HOUSING AND PLANNING BILL: DELEGATED POWERS
Memorandum by the Department for Communities and Local Government to the Delegated Powers and Regulatory Reform Committee

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A. INTRODUCTION

1. This memorandum

This memorandum sets out the provisions in the Housing and Planning Bill (“the Bill”) which confer delegated powers on the Secretary of State and others. In each case it explains why the power has been taken and the reason for the procedure selected.

2. Purpose of the Bill

2.1 The Bill is intended to support the delivery of the Government's commitments as put forward in its manifesto and its productivity plan Fixing the Foundations: Creating a more prosperous nation. Through the Bill, the Government aims to take forward proposals to build more homes that people can afford, give more people the chance to own their own home, and ensure the way housing is managed is improved.

2.2 The Bill seeks to achieve this, in part, by implementing reforms that will make sure that the planning system does not add any unnecessary obstacles to the delivery of new homes.

3. Summary of the Bill

This Bill is made up of eight parts as follows:

   Part 1: New Homes in England
   Part 2: Rogue landlords and letting agents in England
   Part 3: Recovering abandoned premises in England
   Part 4: Social housing in England
   Part 5: Housing, estate agents and rentcharges: other changes
   Part 6: Planning in England
   Part 7: Compulsory purchase etc.
   Part 8: Public authority land
   Part 9: General

4. Devolution

The Bill applies to England only, with some exceptions:

(a) Clauses 122 and Schedule 10 (leaseholds), clause 123 (rentcharges), Part 7 and schedules 14 to 19 (Compulsory purchase) and clauses 185 and 187 (Public Authority Land) apply to England and Wales;

(b) Clauses 183 and 184 (Public Authority Land) apply to England, Wales and Scotland;

(c) Clause 121 (Estate Agents), Part 4 of Chapter 5 and Schedules 5 and 6 (Insolvency of Registered Providers of Social Housing) and clause 187 (Public Authority Land) apply to the whole of the UK.
5. **Abbreviations**

This memorandum contains the following abbreviations:

- “1990 Act” means the Town and Country Planning Act 1990
- “2004 Act” means the Planning and Compulsory Purchase Act 2004
- “2015 Act” means the Self-build and Custom Housebuilding Act 2015
- “the Department” means the Department for Communities and Local Government
- “HMRC” means Her Majesty’s Revenue and Customs

**B. PROVISIONS CONFERRING DELEGATED POWERS**

**Part 1: New homes in England**

**Chapter 1: Starter homes**

6. **Clause 2(1): Power to specify restrictions on sales and lettings of starter homes**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

**Purpose and context**

6.1 Chapter 1 sets out the Government’s proposals to support the supply of starter homes in England.

6.2 A starter home is a new dwelling which is available to certain qualifying first-time buyers and will be sold for a discount of at least 20% of its market value. The sale price will be subject to a price cap and there will be restrictions on the letting and resale.

6.3 There are two main duties in this chapter to support this objective: a general duty to promote the supply of starter homes when planning functions are being carried out, and a specific duty in relation to decisions on planning applications.

6.4 Clause 2(1) sets out the definition of a starter home and enables the Secretary of State to specify restrictions on the sale or letting of a starter home.

6.5 The aim behind the imposition of sales and letting restrictions is to ensure that starter homes are purchased by first-time buyers who are looking to establish a genuine home in which to live. As starter homes are sold at a discount some stakeholders (“stakeholders” in this context would include developers, mortgage lenders, local authorities and housing associations amongst others) have expressed concerns to the Government that there is the potential for some individuals to view...
them as an attractive investment vehicle and use the property either for a buy-to-let investment or for a short term speculative investment.

6.6 However the need to impose these restrictions has to be balanced against the fact that many starter homes will be just that – the first step onto the property owning ladder and over time first-time buyers will want to move as families grow and aspirations change. These restrictions therefore have to be proportionate and reasonable. If they are too onerous first-time buyers could be deterred from purchasing.

**Justification for delegation**

6.7 This is a new policy and therefore uncertainty remains as to how and where to strike the balance between imposing restrictions to guard against starter homes becoming mere investments, and providing a first home and a first step onto the property ladder.

6.8 In addition the success of the policy is inextricably linked to the residential mortgage market (if mortgage lenders won’t offer mortgages on starter homes, many first-time buyers will be unable to purchase them). Although the Government has worked closely with mortgage lenders to develop the starter home policy, until the homes are built and are ‘in the market’ it is difficult to understand exactly how mortgage lenders will react – and the sales and letting restrictions will be one of the key determinants of this.

6.9 Allowing the sales and letting restrictions to be set in regulations therefore allows the Government more time to consult with key stakeholders in the housing market once the provisions are introduced in the Bill and the starter home offer is more clearly understood.

6.10 In addition regulations provide the Government with flexibility to amend the restrictions if, once starter homes are being purchased, those restrictions appear either too generous or too restrictive.

**Justification for procedure selected**

6.11 The restriction on sale and letting places considerable constraints on any individual buying a starter home and the Department considers the imposition of those constraints is important enough to justify the use of the affirmative procedure.

