved authority and subordinate legislation).

Schedule 14: Existing environmental assessment legislation

2470 This Schedule lists existing environmental assessment legislation as referred to in Part 6. Part 1 of the Schedule lists such legislation for the United Kingdom, England and Wales, Part 2 lists it for Scotland, Part 3 for Wales and Part 4 for Northern Ireland.

Schedule 15: Amendments of the Conservation of Habitats and Species Regulations 2017: assumptions about nutrient pollution standards

Background

2471 This Schedule amends Part 6 of the Conservation of Habitats and Species Regulations 2017 ("the 2017 Regulations") so that competent authorities, when making relevant assessments under the 2017 Regulations for planning-related decisions, are required to assume that sewage disposal works will meet the relevant nutrient pollution standards introduced by section 168 (Nutrient pollution standards to apply to certain sewage disposal works) by the relevant upgrade date (or by the 'applicable date' in the case of a catchment permitting area). The amendments also create a new power for the Secretary of State to direct authorities that the assumptions do not apply in relation to a particular plant and a particular nutrient pollution standard.

Effect

Part 1: Introductory

2472 Paragraph 1 specifies that this Schedule amends Part 6 of the 2017 Regulations (assessment of plans and projects).

Part 2: Planning

2473 Paragraph 2 is self-explanatory.

2474 Paragraphs 3) to 10 amend Chapter 2 of Part 6 of the 2017 Regulations (assessment of plans and projects: planning) to signpost the assumptions in new regulations 85A and 85B.

2475 Paragraph 11 inserts new regulations 85A to 85D into the 2017 Regulations.

85A Assumptions to be made about nutrient pollution standards: general

a. Paragraph (1) sets out the circumstances under which the assumptions in paragraph (2) apply, which includes where the competent authority is required to make a relevant assessment before a decision is made.

b. Paragraph (2) requires that in making that relevant assessment, defined in regulation 85A(6), the competent authority must assume that a nitrogen significant plant will meet the nitrogen nutrient pollution standard on and after the upgrade date (or applicable date for a catchment permitting area plant) and that a phosphorus significant plant will meet the phosphorus nutrient pollution standard on and after the upgrade date (or applicable date for a catchment permitting area plant).

c. Paragraph (3) makes paragraph (2) subject to regulation 85C, which provides the Secretary of State with a power to disapply the assumption, and clarifies that the assumption duty does not prevent the competent authority from having regard to outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant. "Outperformance" is defined in regulation 85D(3) and occurs where the plant meets the relevant nutrient pollution standard before the upgrade date or where there is a lower nitrogen or phosphorus concentration in treated effluent than the specified standard.

d. Paragraph (4) defines the term "relevant decision" in relation to the assessment and review provisions in the 2017 regulations.

e. Paragraphs (5) and (6) define the terms "potential development" and "relevant assessment" respectively.

85B Assumptions to be made about nutrient pollution standards: general development orders

a. Paragraph (1) sets out the circumstances in which the assumptions in paragraph (2) apply, with reference to the regulations relevant to the applicable decisions. The circumstances include where the local planning authority is required to make an appropriate assessment under regulation 77(6) before a decision is made.

b. Paragraph (2) requires that in making the relevant assessment, the local planning authority must assume that a nitrogen significant plant will meet the nitrogen nutrient pollution standard on and after the upgrade date (or applicable date for a catchment permitting area plant) and that a phosphorus significant plant will meet the phosphorus nutrient pollution standard on and after the upgrade date (or applicable date for a catchment permitting area plant).

c. Paragraph (3) makes paragraph (2) subject to regulation 85C, which provides the Secretary of State with a power to disapply the assumption, and it also clarifies that the assumption duty does not prevent the local planning authority from having regard to outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant. "Outperformance" is defined in regulation 85D(3).

85C Direction that assumptions are not to apply

a. Paragraph (1) allows the Secretary of State to direct that the assumptions to be made by competent authorities and local planning authorities in regulations 85A(2) and 85B(2) do not apply in relation to a particular plant and a particular nutrient pollution standard.

b. Paragraph (2) specifies when such a direction may be made. Where the plant is a non-catchment permitting area plant, this will be only if the Secretary of State is satisfied that the plant will not be able to meet the standard by the upgrade date. In the case of a catchment permitting area plant, it may be made, where the Secretary of State is satisfied that the plant will not be able to meet the standard by the applicable date, or that the overall effect on the habitats site of nutrients in treated effluent from all plants that discharge into the catchment permitting area will be greater than the overall effect on the site of nutrients in treated effluent from those plants if any nutrient significant plants were subject to and meeting the nutrient pollution standard on the applicable date (see paragraph (4)).

c. Paragraph (3) allows the Secretary of State to revoke such a direction if satisfied: where the plant is a non-catchment permitting area plant, that the plant will in fact meet the standard by the upgrade date; where the plant is a catchment permitting area plant, that the plant

will meet the standard by the applicable date, or that the overall effect on the habitats site of nutrients in treated effluent from all plants that discharge into the catchment permitting area will be the same or less significant than the overall effect on the site of nutrients in treated effluent from those plants if any nutrient significant plants were subject to and meeting the nutrient pollution standard on the applicable date (see paragraph (4)).

d. Paragraph (4) explains the effects that need to be compared for the purposes of making or revoking a direction relating to a catchment permitting area plant under paragraph (2)(b)(ii) or paragraph (3)(b)(ii).

e. Paragraph (5) sets out that in deciding whether to make the direction the Secretary of State may, in particular, have regard to when a non-catchment permitting area plant can be expected to meet the standard, or, where the plant is a catchment permitting area plant, to when the plant can be expected to meet the standard and the sewerage undertaker for the plant can be expected to be in compliance with conditions in the environmental permit for the plant.

f. Paragraph (6) introduces a consultation requirement and lists the bodies and persons that the Secretary of State must consult before making or revoking a direction under this regulation.

g. Paragraph (7) requires that a direction or revocation under this regulation is made in writing and specifies when it takes effect.

h. Paragraph (8) sets out the notification requirements on the Secretary of State after a direction has been made or revoked.

85D Regulations 85A to 85C: interpretation

a. This regulation defines terms used in regulations 85A to 85C.

Part 3: Land use plans

2476 Paragraph 12 is self-explanatory.

2477 Paragraphs 13 to 15 amend regulations 105, 106 and 110 in the 2017 Regulations to signpost the assumption in new regulation 110A.

2478 Paragraph 16 inserts new regulations 110A to 110C into the 2017 Regulations.

2479 110A Assessments under this Chapter: required assumptions

a. Paragraph (1) sets out the circumstances under which the assumptions in paragraph (2) apply, which includes where the authority is required to make a relevant assessment before a decision is made.

b. Paragraph (2) requires that in making the relevant assessment, defined in regulation 110A(5), the authority must assume that a nitrogen significant plant will meet the nitrogen nutrient pollution standard on and after the upgrade date (or applicable date for a catchment permitting area plant) and that a phosphorus significant plant will meet the phosphorus nutrient pollution standard on and after the upgrade date (or applicable date for a catchment permitting area plant).

c. Paragraph (3) makes paragraph (2) subject to regulation 110B, which provides the Secretary of State with a power to disapply the assumption, and clarifies that the assumption duty does not prevent the authority from having regard to outperformance, or expected outperformance, by a plant that is a non-catchment permitting area plant. "Outperformance" is defined in regulation 110C(3)

2480 Paragraphs (4) and (5) define the terms "relevant decision" and "relevant assessment" respectively.

110B Direction that assumptions are not to apply

a. Paragraph (1) allows the Secretary of State to direct that the assumptions in regulation 110A(2) do not apply in relation to a particular plant and a particular nutrient pollution standard.

b. Paragraph (2) specifies when such a direction may be made. Where the plant is a non-catchment permitting area plant, this will be only if the Secretary of State is satisfied that the plant will not be able to meet the standard by the upgrade date. In the case of a catchment permitting area plant, it may be made where the Secretary of State is satisfied that the plant will not be able to meet the standard by the applicable date, or that the overall effect on the habitats site of nutrients in treated effluent from all plants that discharge into the catchment permitting area will be greater than the overall effect on the site of nutrients in treated effluent from those plants if any nutrient significant plants were subject to and meeting the nutrient pollution standard on the applicable date (see paragraph (4)).

c. Paragraph (3) allows the Secretary of State to revoke such a direction if satisfied: where the plant is a non-catchment permitting area plant, that the plant will in fact meet the standard by the upgrade date; where the plant is a catchment permitting area plant, that the plant will meet the standard by the applicable date, or that the overall effect on the habitats site of nutrients in treated effluent from all plants that discharge into the catchment permitting area will be the same or less significant than the overall effect on the site of nutrients in treated effluent from those plants if any nutrient significant plants were subject to and meeting the nutrient pollution standard on the applicable date (see paragraph (4)).

d. Paragraph (4) explains the effects that need to be compared for the purposes of making or revoking a direction relating to a catchment permitting area plant under paragraph (2)(b)(ii) or paragraph (3)(b)(ii).

e. Paragraph (5) sets out that in deciding whether to make the direction the Secretary of State may, in particular, have regard to when a non-catchment permitting area plant can be expected to meet the standard, or, where the plant is a catchment permitting area plant, to when the plant can be expected to meet the standard and the sewerage undertaker for the plant can be expected to be in compliance with conditions in the environmental permit for the plant.

f. Paragraph (6) introduces a consultation requirement and lists the bodies and persons that the Secretary of State must consult before making or revoking a direction under this regulation.

g. Paragraph (7) requires that a direction or revocation under this regulation is made in writing and specifies when it takes effect.

h. Paragraph (8) sets out the notification requirements on the Secretary of State after a direction has been made or revoked.