### 7. **Clause 2(3): Power to specify qualifying characteristics of first-time buyers**

*Power conferred on: Secretary of State*
*Power exercised by: Regulations (Statutory Instrument)*
*Parliamentary procedure: Affirmative procedure*
**Purpose and context**

7.1 A starter home is available for purchase by qualifying first-time buyers only. The power enables the Secretary of State to specify additional qualifying characteristics which a person must have (in addition to being a first-time buyer).

**Justification for delegation**

7.2 The Secretary of State needs the power to specify additional criteria that a person must meet before they are able to purchase a starter home in order to prevent potential abuse of the starter home provisions. The Government notes that concerns have been raised by some stakeholders that individuals might seek to take advantage of the discount offered on starter homes and instead of using the starter home as a long term home and a first step on the property ladder, which is the intention of the policy, they may seek to use it as an investment opportunity or for speculation. Further defining who can purchase a starter home would hopefully assist to mitigate this.

7.3 To assist Parliament anticipate the way in which this power might be exercised, examples have been given of the characteristics that the regulations may seek to include, such as minimum age criteria and nationality.

**Justification for procedure selected**

7.4 The Department considers that the affirmative procedure is appropriate because any change made to the definition may result in certain classes of person being excluded from being eligible to purchase a starter home, and this should be subject to a debate in Parliament.

8. **Clause 2(7): Power to amend the definition of “first-time buyer”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

**Purpose and context**

8.1 Starter homes can only be purchased by qualifying first-time buyers. The term “first-time buyer” is defined on the face of the Bill by reference to section 57AA(2) of the Finance Act 2003.

8.2 The power enables the Secretary of State to amend the definition of “first-time buyer”.

**Justification for delegation**

8.3 There are numerous initiatives (not all of which are legislative) across Government which involve help for first-time buyers as this is a cross-Government priority. Some of these initiatives (such as the first-time buyer ISA which is being developed by the Treasury Department) also rely on the 2003 Act definition. However the Department is aware that other Departments are considering whether additional
matters and scenarios need to be considered which are not necessarily covered by the 2003 Act definition (a recent example is the status of a person who has inherited a property which is not currently covered). The Department is keen to ensure that the starter homes provisions remain consistent with the definitions used across Government as the best way to support the wider policy objective to help first-time buyers. It is therefore important that we have the flexibility to amend and update this definition as necessary.

**Justification for procedure selected**

8.4 The Department considers that the affirmative procedure is appropriate because any change made to the definition may result in certain classes of person being excluded from being eligible to purchase a starter home.

9. **Clause 2(8): Power to amend price cap**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

**Purpose and context**

9.1 Clause 2(1) sets out the definition of a starter home and part of that definition includes that the building should be sold for less than the price cap. Subsection (6), sets out the price cap which is:

(a) in Greater London £450,000; and

(b) outside Greater London £250,000.

9.2 The Secretary of State has a regulation making power allowing him to:

(a) amend the price cap; and

(b) provide for different price caps to apply for buildings in different areas.

**Justification for delegation**

9.3 The housing market is volatile and property prices constantly fluctuate. At the present time in England the majority of prices increase but that is not always the case. Providing explicit figures in the Bill is therefore potentially hazardous as they can become out of date and potentially irrelevant very quickly. This could cause severe difficulties for the practical operation of the provisions if for example it becomes impossible to buy any property in London for £450,000; under the current definition, no starter homes could then be delivered.

9.4 The Secretary of State’s power to amend the price caps via regulations allows the provisions to remain up to date and ensures that the Secretary of State can adjust these limits to reflect movements in the property market generally.
Justification for procedure selected

9.5 The Department considered that the affirmative resolution procedure is appropriate because the power involves the setting of a detail which will have influence not only on starter homes but potentially also on the wider housing market and it is considered that Parliament should have the opportunity to debate each exercise of this power.

10. Clause 3(2): Guidance about the duty to promote starter homes

Power conferred on: Secretary of State
Power exercised by: Guidance
Parliamentary procedure: None

Purpose and context

10.1 Clause 3(2) provides that if the Secretary of State issues guidance in connection with the duty to promote starter homes, an authority must have regard to it.

10.2 The aim of any guidance would be to provide relevant authorities with examples of how they might go about promoting the supply of starter homes.

Justification for delegation

10.3 The term “promote” is broad and the Government thinks it important to provide assistance to local planning authorities in explaining practical ways in which it can fulfil the duty contained in clause 3.

10.4 Issuing guidance in this way is something the Secretary of State does regularly within the planning context. For example, section 34 of the 2004 Act requires local planning authorities to have regard to guidance issued by the Secretary of State in relation to local plan making. Local planning authorities are likely to expect such guidance here.

Justification for procedure selected

10.5 Section 34 of the 2004 Act (as referred to above) contains no procedural requirements on the Secretary of State with regards the preparation or issuing of guidance (such as the need for parliamentary scrutiny or local authority consultation). We suggest that the guidance in this clause is analogous to that under the 2004 Act and therefore does not warrant any additional parliamentary scrutiny.