110C Regulations 110A and 110B: interpretation

a. This regulation defines terms used in regulations 110A to 110B.

Schedule 16: Locally-led development corporations: minor and consequential amendments

Background

2481 This Schedule contains amendments to the Local Government, Planning and Land Act 1980 and New Towns Act 1981, that are minor and consequential to the introduction of locally-led development corporations.

Consequential amendments to Section 134 (urban development area) of the Local Government, Planning and Land Act 1980

2482 Paragraph 2 amends section 134 (urban development areas) of the Local Government, Planning and Land Act 1980. These are not substantive changes; instead, it reflects the true position in the Local Government, Planning and Land Act 1980 since the transfer of Secretary of State functions to the Scottish Ministers and Welsh Ministers.

2483 Paragraph 2(5) of this Schedule also inserts new subsection (3C) into section 134 of the Local Government, Planning and Land Act 1980 to set out the procedure of altering boundaries to exclude areas of land from an urban development area of a Locally-led Urban Development Corporation.

Effect

2484 Paragraph 2(1) to (4) and (6) to (10) changes the references to the Secretary of State to 'appropriate national authority' and makes amendments consequential to this, including where regulations are to be made either by the Houses of Parliament, Scottish Parliament, or Senedd Cymru. This is in recognition that these functions are performed by, or powers fall to, the Secretary of State in England, Scottish Ministers in Scotland, and Welsh Ministers in Wales. Legislative competence lies with the Houses of Parliament in England, the Scottish Parliament, and Senedd Cymru.

2485 Paragraph 2(5) inserts new subsection (3C) into section 134 of the Local Government, Planning and Land Act 1980. The effect of the change is that the Secretary of State must have consent from the oversight authority before making any changes to exclude areas of land from the urban development area of a Locally-led Urban Development Corporation.

2486 Paragraph 2(11) inserts subsection (6) into section 134 of the Local Government Planning and Land Act 1980 and providing for the procedure to for designating a locally-led urban development area by order. Paragraph 2(11) also inserts new subsection (7) which defines 'appropriate national authority' as the Secretary of State in England, Scottish Ministers in Scotland, and Welsh Ministers in Wales in amended section 134 of the Local Government, Planning, and Land Act 1980.

Consequential amendments to Section 135 (urban development corporation) of the Local Government, Planning and Land Act 1980.

Background

2487 Paragraph 3 of this Schedule amends subsection (2) of section 135 and inserts new subsection (7) into section 135 of the Local Government, Planning and Land Act 1980.

Effect

2488 Paragraph 3(2) has the effect of allowing the Secretary of State, by order, to designate a locally-led Urban Development Corporation via the same order used to designate a locally-led urban development area as set out under section 134 (1B), or a separate order.

2489 Paragraph 3(3) inserts subsection (7) into section 135 which sets out the definition of a 'local authority' which means a district, county or London borough council, and the City of London Corporation. This is consistent with the definition under section 134A.

Consequential amendments to section 140 consultation with local authorities for locally-led urban development corporations.

Background

2490 Paragraph 4 of this Schedule amends section 140 (consultation with local authorities) for locally-led Urban Development Corporations. This currently sets out that the urban development corporation shall prepare a code of practice on how it should consult with local authorities about the exercise of the Urban Development Corporations powers.

Effect

2491 Paragraph 4 has the effect of disapplying the need to prepare a code of practice when consulting with local authorities on how a locally-led development corporation is to exercise its powers.

Key definitions

Background

2492 Paragraph 5 amends section 171 of the Local Government, Planning and Land Act which sets out interpretation and key definitions.

Effect

2493 Paragraph 5(2) of this Schedule provides new definitions of key terms. These terms are "locally-led urban development area", "locally-led urban development corporation", and "oversight authority". Paragraph 5(3) updates the definition of 'urban development area' to reference orders made under subsection (1B).

Consequential amendments to the New Town Act 1981

Background

2494 Paragraph 6-9 of this Schedule makes consequential amendments to the New Town Act 1981.

Effect

2495 Paragraph 7 amends section 1A (local authority to oversee development of new town) which has the effect of removing subsections (1), (2), (3) and (7) as a result of new section 1ZA and 1ZB which now cover the local authority proposal for a locally-led New Town and its designation; amending terminology from 'local authority' to 'oversight authority' in subsection (4) and removing the definition of specified in subsection (8) paragraph (a) as a result of removing subsection (2).

2496 Paragraph 8 inserts new subsection (1A) into section 2 (reduction of designated areas). The effect of this change is that the Secretary of State must have consent from the oversight authority before making any changes to exclude areas of land from the area designated as a locally-led New Town.

2497 Paragraph 9 amends section 80 (general interpretation), which sets out general interpretation and definitions. Paragraph 9(2) of this Schedule provides new definitions of key terms. These terms are "locally-led development corporation", "locally-led new town", and "oversight authority". Paragraph 9(3) applies the existing reference to the area of a new town to a locally led new town designated under 1ZB.

Schedule 17: Planning functions of development corporations: minor and consequential amendments

Background

2498 The schedule contains amendments to the New Towns Act 1981, the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, and the Localism Act 2011. These amendments are minor and consequential to the conferral of planning functions to Urban Development Corporations, New Town Development Corporations and Mayoral Development Corporations.

Effect

2499 Paragraph 1 amends the heading of section 7 and amends section 77 of the New Towns Act 1981. This allows the conferral of planning functions to a New Town Development Corporation under new subsection 7A to be made by order using the negative parliamentary procedure.

2500 Paragraph 2 amends provisions in the Town and Country Planning Act 1990. Paragraph 2(2) amends section 7 (urban development corporations as the local planning authority) so that it is subject to section 8A, where the Homes and Communities Agency may become a local planning authority. Paragraph 2(3) inserts new section 7ZA into the TCPA 1990. This defines the local planning authority for development management purpose when a New Town Development Corporation becomes the local planning authority under new subsection 7A(2)(a) or (4)(a) of the New Towns Act 1981.

2501 Paragraph 2(4) amends section 7A (Mayoral development corporation as a local planning authority so that it is subject to section 8A, where the Homes and Communities Agency may become a local planning authority.

2502 Paragraph 2(5) amends section 62B(5) of the TCPA 1990 to include New Town Development Corporations alongside existing development corporation models as a planning authority that cannot be designated for the purposes of allowing direct planning applications to the Secretary of State.

2503 Paragraph 2(6) updates the definition of 'relevant authority' to include New Town Development Corporations in relation to local finance considerations to be taken into account in planning decisions.

2504 Paragraph 2(7) updates the different types of development corporation that are subject to local highway authority restrictions when planning permission is granted to include New Town Development Corporations where they are the planning authority. This allows the Secretary of State, by order, to include provisions enabling a local highway authority to impose restrictions on planning permissions by a development corporation.

2505 Paragraph 3 amends Schedule 4 to the Planning (Listed Buildings and Conservation Areas) Act 1990. This includes New Town Development Corporation and Mayoral Development Corporations in the definition of local planning authority when they take on planning powers under new subsection 7ZA and subsection 7A respectively of the TCPA 1990.

2506 Paragraph 4 amends section 3 of the Planning (Hazardous Substances) Act 1990. This amends the definition of hazardous substances authorities to include all types of development corporation provided they take on these specified functions.

2507 Paragraph 5 amends section 205(5) of the Localism Act 2011 so that the reference relating to Urban Development Corporation should be read as Mayoral Development Corporations in relation to Part 2 of Schedule 29 to the Local Government, Planning and Land Act 1980.