10.6 Although the term “promote” is broad the Department considers that it is understandable without further definition and a local planning authority will be able to comply with the duty on the basis of the legislation itself and it should not require further guidance in order to fulfil the duty. Any guidance issued by the Secretary of State in relation to the duty will be supplementary, focusing for instance on how an authority might fulfil its duty rather than setting out things it must do.

10.7 Guidance will not change the meaning of anything in the Bill.
10.8 The lack of formal procedure also acknowledges that while authorities must have regard to the guidance issued, they are not bound to follow it in all circumstances if circumstances justify a departure from it.

11. **Clause 3(5): Power to amend definitions of authorities and functions**

*Power conferred of: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

**Purpose and context**

11.1 The clause requires planning authorities to carry out their planning functions with a view to promoting the supply of starter homes in England.

11.2 This power enables the Secretary of State to amend the definitions of:

(a) “planning authority” (which is set out in clause 3(3)); and

(b) “relevant planning functions” (which is set out in clause 3(4)).

11.3 The Government wants to have the power to amend the definition of “planning authority” and “relevant planning functions” by regulations so that it can capture any bodies carrying out relevant planning functions which have not been captured by the present definition in the clause. Although there are no bodies or functions currently fulfilling this criteria, that is not to say there will not be in the future, either through newly created bodies, or increasing prominence of existing bodies, like neighbourhood planning forums.

**Justification for delegation**

11.4 The need to amend the definition of bodies which constitute a “planning authority” might for example arise because of the creation of new bodies established as part of the devolution process and the creation of more elected mayors (similar to the London model). Therefore, the power to amend the definitions will allow the Secretary of State to ensure that the duty continues to apply to all authorities which have a planning function which is the original intention of the provision.

11.5 Similarly the power to amend the definition of planning functions allows the duty to remain relevant as the planning system evolves. New bodies may need new planning based functions (for example functions around master-planning for a wider area). The Government would want any new body to have regard to the promotion of starter homes when exercising such functions so it is important that the provisions can be updated to reflect that.

11.6 The Secretary of State has a similar power to amend the definition of a “relevant planning authority” in Section 39(13) of the Environmental Protection Act 1990 so there is precedent in planning related legislation for this type of approach.
11.7 Because exercise of the regulation making power will impose a new duty on a public body, the Department considers it appropriate that any such regulations will be subject to the affirmative procedure.

12. **Clause 4: Power to specify the starter homes requirement**

*Power conferred on: Secretary of State*
*Power exercised by: Regulations (Statutory Instrument)*
*Parliamentary procedure: Affirmative procedure*

**Purpose and context**

12.1 This clause enables the Secretary of State to provide, in regulations, that an English planning authority (which is a local planning authority in England or the Secretary of State when exercising his powers in relation to the grant of planning permission in respect of land in England) may only grant planning permission for a residential development of a specified description where the starter homes requirement is met.

12.2 These regulations may also:

(a) set out the meaning of the “starter homes requirement”;
(b) make different provisions for different areas; and
(c) confer discretions on an English planning authority.

12.3 Subsection (4) of this clause provides that the regulations may, for example, only allow a relevant authority to grant planning permission where the obligation has been discharged either through building starter homes as part of the development or by making a financial contribution to fund the construction of starter homes elsewhere. The first option would most likely be secured through a planning obligation agreement between the local planning authority and the planning applicant.

**Justification for delegation**

12.4 The Government is considering whether the starter home requirement itself should be a single percentage figure to be applied uniformly across all residential developments, or a varied requirement. Development is complex and there are a lot of different circumstances which may potentially need different treatment.

12.5 The regulation making power allows the Government to take account of these differing circumstances. It may, for example, want to apply different proportions of starter homes depending on the size of the site or number of dwellings which are being delivered on any given site. There may need to be differentials based on the characteristics of an area (for example urban rather than rural).

12.6 There will also be circumstances where it will not be appropriate to impose a starter homes requirement. For example, if a site is identified exclusively for the delivery of private rented sector housing or older person housing (the delivery of which are
other Government objectives) then the inclusion of starter homes may be inappropriate.

12.7 In some circumstances where it is not perhaps possible to deliver starter homes, the starter home requirement regulations may allow for the starter homes requirement to be discharged by the payment of a sum to the relevant authority to fund the provision of starter homes on alternative sites.

12.8 This level of complexity and detail would not be suitable for the face of the Bill and regulations are considered a better tool to allow Government to set out the numerous permutations of the starter homes requirement. It also allows the Government more flexibility to be able to alter these requirements if they are found to be too onerous. The Government is keen that the delivery of starter homes does not impact its overall objective to deliver more housing in England and is therefore keen to ensure that the starter homes requirements are sufficiently detailed and up-to-date with prevailing market conditions so that this does not happen.

Justification for procedure selected

12.9 The starter homes requirement and where it is set in different circumstances, will determine how onerous the duty in Clause 4 is on English planning authorities. The Department therefore considers it is appropriate to make the regulations subject to the affirmative procedure.

13. **Clause 5: Power to make provision about monitoring reports**

*Power conferred on:* Secretary of State  
*Power exercised by:* Regulations (Statutory Instrument)  
*Parliamentary procedure:* Negative procedure

**Purpose and context**

13.1 Clause 5 requires local planning authorities to prepare reports containing information about how they are complying with their duties in relation to starter homes (as contained in clauses 3 and 4).

13.2 This power enables the Secretary of State to make regulations about the form and content of reports, and their timings. It also allows the regulations to require that the reports be combined with reports under section 35 of the 2004 Act, and may require a report to contain information about applications to which regulations under clause 5 apply and how those applications have been dealt with.

**Justification for delegation**

13.3 The delivery of starter homes is a key Government priority and a manifesto commitment. It is therefore important that it receives the right information to help it determine how it is progressing towards delivering this commitment. The Secretary of State might therefore need to vary over time the precise detail of the information he is asking authorities to provide, to better understand how starter home delivery is
progressing (or where and why there are problems with delivery). We consider that regulations better allow the Secretary of State to make these changes.

13.4 The regulations will also contain a certain amount of technical detail (such as what format the report should be published in). The Government does not consider it is necessary to include the mechanics of the reporting system in the Bill itself.

**Justification for procedure selected**

13.5 This provision is analogous to section 35 of the 2004 Act which places a similar reporting requirement on local planning authorities. In that case the form and content of such reports can be prescribed by the Secretary of State, and these regulations are subject to the negative procedure.

### 14. Clause 6: Power to make a compliance direction

*Power conferred on: Secretary of State*  
*Power exercised by: Direction*  
*Parliamentary procedure: None*

**Purpose and context**

14.1 Clause 6 provides that where a local planning authority has failed to carry out its functions in relation to starter homes and has a policy in a local development document which is incompatible with those functions the Secretary of State can make a compliance direction.

14.2 A compliance direction will direct that the incompatible policies shall not be taken into account when a local planning authority makes a planning determination.

14.3 A local planning authority usually determines a planning application in accordance with its development plan unless material considerations indicate otherwise (as provided under section 38 of the 2004 Act). Local development documents together make up the development plan. So the consequence of the direction to disregard policies within local development documents means that the local planning authority can no longer give primacy to its development plan in its decision making and other material considerations (including government policy) will be attributed more weight.

**Justification for delegation**

14.4 It is vital that local planning authorities comply with their starter homes functions as set out in clauses 3 and 4 of the Bill in order for the Government to meet its commitment of delivering 200,000 starter homes in the life of this parliament.

14.5 An effective sanction regime is a key tool for the Government to ensure that these functions are taken seriously by local planning authorities.

14.6 The process of the Secretary of State giving a direction is used elsewhere in planning legislation.
Justification for procedure selected

14.7 The Secretary of State’s power to make a compliance direction will not be subject to further parliamentary scrutiny.

14.8 This is considered proportionate because any given direction will only apply to an individual local planning authority so would not warrant specific parliamentary scrutiny.

14.9 However the Secretary of State is required to publish any direction given under this part, along with reasons for making the direction which will provide transparency and aid public scrutiny of any decision taken to make a compliance direction.

Chapter 2: Self-build and custom housebuilding

15. **Clause 8(4): Power to amend definition of “serviced plot of land”**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*

**Purpose and context**

15.1 This chapter is intended to increase the amount of self-build and custom housebuilding in England. The policy objective behind this is to increase housing supply by maximising all methods of house building.

15.2 These provisions follow (and now amend) the 2015 Act which introduced the first part of the Government’s legislative programme to encourage more self-build and custom housebuilding. The 2015 Act required relevant authorities to keep a register of individuals and associations of individuals who want to acquire land for self-build and custom house building (“the register”).

15.3 The Government introduces through these provisions the second element of its policy by creating a new statutory definition of “self-build and custom housebuilding” and placing a new duty on relevant authorities to ensure that they grant planning permission suitable to implement a self-build and custom housebuilding project on a sufficient number of serviced plots of land within a prescribed time frame (to be specified by the Secretary of State in regulations) to at least match the demand in that authority’s area arising in the first year of the period.

15.4 The Bill puts a duty on a relevant authority to give suitable development permission in respect of enough serviced plots of land to meet the demand in its area for self-build and custom housebuilding.

15.5 Clause 8(4) amends section 5 of the 2015 Act and provides a definition of “serviced plot of land” and a regulation making power has been taken to amend the definition to add references to additional services.

15.6 Additional services may for example include a broadband connection.
**Justification for delegation**

15.7 The Government is conscious that these are new provisions which aim to try and encourage self-build and custom housebuilding projects. At the moment consultation responses and a pilot project run by the Department has provided information on the kind of servicing that is required to make plots attractive to prospective self-builders, but this is a developing area and flexibility is important to ensure that the legislation responds to changing requirements as this sector grows and develops. So although we have been able to develop a definition of “serviced plot of land” the power to add to this definition acknowledges that this may need to be updated as time moves on.

**Justification for procedure selected**

15.8 The 2015 Act contained reference to the term “serviced plot of land” with regulations, subject to the negative procedure to be used to specify requirements about utilities and other matters.

15.9 Unfortunately this approach was criticised by the Committee in its 16th Report of Session 2014-15.

15.10 In its response, the Government justified its use of the negative procedure on the basis that the wording used in the 2015 Act gave a good indication of how those regulations will be used to define ‘serviced plot of land’.