Schedule 18: Conditional confirmation and making of compulsory purchase orders: consequential amendments

Background

2508 Schedule 18 contains, and makes provision in connection with, amendments in consequence of section 183 (conditional confirmation of CPOs) of, and paragraph 3 of Schedule 19 (corresponding provision for purchases by Ministers) to, the Act.

Effect

2509 Paragraph 1 makes a consequential amendment to subsection (6) of section 33D of the Land Compensation Act 1973 (exclusions from basic loss payments) to ensure the relevant time a notice under subsection (4) of that section has effect, or is operative, takes into account the situation where a CPO in relation to the person's interest in the land has been conditionally confirmed.

2510 Paragraph 2 makes a consequential amendment to subsection (2) of section 5 of the Compulsory Purchase (Vesting Declarations) Act 1981 as a result of changes to section 26 of the Acquisition of Land Act 1981 ("the 1981 Act") in relation to operative dates for CPOs and certificates issued under Part 2 of Schedule 3 to the 1981 Act.

2511 Paragraph 3(1) sets out the 1981 Act is amended by paragraphs 3(2) and (3). Paragraph 3(2) makes a consequential amendment to section 7 of the 1981 Act to clarify where matters are required or authorised to be prescribed under the Act in relation to CPOs which may be made or confirmed by the Welsh Ministers, the reference to the Secretary of State in subsection (2) to section 7 of the 1981 Act should be read as the Welsh Ministers. It also clarifies the reference in subsection (3) to section 7 of the 1981 Act to either House of Parliament should be read in these cases as a reference to Senedd Cymru.

2512 Paragraph 3(3) makes a consequential amendment to section 26 of the 1981 Act to clarify the operative dates for CPOs which have been confirmed conditionally or unconditionally. It also confirms the operative dates for certificates given under Part 3 of, and Schedule 3 to, the 1981 Act.

2513 Paragraph 4(1) sets out that the Housing Act 1985 is amended by paragraphs 4(2) and (3). Paragraph 4(2) makes a consequential amendment to subsections (2) and (6) of section 582 of the Housing Act 1985 to ensure the period of suspension for the recovery of possession of certain premises when a CPO is made, and the termination of that period, allows for the circumstances where a CPO is conditionally confirmed.

2514 Paragraph 4(3) makes a consequential amendment to paragraph 3 of Schedule 5A to the Housing Act 1985 to ensure the definition of a "relevant decision" under that paragraph for the purposes of preventing a landlord from carrying out the demolition of a dwelling-house includes where a CPO was conditionally confirmed but it was decided the conditions had not been met. It also clarifies that where a CPO was conditionally confirmed but an application by the acquiring authority for the discharge of the conditions had not been received which resulted in the CPO expiring, an initial demolition notice will cease to have effect from the date of when the CPO expired.

2515 Paragraph 5 makes a consequential amendment to subsection (7)(b) of section 137 of the Town and Country Planning Act 1990 to ensure the discontinuance of a CPO for the purpose of a blight notice exception under that section of the Act takes into account the situation where a CPO has been conditionally confirmed.

2516 Paragraph 6 makes a consequential amendment to subsection (6)(b) of section 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to ensure the discontinuance of a CPO for the purpose of the listed building purchase notice exception under that section of the Act takes into account the situation where a CPO has been conditionally confirmed.

2517 Paragraph 7 makes a consequential amendment to subsection (8)(b) to section 111 of the Historic Environment (Wales) Act 2023 to ensure the discontinuance of a CPO for the purpose of the listed building purchase notice exception under that section of the Act takes into account the situation where a CPO has been conditionally confirmed.

Schedule 19: Compulsory purchase: corresponding provision for purchases by Ministers

Online publicity

Background

2518 Schedule 19 makes provisions for circumstances in which Ministers are the acquiring authority for the purposes of the Acquisition of Land Act 1981 ("the 1981 Act").

Effect

2519 Subparagraph (1) gives effect to the amendments made in (2) to (6) in Schedule 1 to the 1981 Act.

2520 Subparagraph (2) changes the italic heading "Notices in newspapers" to "Public notices".

2521 Subparagraph (3) amends paragraph 2 of Schedule 1. It:

a. amends subparagraph (1) to maintain the requirement for a newspaper notice to be published for two successive weeks and introduces the requirement to publish a notice in the prescribed form for 21 days on an appropriate website.

b. makes consequential amendments to subparagraph (2) as a result of paragraph (a).

c. gives the appropriate authority a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the appropriate authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make the documents available in a physical location.

d. makes a consequential amendment as a result of the changes to subparagraph (2).

2522 Subparagraph (4) amends paragraph 3 of Schedule 1 which sets out the requirements to notify certain persons prior to submitting a CPO for confirmation. It introduces a new requirement for the notice to include details of a website where the draft CPO and associated map can be viewed. It also requires that the notice should specify the final date for making objections.

2523 Subparagraph (5) inserts a new paragraph "Final day for making objections" into Schedule 1. This new paragraph explains what the final day for making objections to a CPO is. The time period for making objections has not changed. This paragraph is only needed to clarify the position following the introduction of the additional requirements to publish notices under paragraphs 2 and 3 on an appropriate website.

2524 Subparagraph (6) amends paragraph 6 of Schedule 1 which sets out requirements to publish notices after a CPO has been confirmed. It:

a. introduces a new additional requirement for acquiring authorities to publish the notice on an appropriate website for 6 weeks.

b. introduces a new additional requirement for the notice to specify a website where a CPO and associated map can be viewed.

c. gives appropriate authorities a new power to direct that the existing requirement for a notice to name a place where a CPO and map can be viewed does not apply. This power can only be exercised where the appropriate authority is satisfied that there are special circumstances which mean it is impractical for the acquiring authority to make copies available in a physical location.

Proceedings for considerations of draft order

Effect

2525 Subparagraph (1) gives effect to the amendments made in subparagraphs (2) and (3) in paragraph 2 of Schedule 19.

2526 Subparagraph (2) makes amendments to paragraph 4A of Schedule 1 to the 1981 Act and sets out the circumstances in which a public local inquiry must be held. Where those circumstances do not apply, the confirming authority has the power to decide whether to hold either a public local inquiry or follow a representations procedure. Details of the representations procedure will be set out in secondary legislation. The procedure will allow remaining objectors to provide oral representations at a hearing if they wish to. It will also allow acquiring authorities and any other person who the confirming authority thinks appropriate to make representations in writing or at any hearing requested by a remaining objector.

2527 Subparagraph (3) makes consequential amendments to paragraph 4B of Schedule 1 to the 1981 Act to reflect the changes to paragraph 4A of Schedule 1 to the 1981 Act.

Conditional orders

Effect

2528 Subparagraph (1) gives effect to the amendments made in subparagraphs (2) and (3) in paragraph 3 of Schedule 19.

2529 Subparagraph (2) inserts paragraph 4AA into Schedule 1 to the 1981 Act.

2530 New paragraph 4AA(1) gives the Minister the power to confirm a CPO.

2531 New paragraph 4AA(2) provides that acquiring authorities will only be able to implement CPOs which have been confirmed conditionally, once an application to discharge the conditions has been approved by the Minister. Where such an application has not been received within the required time or the confirming authority declines the application, the CPO cannot be implemented.

2532 New paragraph 4AA(3) gives the Minister discretion as to what conditions to impose and the timeframe in which the conditions must be met.

2533 New paragraph 4AA(4) provides that the application process is to be prescribed.

2534 New paragraph 4AA(5) requires that the application process must provide for relevant objectors to be notified of the application, have the opportunity to submit written representations to the confirming authority and include provision as to the giving of reasons for the decision by the Minister.

2535 New paragraph 4AA(6) defines a relevant objector.

2536 Subparagraph (3) makes consequential amendments to notices issued after confirmation of a CPO and provision for notices to be served on discharge of any condition imposed.

Schedule 20: Grounds of appeal against final letting notice

Background

2537 Section 202 (appeals) provides that the landlord may appeal against a final letting notice to the county court.

Part 1: Grounds

Effect

2538 Part 1 sets out the grounds upon which the landlord may appeal against a final letting notice to the county court. These include that the vacancy condition was not met, that the premises were not suitable for high-street use, that the local benefit condition was not met, that the local authority failed to give consent to a letting where it was required to do so, where the landlords intends to redevelop, or where the landlord intends to occupy the premises themselves.

Part 2: Interpretation and application

Effect

2539 Part 2 sets out matters of interpretation and application in connection with the grounds of appeal.

Schedule 21: Provision to be included in terms of tenancy further to agreement under section 204

Background

2540 Section 206 (terms of tenancy) provides that the terms of the tenancy must include certain provisions.

Effect

2541 This Schedule sets out the provisions which need to be included in the terms of a tenancy further to an agreement under section 204 (power to contract for tenancy). These include what obligations the landlord has with respect to maintenance or repair of anything outside the premises that enables or facilitates the use of the premises and, the supply of utilities to the premises. These also include what obligations the tenant has to keep the premises in repair, provision about the tenant making alterations to the premises and provision requiring the tenant to insure the premises.