15.11 However the Government is keen to ensure it fully addresses concerns raised by the Committee in its report and so has taken this opportunity to put a full definition of “serviced plot of land” into the 2015 Act.

15.12 The Department considers that the regulation making power to add additional categories of services into the definition of serviced plot of land should be subject to the affirmative procedure given that this would amend a definition set out in primary legislation.

**16. Clause 9(1): Power to specify timeframes for compliance with duty**

*Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure*

**Purpose and context**

16.1 Clause 9 inserts in to the 2015 Act a new section 2A which places a duty on relevant authorities to grant planning permission on a sufficient number of plots of land suitable for a self-build and custom housebuilding project.

16.2 Subsection (3) provides that regulations must specify the time within which the relevant authority must comply with the duty. Subsection (9) further provides that the regulations made under subsection (3) can make different provision for different authorities or different descriptions of authorities and may make different provisions for different proportions of the demand.
By way of example, the power could be used to require that a certain percentage of demand is met within two years, the majority by four years and the remainder within five years. Further, the Government may identify relevant authorities which are slow at complying with their duty, and only apply such timeframes to those authorities.

**Justification for delegation**

Diversifying the house building sector by promoting self-build and custom housebuilding is a novel policy. Consequently the Department anticipates that adjustments may be needed in future either to ensure that the objectives are met or because timescales which are appropriate for getting a system started may well be different to those required once the culture has changed and self-build and custom build becomes a mainstream activity.

**Justification for procedure selected**

The timeframe in which relevant authorities have to comply with the duty is an essential determining factor as to what impact these provisions will have not only on authorities (in terms of planning and resourcing to meet this duty) but also on how the provisions will actually work to achieve the policy objective of encouraging self-build and custom housebuilding. A long timeframe would be less of a burden on authorities but would not assist the delivery of more plots suitable for self-build and custom housebuilding, whereas a short timeframe might place an unachievable burden on authorities. In order to ensure the correct balance is struck the Department considers that the regulations concerning this should be subject to further specific scrutiny and debate and therefore that the affirmative procedure is suitable for the exercise of this power.

**Clause 9(2): Guidance**

*Power conferred on: Secretary of State*

*Power exercised by: Guidance*

*Parliamentary procedure: None*

**Purpose and context**

Clause 9(2) amends section 3 of the 2015 Act to extend the circumstances in which the Secretary of State may issue guidance. The provision provides that if the Secretary of State issues guidance in connection with the duty, an authority subject to that duty must have regard to it.

**Justification for delegation**

The aim of any guidance issued by the Secretary of State pursuant to this provision would be to provide relevant authorities with examples of how they might comply with the duty contained in the clause 9 of the Bill. For example setting up specific self-build and custom housebuilding projects on land within its ownership. The objective of the guidance is to provide assistance rather to specifically direct authorities to act in a particular way; and while an authority must have regard to the
guidance there is an acknowledgement that there may be circumstances where it is necessary for an authority to depart from the guidance in its compliance with the duty.

17.3 There are examples of similar guidance provisions in current planning legislation which we had in mind when preparing the Bill. For example, section 34 of the 2004 Act requires local planning authorities to have regard to guidance issued by the Secretary of State in relation to local plan making. The Secretary of State providing guidance is a common feature of the planning system and the Department considers that local authorities will expect to have such guidance.

**Justification for procedure selected**

17.4 In relation to section 34 of the 2004 Act which is cited above, there is no requirement on the Secretary of State as to the process for preparing guidance (such as the need for parliamentary scrutiny or local authority consultation). We suggest that the guidance in this Bill is analogous to any guidance issued under section 34 of the 2004 Act and therefore does not warrant any greater degree of parliamentary scrutiny.

17.5 The Government anticipates that a relevant authority will be able to comply with the duty contained in clause 9 of the Bill based on the wording of the legislation itself and it should not require guidance in order to do this. Any guidance issued by the Secretary of State in relation to the duty will be supplementary, focusing for instance on how an authority might fulfil its duty rather than setting out things an authority must do. While authorities must have regard to the guidance they will be able to depart from it if they have justification for doing so.

17.6 Guidance will not change the meaning of anything in the Bill.

18. **Clause 10(1): Power to make regulations about exemptions**

*Power conferred on:* Secretary of State  
*Power exercised by:* Regulations (Statutory Instrument)  
*Parliamentary procedure:* Negative procedure

**Purpose and context**

18.1 Clause 10(1) enables an authority to apply to the Secretary of State for an exemption from the duty.

18.2 This clause enables the Secretary of State to make regulations:

(a) specifying the cases or circumstances in which an authority can apply for an exemption

(b) making further provisions about applications for exemptions.

18.3 Subsection (2) of the new section 2B provides that the regulations can specify the cases or circumstances in which an authority can apply for an exemption. Further, the regulations may make provisions about applications under subsection (1) (see subsection (3)). Such further provisions may, in particular: require that an
application is supported by specified information and by such further information as
the Secretary of State requires (subsection (3)(a)), or that an authority which is
granted an exemption must notify all those on the register (subsection (3)(b)).