2542 They also include provision enabling the landlord to recover from the tenant costs reasonably incurred by or on behalf of the landlord in connection with the premises, provisions dealing with assignment and subletting, provision requiring the tenant to give a deposit, provision about the circumstances in which the landlord can re-enter the premises following a tenant's breach, and provision requiring the tenant to deliver up the premises with vacant possession at the end of the tenancy.

Schedule 22: Pavement Licences

Introductory

2543 Paragraph 1 provides definitions of key terms to be used throughout Schedule 22. These terms are "the 2020 Act", "the commencement date" and "pavement licence".

Making pavement licence provisions permanent

Background

2544 Paragraph 2(1) amends the Business and Planning Act 2020 ('the 2020 Act') to omit section 10 which sets out the expiry date of the temporary pavement licence provisions, and to omit from section 23 (4) of the 2020 Act, which sets out when a statutory instrument containing regulations must be laid before Parliament, the word "10". This is a consequential change as a result of omitting section 10.

Effect

2545 This has the effect of removing the sunset section and associated references, which previously applied to these provisions when they were made to be temporary. This means that the provisions for pavement licensing in section 1 of the 2020 Actnow do not sunset on a particular date and are permanent.

Applications: fees

Background

2546 Paragraph 3 amends section 2 of the 2020 Act to replace the previous fee cap chargeable by a local authority for a pavement licence. This is expressed as 'the relevant amount'. Paragraph 3 also introduces new subsection (1A) to section 2 of the 2020 Act which defines the relevant amount, and new subsection (1B) to section 2 of the 2020 Act which introduces a power for the Secretary of State to be able to substitute the relevant amount by regulations.

Effect

2547 Subparagraph (2) has the effect of changing the fee cap from the previous £100 level, to the "relevant amount".

2548 Subparagraph (3) inserts subsection (1A) which has the effect of introducing the definition of "the relevant amount". This introduces two new fee caps under which the local authority can charge a fee for a pavement licence, £350 in the case of a renewal application and £500 in the case of any other application. This replaces the previous fee cap of £100. The fee cap is a maximum the local authority is able to charge, and local authorities should only charge to cover their costs. Local authorities are able to set a fee structure within the cap.

2549 New subsection (1B) has the effect of giving the Secretary of State a new power to substitute by regulations a different amount for those specified in the definition of "the relevant amount" which sets the fee caps. This is intended to allow the fees to keep pace with the costs for processing applications.

Applications: procedure on renewals

Background

2550 Paragraph 5 amends section 2 of the 2020 Act to introduce the criteria for what can be considered a renewal application and the details that need to be submitted for such an application.

Effect

2551 This has the effect of introducing a more streamlined application process for renewal applications. This would mean that applicants do not have to provide the full details as set out in section 2(2) of the 2020 Act, but they simply need to make an application for the same licence and provide any additional evidence that the local authority may ask for. This means that the fee cap for these types of applications can be lower at £350.

Applications: periods for consultation and determination

Background

2552 Paragraph 6 amends section 2 of the 2020 Act.

2553 Paragraph 7 amends section 3 of the 2020 Act. Sections 2 and 3 provided for a period of consultation of 7 days after which the local authority had a further 7 days to determine whether to grant the licence.

Effect

2554 Paragraphs 6 and 7 amend the period of consultation to 14 days and provide a further 14 days for the local authority to make its decision.

Duration of licences

Background

2555 Paragraph 8 amends section 4 of the 2020 Act to substitute subsections 4(1) and (2) for the new subsections (1) and (2), which changes the limit for how long the licence is valid.

Effect

2556 This has the effect of allowing local authorities to grant pavement licences for a length of their choosing up to a maximum of two years.

Enforcement of licences

Background

2557 Paragraph 9 introduces a new subsection (4) to section 6 of the 2020 Act.

Effect

2558 This has the effect of allowing the local authority to amend a pavement licence with the consent of the licence-holder, which has been granted or deemed to be granted by them, if it considers that the highway is no longer suitable for the use as granted by the licence. This might also be due to evidence that there is a risk to public health or safety, increased anti-social behaviour, the highway is being obstructed or the no-obstruction condition, which applies to all pavement licences, is not being complied with.

Effect of licences

Background

2559 Paragraph 10 omits subsections (4) to (6) and (8) to (10) of section 7 of the 2020 Act. Paragraph 11 amends the Highways Act 1980 to insert new subsection (5) to section 115E. Paragraph 12 amends section 249 of the Town and Country Planning Act 1990 to permanently introduce text into subsection (7).

Effect

2560 These amendments have the effect of removing interactions between the previous route to gaining a pavement licence in England allowed under the Highways Act 1980 and this permanent route that are no longer relevant. Specifically, paragraph 11 requires that permissions to do anything which could be authorised by a pavement licence under the regime introduced through the 2020 Act are to be authorised through that route. Paragraph 12 introduces permanent text which extends powers for the Secretary of State or the local planning authority to make an order which may make provision for the removal of an obstruction which would be allowed by the pavement licensing regime.

Enforcement

Background

2561 Paragraph 13 inserts after section 7 of the 2020 Act a new section 7A. Previously, local authorities could only revoke licences or serve a notice requiring necessary steps to be taken to remedy the breach of a condition of a licence.

Effect

2562 This has the effect of introducing a new enforcement power for local authorities who are tasked with granting pavement licences. This new power applies where furniture which would normally be permitted by a pavement or other licence has been placed on a relevant highway without the required licence. This power allows the local authority to give notice requiring the person to remove the furniture before a date specified, and refrain from putting furniture on the highway unless they gain a licence. If furniture continues to be placed on the highway in contravention of the notice the local authority may remove and store the furniture, recover the costs from the person and refuse to return the furniture until those costs have been paid. If within 3 months of the notice being given the costs are not paid, the local authority can dispose of the furniture by sale or other means and retain the proceeds.

Local authority functions

Background

2563 Paragraph 14 omits subsection (2) of section 8 of the 2020 Act and paragraph 15 inserts the same provisions permanently into Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

Effect

2564 This has the effect of making permanent the reference to pavement licensing in the list of local authority functions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

Other amendments

Background

2565 Paragraph 16 omits subsections (2) and (3) of section 9 of the 2020 Act as they are no longer required given that the provisions are spent.

Effect

2566 This has the effect of excluding the applicability of temporary traffic orders made for purposes connected to coronavirus as this is no longer in force.

Background

2567 Paragraph 17 amends section 62 of the Anti-social Behaviour, Crime and Policing Act 2014 to insert a new provision exempting areas which are granted a pavement licence from alcohol prohibition in public spaces protection orders. Public spaces protection orders are provisions applying restrictions to an area for the purposes of the reduction of anti-social behaviour and may make provision regarding the sale of alcohol in or around that area.

Effect

2568 This has the effect that, where there is a pavement licence in place and a public space protection order exists, the public space protection order will not have effect in the area granted a pavement licence.

Transitional provision

Background

2569 Paragraph 18 makes transitional provisions for the duration of pavement licences that are already granted prior to the commencement date of Schedule 22.

Effect

2570 Where an application has already been granted or deemed to be granted under the 2020 Act without a specified duration, the licence will be in force for two years from the commencement of Schedule 22.

Background

2571 Paragraph 19 makes a transitional provision in relation to the amendment in paragraph 11 to require permissions that could be authorised through the route set out in the 2020 Act are to be authorised under that regime. This transitional provision means that paragraph 11 does not impact permissions granted under section 115E of the Highways Act 1980 prior to the commencement of Schedule 22.

Effect

2572 Where permission has already been granted under section 115E of the Highways Act 1980, the provisions in paragraph 11 do not apply meaning that a council cannot require an additional application be made under section 1 of the 2020 Act whilst the permission granted under section 115E of the Highways Act 1980 is valid.

Schedule 23: Use of non-domestic premises for childcare: registration

2573 This Schedule is introduced by subsection (2) of section 237 of this Act (childcare: use of non-domestic premises). It makes further amendments to Part 3 of the Childcare Act 2006 relating to the registration of persons providing childminding wholly on non-domestic premises.

2574 Paragraph 1 provides for Part 3 of the Childcare Act 2006 (regulation of provision of childcare in England) to be amended as set out on this Schedule.

Chapter 1 of Part 3: General Functions of the Chief Inspector

2575 Paragraph 2 inserts a new subsection (6) into section 32 of the Childcare Act 2006 (maintenance of two childcare registers), deeming any references in section 32 to persons registered as "childminders" to mean persons registered as childminders whether with or without domestic premises. This ensures the two childcare registers maintained by His Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector"), the early years register and the general childcare register, must include all persons registered with the Chief Inspector as childminders with and without domestic premises.

Chapter 2 of Part 3: Regulation of early years provision

2576 Paragraphs 3 to 8 amend Chapter 2 of Part 3 of the Childcare Act 2006 (regulation of early years provision).

2577 Paragraph 3 amends subsection (1) of section 33 of the Childcare Act 2006 (requirement to register: early years childminders) to require a person who provides early years childminding in England (other than early years childminding in respect of which a person is exempt from registration), where some or all of the provision is on domestic premises, to be registered with the Chief Inspector in the early years register, or with an early years childminder agency, as an "early years childminder with domestic premises".

2578 Paragraph 4 amends section 34 of the Childcare Act 2006 (requirement to register: other early years providers) to create a new category of early years childminder who provides all of their childminding from non-domestic premises. Subparagraph (2) substitutes subsections (1) and (1ZA) of section 34 with new subsections (1) and (1ZA).

2579 The new section 34(1)(a) continues to prohibit a person from providing early years provision on non-domestic premises in England (other than early years provision to which the new subsection (1ZA) applies or early years provision in respect of which a person is exempt from registration) unless the person is registered with the Chief Inspector as an "early years provider other than a childminder".

2580 The new section 34(1)(a) makes it clear that a person can register with the Chief Inspector as an "early years provider other than a childminder" even if the provision is or includes early years childminding where none of the childminding is on domestic premises.

2581 The new section 34(1)(b) provides that a person who provides early years childminding, where none of the childminding is on domestic premises, satisfies the requirement to register if they are registered with the Chief Inspector, or with an early years childminder agency, as an "early years childminder without domestic premises".

2582 The new subsection (1ZA) mirrors the effect of the existing subsection (1ZA), by disapplying the requirement to register in the new section 34(1)(a) (but not the new section 34(1)(b)) to early years provision in respect of which a person is required to be registered by the amended sections 33(1) (early years childminding where some or all of the childminding is on domestic premises) and 34(1A) (early years provision that would be childminding where some or all of the childminding is on domestic premises but for the operation of section 96(5) of the Childcare Act 2006) ("early years childcare on domestic premises"). Subparagraph (3) amends subsection (1A) to allow providers of early years childcare on domestic premises to spend more of their time working from non-domestic premises, by requiring them to provide at least some or all of their provision on domestic premises.

2583 Paragraph 5 amends section 35 of the Childcare Act 2006 (applications for registration: early years childminders) to enable a person who proposes to provide early years childminding that is required to be registered by the amended section 33(1) (early years childminding where some or all of the childminding is on domestic premises) to make an application to the Chief Inspector, or to an early years childminder agency, for registration as an "early years childminder with domestic premises". Paragraph 5 also makes consequential amendments to subsections (5)(aa) and (ab) of section 35 to make it clear that regulations made under section 35(3)(b) can prohibit a person from being registered as an "early years childminder with domestic premises" with both the Chief Inspector and an early years childminder agency, or with more than one childminder agency, (as is currently the case for early years childminders under sections 35(5) (aa) and (ab)).

2584 Paragraph 6 amends section 36 of the Childcare Act 2006 (applications for registration: other early years providers). Subparagraph (2) amends subsection (1), creating new subsections (1)(a) and (1)(b). The new subsection (1)(a) enables a person who proposes to provide any early years provision in respect of which they are required to be registered under the amended section 34(1)(a) (requirement to register: other early years providers) to make an application to the Chief Inspector for registration in the early years register as an early years provider other than a childminder, even where the provision is or includes early years childminding where none of the childminding is on domestic premises.

2585 The new subsection (1)(b) enables a person who proposes to provide early years childminding in respect of which they are required to be registered by section 34(1)(b) (early years childminding where none of the childminding is on domestic premises) to make an application to the Chief Inspector for registration in the early years register (amended section 36(1)(b)(i)), or to an early years childminder agency (amended section 36(1)(b)(ii)), for registration as an "early year childminder

without domestic premises". The wording after the new subsection (1)(b)(ii) makes it clear that a person can separately register as both an early years provider other than a childminder under subsection (1)(a) and as an early years childminder without domestic premises under subsection (1)(b). Subparagraphs (3) and (4) make consequential amendments to sections 36(3), (4), and (4A). Subparagraph (5) makes a consequential amendment to section 36(5) by inserting new subparagraphs (ac) and (ad) to make it clear that regulations made under section 36(3)(b) can prohibit a person from being registered as an "early years childminder without domestic premises" with both the Chief Inspector and an early years childminder agency, or with more than one childminder agency, (as is currently the case in relation to early years childminders under sections 35(5) (aa) and (ab) and other early years providers under sections 36(5)(aa) and (ab)).

2586 Paragraphs 7 and 8 amend section 37 (entry on the register and certificates) and section 37A (early years childminder agencies: registers and certificates) of the Childcare Act 2006 and insert a new subsection (2A) into section 37 and a new subsection (1A) into section 37A. These amendments ensure the Chief Inspector and early years childminder agencies are under a duty to register a person correctly and to give the person a certificate of registration with prescribed information, following the granting by the Chief Inspector of an application for registration made under the amended section 35(1)(a) and the new sections 36(1)(a) and (b)(i), and the granting by an early years childminder agency of an application for registration made under the amended section 35(1)(b) and the new section 36(1)(b)(ii).

Chapter 3 of Part 3: Regulation of later years provision for children under 8

2587 Paragraphs 9 to 16 amend Chapter 3 of Part 3 of the Childcare Act 2006 (regulation of later years provision for children under 8).

2588 Paragraphs 9 to 14 mirror, in relation to the regulation of later years provision for children under the age of eight in Chapter 3 of Part 3 of the Childcare Act 2006, the amendments made to Chapter 2 of Part 3 of the Childcare Act 2006 (regulation of early years provision) by paragraphs (3) to (8) of this Schedule.

2589 Paragraphs 15 and 16 amend section 57 (special procedure for providers registered in the early years register) and section 57A (special procedure for providers registered with early years childminder agencies) of the Childcare Act 2006 so that:

a. a person registered as an "early years childminder with domestic premises" under Chapter 2 of Part 3 of the Childcare Act 2006 can use the special procedures in sections 57 and 57A to register as a "later years childminder with domestic premises" in Part A of the general childcare register or, as the case may be, with their childminder agency (if it is also a later years childminder agency), and

b. a person registered as an "early years childminder without domestic premises" under Chapter 2 of Part 3 of the Childcare Act 2006 can use the special procedures in sections 57 and 57A to register as a "later years childminder without domestic premises" in Part A of the general childcare register or, as the case may be, with their childminder agency (if it is also a later years childminder agency).

Chapter 4 of Part 3: Voluntary registration

2590 Paragraphs 17 to 21 amend Chapter 4 of Part 3 of the Childcare Act 2006 (voluntary registration), which provides for the voluntary registration of early years and later years provision which is not required to be registered under Chapters 2 or 3 of Part 3 of the Childcare Act 2006, and later years provision for children aged eight and above ("exempt provision").

2591 Paragraph 17 amends section 62 of the Childcare Act 2006 (applications for registration on the general register: childminders) to enable a person who proposes to provide exempt provision that is early years or later years childminding where some or all of the childminding is provided on domestic premises to make an application to the Chief Inspector for registration in Part B of the general childcare register as a "childminder with domestic premises".

2592 Paragraph 18 amends section 63 of the Childcare Act 2006 (applications for registration on the general register: other childcare providers). It substitutes subsection (1) with new subsections (A1) and (1), enabling a person who provides exempt provision, other than childminding where some or all of the childminding is provided on domestic premises and in respect of which an application for registration can be made under the amended section 62, to make an application in any case to the Chief Inspector for registration in Part B of the general childcare register as a "provider of childcare other than a childminder" or, where the provision is early or later years childminding where none of the provision is on domestic premises, as a "childminder without domestic premises".

2593 The new subsection (1)(a) makes it clear that a person can make an application to register as a "provider of childcare other than a childminder" even if the provision is or includes childminding where none of the childminding is on domestic premises. The wording at the end of the new subsection (1)(b) makes it clear that a person can choose to register separately as both a "provider of childcare other than a childminder" under the new section subsection (1)(a) and as a "childminder without domestic premises" under the new subsection (1)(b).

2594 Paragraph 19 amends section 64 of the Childcare Act 2006 (entry on the register and certificates) and inserts a new subsection (2A). These amendments ensure the Chief Inspector is under a duty to register a person correctly, and to give to the person a certificate of registration with prescribed information, following the granting by the Chief Inspector of an application for registration made under the amended section 62(1) and the new sections 63(1)(a) and (b).