**Justification for delegation**

18.4 It is important that the exemption regime has a degree of flexibility to it. The
Government is keen that it does not place a burden on relevant authorities which is
unmanageable or impinges on their ability to deliver housing more generally. At this
stage, before the registers under section 1 of the 2015 Act have been established
and the duty in clause 2A is in force it is difficult to determine what the demands will
be on different local authorities and how the exemption should be set to assist them
(while ensuring that the objective to promote self-build and custom housebuilding is
met). Setting out the detail of the exemption in regulations allows the Government
time to understand how the registers and the duty are working together in the first
instance before it sets out where and when authorities should be exempt. It also
allows the Government flexibility to adapt the exemption at a later date as this area
grows and develops.

**Justification for procedure selected**

18.5 The Department considers that the negative resolution procedure is appropriate
because the power under the regulations will relieve an authority of a burden (rather
than creating new obligations). In other words, the regulations create exemptions to
the duty in the new section 2A. The Department does not therefore consider that
this warrants further Parliamentary debate.

19. **Clause 11(1): Further and consequential amendments**

*Power conferred on: Secretary of State*
*Power exercised by: Regulations (Statutory Instrument)*
*Parliamentary procedure: Negative procedure*

**Purpose and context**

19.1 Clause 11(1) provides an amendment to paragraph 3 of the Schedule to the 2015
Act. This amendment allows the Secretary of State to make regulations which
provide that where a person does not meet certain eligibility criteria to go onto an
authority’s register (which it is required to hold under section 1 of the 2015 Act), but
has met other conditions, they can be entered onto a separate part of the register
(the “part II register”).

19.2 For example an authority might apply, as part of its eligibility criteria, a local
connection test specifying that only persons residing in its area are entitled to be
entered onto its register. The regulations under this part can provide that where a
person has failed a local connection test but has satisfied other conditions (such as
criteria about age or ability to fund an acquisition) then that authority has to place
that person on part II of the register.
The duty does not extend to the demand as demonstrated by the part II register. However an authority will be required to have regard to the second register as part of its existing duty under section 2 of the 2015 Act to have regard to registers in the exercise of its planning, housing, regeneration and land disposal functions.

**Justification for delegation**

The existing structure of the 2015 Act provides that eligibility criteria are established by way of regulations. Although at the present time we anticipate that the Secretary of State will make regulations relating to eligibility criteria including a local connection test this has not yet been done. The requirements relating to the part II register are contingent on eligibility criteria being established and therefore it seems appropriate that they should be dealt with in the same instrument.

**Justification for procedure selected**

The regulations do not confer a new burden on relevant authorities as they are already required to have regard to registers under the provisions of the 2015 Act. Although the regulations could be regarded as setting up an additional register, the part II register is only a subset of an authority’s register to record people who do not comply with all of the eligibility criteria that the authority has applied. The ability to apply eligibility criteria in the first instance is conferred by the Secretary of State through regulations (which are also subject to the negative procedure).

**20. Clause 11(2): Further and consequential amendments**

*Power conferred on:* Secretary of State  
*Power exercised by:* Regulations (Statutory Instrument)  
*Parliamentary procedure:* Affirmative procedure

**Purpose and context**

20.1 Clause 11(2) amends paragraph 6 of the Schedule to the 2015 Act which provides the Secretary of State with the power to make regulations concerning fees.

20.2 The amended power extends the regulation making power so provision can be made for the payment of fees in connection with the duty under new clause 2A. Previously fees could only be charged in connection with the relevant authority’s function of keeping and administering the register as provided under section 1 of the 2015 Act. Given that that Bill creates a new duty and functions on relevant authorities, the fee charging powers in the Act needed to be revised accordingly.

20.3 Regulations may now also make provision about the fixing of fees by the Secretary of State (previously this extended to relevant authorities only).

20.4 The regulations may also specify circumstances where no fee is to be paid. It is currently envisaged that this might apply to, for example, those persons on the part II register.
**Justification for delegation**

20.5 The level of appropriate fees changes over time, for example depending on fluctuations in the fixed costs of a relevant authority, so it is important that the fee structure can be subject to some flexibility.

**Justification for procedure selected**

20.6 The affirmative procedure is considered appropriate for these regulations, given that the existing fee charging powers in the 2015 Act are subject to the affirmative procedure.

20.7 The affirmative procedure is also in line with other fee setting powers in other planning related legislation (such as the 1990 Act).

**Part 2: Rogue landlords and property agents in England**

**Chapter 2: Banning orders**

21. **Clause 13: Power to specify meaning of “banning order” and “banning order offence”**

- Power conferred on: Secretary of State
- Powers exercised by: Regulations (Statutory Instrument)
- Parliamentary procedure: Negative procedure

**Purpose and context**

21.1 Part 2 of the Bill contains measures to help local authorities tackle rogue landlords and property agents (i.e. letting agents or property managers) in their area, by providing them with the opportunity to apply to the First-tier Tribunal for a banning order to be made against a person, where that person has been convicted of certain serious offences. The effect of a banning order would be to prevent the person against whom it is made from letting out or managing property for a specified period of time. Part 2 of the Bill also contains provision requiring the Secretary of State to establish a database of rogue landlords and property agents (who again will have been convicted of certain serious offences), which will then be updated and used by local authorities, as a means of monitoring rogues operating in their area.