2595 Paragraphs 20 and 21 amend section 65 (procedure for persons already registered in a childcare register) and section 65A (procedure for providers registered with a childminder agency) of the Childcare Act 2006 to provide that:

a. a person registered with the Chief Inspector in the early years register or in Part A of the general childcare register, or with a childminder agency, as an early years or a later years "childminder with domestic premises" under Chapters 2 or 3 of Part 3 of the Childcare Act 2006, who proposes to provide exempt provision that is childminding where some or all of the childminding is on domestic premises, may use the special procedures in sections 65(1) and 65A(1) to voluntarily register with the Chief Inspector in Part B of the general childcare register or, as the case may be, with their childminder agency, as a "childminder with domestic premises", and

b. a person registered with the Chief Inspector in the early years register or in Part A of the general childcare register, or with a childminder agency, as an early years or a later years "childminder without domestic premises" under Chapters 2 or 3 of Part 3 of the Childcare Act 2006, who proposes to provide exempt provision that is childminding where none of the childminding is on domestic premises, may use the special procedures in sections 65(1) and 65A(1) to voluntarily register with the Chief Inspector in Part B of the general childcare register or, as the case may be, with their childminder agency, as a "childminder without domestic premises".

Chapter 5 of Part 3: Common provisions

2596 Paragraphs 22 to 24 amend Chapter 5 of Part 3 of the Childcare Act 2006 (common provisions), which includes provisions relating to the cancellation and suspension of a childcare provider's registration and the interpretation of Part 3 of the Childcare Act 2006, to reflect the amendments made to Part 3 of the Childcare Act 2006 by this Schedule.

2597 Paragraph 22 amends the Chief Inspector's powers in subsections (3), (4), and (5) of section 68 of the Childcare Act 2006 (cancellation of registration in a childcare register: early years and later years providers) to cancel the registration of a person registered as a an early years or a later years childminder with or without domestic premises in the early years register or in Part A of the general childcare register under Chapters 2 or 3 of Part 3 of the Childcare Act 2006, or as a childminder with or without domestic premises in Part B of the general childcare register under Chapter 4 of Part 3 of the Childcare Act 2006, as follows:

a. where a person is registered as a "childminder with domestic premises", the Chief Inspector may cancel the person's registration where the person has not provided any childminding on domestic premises for a period of more than three years, and

b. where a person is registered as a "childminder without domestic premises", the Chief Inspector may cancel the person's registration where the person has not provided any childminding on non-domestic premises for a period of more than three years.

2598 Paragraph 23 amends the Chief Inspector's powers in subsections (3) and (4) of section 69 of the Childcare Act 2006 (suspension of registration in a childcare register: early years and later years providers) to ensure the Chief Inspector's powers to suspend the registration of a person registered as an early years childminder in the early years register under Chapter 2 of Part 3 of the Childcare Act 2006, or as a later years childminder in Part A of the general childcare register under Chapter 3 of the Childcare Act 2006, apply to persons registered under Chapters 2 and 3 of the Childcare Act 2006 as early years or later years childminder with or without domestic premises.

2599 Paragraph 24 amends section 98 of the Childcare Act 2006 (interpretation of Part 3). Subparagraph (2) amends the definition of "domestic premises" in section 98(1) to also define "non-domestic premises". Subparagraph (3) inserts a new section 98(1B) to provide definitions for references in Part 3 of the Childcare Act 2006 to persons registered as early years and as later years childminders with and without domestic premises.

Schedule 24: Regulations under Chapter 1 of Part 3 or Part 6: form and scrutiny

2600 This Schedule contains provision about the form and scrutiny of regulations under Chapter 1 of Part 3 or Part 6 made by the Secretary of State or a devolved authority acting alone or by the Secretary of State and a devolved authority acting jointly.

Commencement

2601 Part 13 of the Act (General) will come into force on the day this Act is enacted. Section 255 (Commencement and transitional provision) sets out the commencement for provisions in this Act (for which see the explanatory note to that section).

Related documents

2602 The following document is relevant to the Act and can be read at the stated location:

- Levelling Up the United Kingdom White Paper, February 2022, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052706/Levelling_Up_WP_HRES.pdf

Annex A – Territorial extent and application in the United Kingdom

2603 The information provided in this Annex is the view of the UK Government. The Act forms part of the law of England and Wales only, with the exception of:

- Part 1 (Levelling Up Missions) which extends UK-wide.
- Part 3 (Planning) Chapter 1 (Planning Data) which extends UK-wide.
- Part 3 (Planning) Chapters 2-6; an amendment or repeal in these chapters has the same extent as the provision amended or repealed.
- Part 3 (Planning) Chapter 4 (Grant and implementation of planning permission) section 108 (Street votes: modifications of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017) which extends UK-wide s
- Part 3 (Planning) Chapter 6 (Other Provision) section 132 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which extends UK-wide.
- Part 3 (Planning) Chapter 6 section 133 (Participation in certain proceedings conducted by, or on behalf of, the Secretary of State) extends to England and Wales and Scotland.
- Part 6 (Environmental Outcomes Reports) which extends UK-wide.
- Part 8 (Development corporations): amendments or repeal in this Part have the same extent as the provision amended or repealed.
- Part 11 (Information about interests and dealings in land) which extends UK wide.
- Part 12 (Miscellaneous) section 231 (Review of governance etc of RICS) which extends UK-wide.
- Part 12 section 232 (Marine Licensing) which extends UK-wide.
- Part 12 section 239 (Amendments of Schedule 7B to the Government of Wales Act 2006) which extends UK-wide.
- Part 12 section 242 (Report on enforcement of the Vagrancy Act 1824) which extends UK-wide.
- Part 12 section 244 (road user charging schemes in London) which extends to England and Wales and Scotland.
- Part 13 (General) which extends UK-wide.
- Schedules 13, 14 and 24 extend UK wide.

2604 The Act applies to England only, except for:

- Part 1 (Levelling Up Missions) which applies UK-wide.
- Part 3 (Planning) Chapter 1 (Planning Data) which applies UK-wide (except sections 87-88).
- Part 3 (Planning) Chapter 4 (Grant and implementation of planning permission), section 107(2)(b) (street votes: community infrastructure levy) which applies to England and Wales.
- Part 3 (Planning) Chapter 6 (Other Provision):

- Sections 126, 127 and 128 (Nationally Significant Infrastructure Projects- NSIP related sections) which apply to England and Wales, and Scotland (the NSIP regime only applies to Scotland in the case of the construction of an oil or gas pipe-line, one end of which is in England or Wales and the other end of which is in Scotland).
- Section 130 (Regulations and order under the Planning Acts) which applies to England and Wales.
- Section 132 (Pre-consolidation amendment of planning, development and compulsory purchase legislation) which applies UK-wide.
- Section 133 (Participation in certain proceedings) applies to England and Wales and Scotland.
- Part 6 (Environmental Outcomes Reports) which applies UK-wide.
- Part 9 (Compulsory Purchase) which applies to England and Wales (except section 180).
- Part 11 (Information About Interests and Dealings in land) which applies UK Wide.
- Part 12 (Miscellaneous) section 231 (Review of governance etc of RICS) which applies UK-wide.
- Part 12 section 232 (Marine Licensing) which applies where the Secretary of State is the appropriate licensing authority in the inshore and offshore regions in England, and the offshore region only in Northern Ireland (and in the UK marine licensing area for certain reserved or excepted matters), and where the Scottish Ministers are the appropriate marine licensing authority in the Scottish offshore region.
- Part 12 section 239 (Amendments of Schedule 7B to the Government of Wales Act 2006) applies to England and Wales.
- Part 12 section 242 (Report on enforcement of the Vagrancy Act 1894) which applies to England and Wales and Northern Ireland.
- Part 13 (General) which applies UK-wide.
- Schedules 13, 14 and 24 apply UK wide.
- Schedules 18 and 19 (compulsory purchase) apply to England and Wales.

Part/Section	**England**	**Wales**	**Scotland**	**Northern Ireland**
	Extend to E & W and apply to England?	**Extend to E & W and apply to Wales?**	**Extend and apply to Scotland?**	**Extend and apply to Northern Ireland?**
Part 1: (Levelling-Up Missions)	Yes	Yes	Yes	Yes
Part 2 (Local Democracy and Devolution)	Yes	No	No	No

Part 3 (Planning) Chapter 1 (Planning Data) (except sections 87-88 which apply to England only)	Yes	Yes	Yes	Yes
Part 3 (Planning) Chapter 2 (Development Plans etc)	Yes	No	No	No
Part 3 (Planning) Chapter 3 (Heritage)	Yes	No	No	No
Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) Section 107(2)(b)	Yes Yes	No Yes	No No	No No
Part 3 (Planning) Chapter 5 (Enforcement of Planning Controls)	Yes	No	No	No
Part 3 (Planning) Chapter 6 (Other Provision) Section 122 Section 123 Section 124 Section 125 Section 126 Section 127 Section 128 Section129 Section 130 Section 131 Section 132 Section 133 Section 134 Section135 Section 136	 Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes Yes	 No No No No Yes Yes Yes No Yes No Yes Yes No No No	 No No No No Yes Yes Yes No No No Yes Yes No No No	 No No No No No No No No No No Yes No No No No
Part 4 (Infrastructure Levy)	Yes	No	No	No
Part 5 (Community Land Auctions)	Yes	No	No	No

Part 6 (Environmental Outcomes Reports)	Yes	Yes	Yes	Yes
Part 7 (Nutrients Pollution Standards)	Yes	No	No	No
Part 8 (Development Corporations)	Yes	No	No	No
Part 9 (Compulsory Purchases) Section 180 Sections 181-190	Yes Yes	No Yes	No No	No No
Part 10 (Letting by local authorities of vacant high street premises)	Yes	No	No	No
Part 11 (Information about interests and dealings in land)	Yes	Yes	Yes	Yes

Part 12 (Miscellaneous)				
Section 228	Yes	No	No	No
Section 229	Yes	No	No	No
Section 230	Yes	No	No	No
Section 231	Yes	Yes	Yes	Yes
Section 232*	Yes	Yes	Yes	Yes
Section 233	Yes	No	No	No
Section 234	Yes	No	No	No
Section 235	Yes	No	No	No
Section 236	Yes	No	No	No
Section 237	Yes	No	No	No
Section 238	Yes	No	No	No
Section 239	Yes	Yes	No	No
Section 240	Yes	No	No	No
Section 241	Yes	No	No	No
Section 242	Yes	Yes	No	Yes
Section 243	Yes	No	No	No
Section 244	Yes	No	No	No
Section 245	Yes	No	No	No
Part 13 (General)	Yes	Yes	Yes	Yes
Schedule 1	Yes	No	No	No
Schedule 2	Yes	No	No	No

Schedule 3	Yes	No	No	No
Schedule 4	Yes	No	No	No
Schedule 5	Yes	No	No	No
Schedule 6	Yes	No	No	No
Schedule 7	Yes	No	No	No
Schedule 8	Yes	No	No	No
Schedule 9	Yes	No	No	No
Schedule 10	Yes	No	No	No
Schedule 11	Yes	No	No	No
Schedule 12	Yes	No	No	No
Schedule 13	Yes	Yes	Yes	Yes
Schedule 14	Yes	Yes	Yes	Yes
Schedule 15	Yes	No	No	No
Schedule 16	Yes	No	No	No
Schedule 17	Yes	No	No	No
Schedule 18	Yes	Yes	No	No
Schedule 19	Yes	Yes	No	No
Schedule 20	Yes	No	No	No
Schedule 21	Yes	No	No	No
Schedule 22	Yes	No	No	No
Schedule 23	Yes	No	No	No
Schedule 24	Yes	Yes	Yes	Yes

* section 232 (marine licensing) see text on application above.

Minor and Consequential Effects

2605 The following provisions that apply in England have effect outside England, all of which are, in the view of the UK Government, minor or consequential:

- Part 3 (Planning) Chapter 2 (Development plans) in part applies to England and Wales, but solely to preserve the legal position for Wales and has no practical effect.
- Part 3 (Planning) Chapter 3 (Heritage) in part applies to England and Wales, but solely to preserve the legal position for Wales and has no practical effect.
- Part 3 (Planning) Chapter 4 (Grant and Implementation of Planning Permission) (with respect to Crown Development and Completion Notices) in part applies to England and Wales, but solely to preserve the legal position for Wales and has no practical effect.
- Part 3 (Planning) Chapter 5 (Enforcement of Planning Controls) in part applies to England and Wales, but solely to preserve the legal position for Wales and has no practical effect.
- Part 4 (Infrastructure Levy) applies to England and Wales in part (s.139) but solely to preserve the legal positions for Wales and has no practical effect.
- Part 4 (Infrastructure Levy), s.140 (Enforcement of Community Infrastructure Levy), which is consequential to section 13 of the Judicial Review and Courts Act 2022, applies to Wales.
- Part 8 (Development Corporations) in part applies to England and Wales and Scotland, but solely to preserve the legal positions for Wales and Scotland and has no practical effect.
- Part 12 (Miscellaneous) in part applies to England and Wales (with regard to open access mapping and protected landscapes) but solely to preserve the legal position for Wales and has no practical effect.

Annex B – Hansard References

2606 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	11 May 2022	Vol. 714 Col. 148
Second Reading	08 June 2022	Vol. 715 Col. 821
Public Bill Committee	21 June 2022	Vol. 716 Col. 1
	21 June 2022	Vol.716 Col. 29
	23 June 2022	Vol. 716 Col. 65
	23 June 2022	Vol. 716 Col. 91
	28 June 2022	Vol. 717 Col. 147
	28 June 2022	Vol. 717 Col. 183
	30 June 2022	Vol. 717 Col. 221
	30 June 2022	Vol. 717 Col. 251
	5 July 2022	Vol. 717 Col. 289
	5 July 2022	Vol. 717 Col. 325
	7 July 2022	Vol. 717 Col. 365
	12 July 2022	Vol. 718 Col. 371
	12 July 2022	Vol. 718 Col. 399
	14 July 2022	Vol. 718 Col. 445
	14 July 2022	Vol. 718 Col. 473
	19 July 2022	Vol. 718 Col. 513
	19 July 2022	Vol. 718 Col. 547
	6 September 2022	Vol. 719 Col. 581
	6 September 2022	Vol. 719 Col. 617
	6 September 2022	Vol. 719 Col. 617
	8 September 2022	Vol. 719 Col.655
	8 September 2022	Vol. 719 Col. 679
	13 October 2022	Vol. 720 Col.715
	13 October 2022	Vol. 720 Col. 745
	18 October 2022	Vol. 720 Col 769
	18 October 2022	Vol. 720 Col. 805
	20 October 2022	Vol. 720 Col. 855
	20 October 2022	Vol.720 Col. 899
Report	23 November 2022	Vol. 723 Col. 331
	13 December 2022	Vol. 724 Col. 917
Third Reading	13 December 2022	Vol. 724 Col. 917

House of Lords		
Introduction	19 December 2022	Vol. 826
Second Reading	17 January 2023	Vol. 826 Col. 1706
Grand Committee	20 February 2023	Vol. 827 Col. 1449
	20 February 2023	Vol. 827 Col. 1516
	22 February 2023	Vol. 827 Col. 1672
	22 February 2023	Vol. 827 Col. 1732
	27 February 2023	Vol. 828 Col. 49
	27 February 2023	Vol. 828 Col. 89
	13 March 2023	Vol. 828 Col. 1096
	13 March 2023	Vol. 828 Col. 1166
	15 March 2023	Vol. 828 Col. 1320
	15 March 2023	Vol. 828 Col. 1409
	20 March 2023	Vol. 828 Col. 1553
	20 March 2023	Vol. 828 Col. 1626
	22 March 2023	Vol. 828 Col. 1762
	22 March 2023	Vol. 828 Col. 1829
	27 March 2023	Vol. 829 Col. 21
	18 April 2023	Vol. 829 Col. 559
	18 April 2023	Vol. 829 Col. 632
	20 April 2023	Vol. 829 Col. 780
	24 April 2023	Vol. 829 Col. 979
	24 April 2023	Vol. 829 Col. 1055
	3 May 2023	Vol. 829 Col. 1601
	18 May 2023	Vol. 830 Col. 398
	22 May 2023	Vol. 830 Col. 615
	24 May 2023	Vol. 830 Col. 114GC
Report	11 July 2023	Vol. 883 Col. 1648
	13 July 2023	Vol. 831. Col. 1895
	13 July 2023	Vol. 831 Col. 1958
	18 July 2023	Vol. 831 Col. 2212
	20 July 2023	Vol.831 Col. 2467
	4 September 2023	Vol. 832 Col. 203
	4 September 2023	Vol. 832 Col. 301
	6 September 2023	Vol. 832 Col. 396
	6 September 2023	Vol. 832 Col. 477
	6 September 2023	Vol. 832 Col. 529
	13 September 2023	Vol. 832 Col. 968
	13 September 2023	Vol. 832 Col. 1020
	18 September 2023	Vol. 832 Col. 1211