21.2 This clause defines a “banning order”, which is an order that may be made by the First-tier tribunal, preventing a person from letting housing in England or engaging in letting agency or property management work in relation to housing in England (or preventing a person from doing two or more of these things) or from acting as a director or officer of a company engaging in such activities. The clause also defines a “banning order offence” as an offence of a description specified in regulations made by the Secretary of State.

**Justification for delegation**

21.3 The Department considers that regulations are appropriate to specify the offences which are to be banning order offences, as this provides flexibility in the event that it
is considered necessary to amend the description of offences over time, in order to respond to changing circumstances. In particular, the Department may wish to make changes to the specified offences after reviewing how provisions relating to banning orders and the database of rogue landlords and property agents are working in practice, given that this is an entirely new regime being implemented through the Bill.

Justification for procedure selected

21.4 The negative procedure is appropriate here given that much of the detail of what the regulations may include is already set out in the Bill. For example, the Bill provides that the regulations may describe an offence by reference to the nature of the offence, characteristics of the offender, the place and circumstances in which the offence is committed, the court which sentences a person for the offence and the sentence that is imposed.

21.5 It is envisaged that the type of offences which would be able to trigger an application for a banning order would be serious offences, including a conviction in the Crown Court for offences involving fraud, drugs or sexual assault that are committed in or in relation to a property that is owned or managed by the offender. It is also envisaged that a banning order may be sought where a person has been convicted of certain specified housing offences, which will include offences such as unlawful eviction and failing to comply with an improvement notice in relation to property conditions. These are all existing offences which already have serious consequences for those who are convicted. Nevertheless, there is a safeguard provided in the primary legislation in that where a person has been convicted of a banning order offence and a local authority wishes to seek a banning order, they will need to apply to the First-tier Tribunal for such an order to be made. The tribunal will consider the appropriateness of making a banning order in each individual case, having regard to factors such as the seriousness of the offence or offences committed, any previous banning order convictions and the effect of the banning order on any person who may be affected by it.

22. Clause 22(7) and (8): Power to make regulations on financial penalty for breach of banning order

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

22.1 Clause 22 sets out that a local housing authority may impose a financial penalty, as an alternative to prosecution, if it is satisfied that a person has breached a banning order. The local authority can determine the amount of the penalty, which may be up to £30,000. The clause contains the power for the Secretary of State to make regulations setting out how local authorities are to deal with the financial penalties recovered. There is also a power for the Secretary of State to make regulations
amending the amount of financial penalty that a local authority may charge, to reflect changes in the value of money.

Justification for delegation

22.2 The Department considers that regulations are appropriate to specify how local authorities are to deal with financial penalties recovered and to amend the amount of financial penalty that a local authority may charge, given that these are fairly detailed points, which are likely to be uncontroversial. There is a precedent for setting out how local authorities should deal with certain money recovered from landlords in the existing rent repayment order provisions, where sections 74 and 97 of the Housing Act 2004 provide the power for the Secretary of State to make regulations, under the negative procedure, setting out how amounts received must be used by the local authority. It is anticipated that regulations made under subsection (7) of this clause, specifying how local authorities are to deal with the financial penalties recovered, will set out that the money recovered is to be used by the local authority in the exercise of its housing functions. Secondary legislation provides flexibility to make amendments to the provision over time, to reflect changing circumstances, such as in relation to local authority administration and also changes in the value of money.

Justification for procedure selected

22.3 The Department considers the negative procedure to be appropriate for regulations made under this provision, given the fairly detailed nature of the information to be specified and that this is likely to be uncontroversial. Where power is delegated to provide for the uprating of penalties in order to allow for inflation, it is widely accepted that the negative procedure may be used. As referred to above, there is also a precedent in the Housing Act 2004 where the negative procedure is used for secondary legislation setting out how local authorities should deal with amounts received in relation to rent repayment orders.

23. Clause 22(9) Financial penalty for breach of banning order - guidance

Power conferred on: Secretary of State
Power exercised by: Guidance
Parliamentary procedure: None

Purpose and context

23.1 The clause provides that the Secretary of State can issue guidance which local authorities must have regard to when exercising their functions under this clause or under Schedule 1 to the Bill, which sets out the procedure to be followed by a local authority where it imposes a financial penalty on a person for a breach of a banning order.
23.2 The guidance which the Secretary of State may issue which local authorities must have regard to when deciding whether to impose a financial penalty, the amount of such a penalty and regarding the procedure to be followed when imposing a financial penalty, is likely to be uncontroversial and may contain a level of detail that would be inappropriate for legislation.

23.3 Guidance is considered appropriate for setting out what considerations local authorities should have when deciding whether to impose a financial penalty, the amount of such a penalty and the procedure to be followed when imposing a financial penalty, as whilst local authorities are required to have regard to the guidance, they will be able to depart from the guidance where they consider it appropriate to do so.