Third Reading	21 September 2023	Vol. 832 Col. 1543
Commons Consideration of Lords Amendments	17 October 2023	Vol. 738 Col. 179
Royal Assent	26 October 2023	House of Commons Vol. 738 Col. 999
		House of Lords Vol. 833 Col. 695

Annex C – Progress of Bill Table

2607 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Act through Parliament

Section of Final Bill	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as Introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
1	1	1	1	1	1
2					2
N/A					3
3	2	2	2	2	4
4	3	3	3	3	5
5	4	4	4	4	6
6	5	5	5	5	7
7					8
8	6	6	6	6	9
9	7	7	7	7	10
10	8	8	8	8	11
11	9	9	9	9	12
12	10	10	10	10	13
13	11	11	11	11	14
14	12	12	12	12	15
15	13	13	13	13	16
16	14	14	14	14	17
17	15	15	15	15	18
18	16	16	16	16	19
19	17	17	17	17	20
20	18	18	18	18	21
21	19	19	19	19	22
22	20	20	20	20	23
23	21	21	21	21	24
24			22	22	25
25	22	22	23	23	26
26	23	23	24	24	27
27	24	24	25	25	28
28	25	25	26	26	29
29	26	26	27	27	30

30	27	27	28	28	31
31	28	28	29	29	32
32	29	29	30	30	33
33	30	30	31	31	34
34	31	31	32	32	35
35	32	32	33	33	36
36	33	33	34	34	37
37	34	34	35	35	38
38	35	35	36	36	39
39	36	36	37	37	40
40	37	37	38	38	41
41	38	38	39	39	42
42	39	39	40	40	43
43	40	40	41	41	44
44	41	41	42	42	45
45	42	42	43	43	46
46	43	43	44	44	47
47	44	44	45	45	48
48	45	45	46	46	49
49	46	46	47	47	50
50	47	47	48	48	51
51	48	48	49	49	52
52	49	49	50	50	53
53	50	50	51	51	54
54	51	51	52	52	55
55	52	52	53	53	56
56	53	53	54	54	57
57	54	54	55	55	58
58	55	55	56	56	59
59	56	56	57	57	60
60					
61	57	57	58	58	61
62	58	58	59	59	62
63			60	60	63
64	59	59	61	61	64
65	60	60	62	62	65
66	61	61	63	63	66

67	62	62	64	64	67
68	63	63	65	65	68
69	64	64	66	66	69
70	65	65	67	67	70
71	66	66	68	68	71
72	67	67	69	69	72
73	68	68	70	70	73
N/A					74
74			71	71	75
75				72	76
76	69	69	72	73	77
77	70	70	73	74	78
78	71	71	74	75	79
79	72	72	75	76	80
80	73	73	76	77	81
81	74	74	77	78	82
82					83
83					84
84	75	75	78	79	85
85	76	76	79	80	86
86	77	77	80	81	87
87	78	78	81	82	88
88	79	79	82	83	89
89	80	80	83	84	90
90					91
91	81	81	84	85	92
92	82	82	85	86	93
93	83	83	86	87	94
94	84	84	87	88	95
N/A					96
N/A					97
95	85	85	88	89	98
96	86	86	89	90	99
97	87	87	90	91	100
98	88	88	91	92	101
99	89	89	92	93	102
100	90	90	93	94	103

101	91	91	94	95	104
102	92	92	95	96	105
103	93	93	96	97	106
104	94	94	97	98	107
105	95	95	98	99	108
106	96	96	99	100	109
107			100	101	110
108				102	111
109	97	97	101	103	112
110	98	98	102	104	113
111	99	99	103	105	114
112	100	100	104	106	115
113			105	107	116
114			106	108	117
115	101	101	107	109	118
116	102	102	108	110	119
117	103	103	109	111	120
118	104	104	110	112	121
119	105	105	111	113	122
120	106	106	112	114	123
121	107	107	113	115	124
122	108	108	114	116	125
123			115	117	126
124	109	109	116	118	127
125	110	110	117	119	128
126			118	120	129
127		111	119	121	130
128		112	120	122	131
129	111	113	121	123	132
130	112	114	122	124	133
131				125	134
132			123	126	135
133				127	136
134				128	137
135					138
N/A					139
136					140

N/A					141
13	113	115	124	129	142
138	114	116	125	130	143
139	115	117	126	131	144
140					145
141			127	132	146
142			128	133	147
143			129	134	148
144			130	135	149
145			131	136	150
146			132	137	151
147			133	138	152
148			134	139	153
149			135	140	154
150			136	141	155
151			137	142	156
152	116	118	138	143	157
153	117	119	139	144	158
154	118	120	140	145	159
155	119	121	141	146	160
156	120	122	142	147	161
157	121	123	143	148	162
158					163
159	122	124	144	149	164
160	123	125	145	150	165
161	124	126	146	151	166
162	125	127	147	152	167
163	126	128	148	153	168
164	127	129	149	154	169
165	128	130	150	155	170
166	129	131	151	156	171
167	130	132	152	157	172
168			153	158	173
169			154	159	174
170			155	160	175
171	131	133	156	161	176
172	132	134	157	162	177

173	133	135	158	163	178
174	134	136	159	164	179
175	135	137	160	165	180
176	136	138	161	166	181
177	137	139	162	167	182
178	138	140	163	168	183
179	139	141	164	169	184
180	140	142	165	170	185
181	141	143	166	171	186
182	142	144	167	172	187
183	143	145	168	173	188
184	144	146	169	174	189
185	145	147	170	N/A	190
186	146	148	171	175	191
187	147	149	172	176	192
188	148	150	173	177	193
189	149	151	174	178	194
190		152	175	179	195
191				180	196
192	150	153	176	181	197
193	151	154	177	182	198
194	152	155	178	183	199
195	153	156	179	184	200
196	154	157	180	185	201
197	155	158	181	186	202
198	156	159	182	187	203
199	157	160	183	188	204
200	158	161	184	189	205
201	159	162	185	190	206
202	160	163	186	191	207
203	161	164	187	192	208
204	162	165	188	193	209
205	163	166	189	194	210
206	164	167	190	195	211
207	165	168	191	196	212
208	166	169	192	197	213
209	167	170	193	198	214

210	168	171	194	199	215
211	169	172	195	200	216
212	170	173	196	201	217
N/A	171	174	197	202	218
213	172	175	198	203	219
214	173	176	199	204	220
215	174	177	200	205	221
216	175	178	201	206	222
217	176	179	202	207	223
218	177	180	203	208	224
219				209	225
220				210	226
221				211	227
222				212	228
	178	181	204	N/A	
223	179	182	205	213	229
	180	183	206	N/A	
224	181	184	207	214	230
225	182	185	208	216	231
226	183	186	209	217	232
227			210	218	233
228	184	187	211	219	234
229	185	188	212	220	235
230	186	189	213	221	236
231	187	190	N/A		237
232			214	222	238
233				223	239
234				224	240
235				225	241
236				226	242
237					243
238					244
239					245
240					246
241					247
242					
N/A					248

N/A					249
N/A					250
243					251
N/A					252
244					253
245					
246	188	191	215	227	254
247	189	192	216	228	255
248					256
249	190	193	217	229	257
250	191	194	218	230	258
251					259
252	192	195	219	231	260
253	193	196	220	232	261
254	194	197	221	233	262
255	195	198	222	234	263
256	196	199	223	235	264
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5
Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6	Schedule 6
N/A					Schedule 7
Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 7	Schedule 8
Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 8	Schedule 9
Schedule 9				Schedule 9	Schedule 10
Schedule 10	Schedule 9	Schedule 9	Schedule 9	Schedule 10	Schedule 11
Schedule 11	Schedule 10	Schedule 10	Schedule 10	Schedule 11	Schedule 12
Schedule 12	Schedule 11	Schedule 11	Schedule 11	Schedule 12	Schedule 13
Schedule 13					Schedule 14
Schedule 14					Schedule 15
Schedule 15			Schedule 12	Schedule 13	Schedule 16
Schedule 16	Schedule 12	Schedule 12	Schedule 13	Schedule 14	Schedule 17

Schedule 17	Schedule 13	Schedule 13	Schedule 14	Schedule 15	Schedule 18
Schedule 18				Schedule 16	Schedule 19
Schedule 19	Schedule 14	Schedule 14	Schedule 15	Schedule 17	Schedule 20
Schedule 20	Schedule 15	Schedule 15	Schedule 16	Schedule 18	Schedule 21
Schedule 21	Schedule 16	Schedule 16	Schedule 17	Schedule 19	Schedule 22
Schedule 22	Schedule 17	Schedule 17	Schedule 18	Schedule 20	Schedule 23
Schedule 23					Schedule 24
Schedule 24					Schedule 25

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