24. **Clause 25 and Schedule 3: Management orders following banning order**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

24.1 Clause 25 introduces Schedule 3 to the Bill, which makes amendments to the Housing Act 2004 to allow interim and final management orders to be made by the local housing authority in cases where a landlord has been banned from letting out property. Local authorities are currently able to make management orders to allow them to take over control of the running of a property in certain situations, such as where a property is unlicensed and a suitable licence holder cannot be found. The amendments made by this Schedule provide an additional circumstance in which a management order can be made, which is that a property is let in breach of a banning order. In this circumstance a local authority may decide to make a management order for example if there are tenants in a property who cannot be evicted or the local authority does not wish to see evicted. Where a management order is made due to a property being let in breach of a banning order, the local authority will receive any rent paid by the tenants instead of the landlord and can use this income to help cover its costs in managing the property.

24.2 Whereas under the existing management order provisions in the Housing Act 2004 the landlord is entitled to receive any surplus from the local authority at intervals during and at the end of the management order, where a management order is made due to a breach of a banning order, the local authority keeps any surplus and the Secretary of State may by regulations make provision about how local authorities are to deal with any surplus. In this context the term “surplus” is used to refer to any amount of rent or other payments collected or recovered by a local authority whilst a management order is in place, which remains after deductions to
meet the authority’s relevant expenditure and any amounts of compensation which may be payable to persons affected by the management order.

**Justification for delegation**

24.3 The principle that a local authority is able to manage the finances in relation to property where a management order is in place is already established in the primary legislation. The Department consider that regulations are appropriate to specify how a “surplus” may be dealt with by a local authority as this is a matter of detail that would not be suitable for inclusion in the primary legislation. As referred to above, there is precedent in the Housing Act 2004 to set out the detail in secondary legislation regarding how local authorities should use certain money received in the course of carrying out their housing functions under that Act.

**Justification for procedure selected**

24.4 The Department considers the negative procedure to be appropriate here given that this provision is likely to be uncontroversial. The legislation already sets out the principle that a “surplus” may be retained by the local authority so little discretion is left to the Secretary of State when setting out in secondary legislation how the local authority should use this money.

**Chapter 3: Database of rogue landlords and property agents**

25. **Clause 29: Requirement to publish guidance relating to inclusion of person convicted of banning order offence on a database**

*Power conferred on: Secretary of State*
*Power exercised by: Guidance*
*Parliamentary procedure: None*

**Purpose and context**

25.1 Clause 29(7) requires the Secretary of State to publish guidance setting out the criteria which local housing authorities must have regard to when deciding whether to place a person on a database of rogue landlords and property agents and the period for which persons should be included in this database.

**Justification for delegation**

25.2 The Department considers that the guidance is likely to contain a level of detail that would not be appropriate for inclusion in the primary legislation, for example, the circumstances that may be taken into account in relation to relevant offences and patterns of previous behaviour that may make a person suitable for inclusion on the database. It is possible that the Department may wish to include scenarios and case studies within the guidance to help illustrate this, which would not be suitable for inclusion within the primary legislation.
25.3 The Department considers that providing this information in a guidance document provides increased flexibility, as the guidance may be updated as frequently as necessary. In particular the guidance may need to be revised in response to feedback from local authorities as they use the guidance and when reviewing the effectiveness of the database over time, given that this is a wholly new initiative being introduced by the legislation. Use of a guidance document is also appropriate here because whilst local authorities must have regard to the guidance, they will be able to depart from the guidance where they have justification for this.

26. **Clause 32: Power to specify information to be included in the database**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

26.1 Clause 32 provides the power for the Secretary of State to make regulations setting out the information to be included in relation to each person who is listed in the database of rogue landlords and property agents. In particular, the regulations may require a person’s entry to include their address and other contact details, the period for which their entry on the database is to be maintained, details of properties owned by the person, details of any banning order offences of which the person has been convicted, details of any banning orders made against the person and details of any relevant financial penalties that they have received.

**Justification for delegation**

26.2 The Department considers that this level of detail is more suited to secondary legislation than to be set out in the primary legislation, as the use of secondary legislation provides flexibility by allowing the required information to be amended or updated over time. This flexibility is particularly important given that the database is newly established and the Secretary of State may wish to make amendments to the information that is held in response to feedback from local authorities who will be using the database.

**Justification for procedure selected**

26.3 The negative procedure is considered to be appropriate here given that the primary legislation already gives a clear indication of the type of information to be specified in the secondary legislation. As such, relatively little discretion is therefore given to the Secretary of State in relation to the information to be specified in the regulations.

**Chapter 4: Rent repayment orders**

27. **Clause 40: Guidance on decision to apply for a rent repayment order**

*Power conferred on: Secretary of State*
Power exercised by: Guidance
Parliamentary procedure: none

Purpose and context

27.1 This clause provides in subsection 4 that the Secretary of State may issue guidance which local authorities must have regard to when deciding whether to apply for a rent repayment order.

Justification for delegation

27.2 Guidance issued by the Secretary of State setting out the factors that a local authority is to have regard to when considering whether to apply for a rent repayment order is likely to contain a level of detailed discussion on matters of discretion that would not be appropriate to be included in legislation.

Justification for procedure selected

27.3 The Department considers that use of a guidance document is appropriate here because it provides the flexibility to be able to update the document as required from time to time in the light of changing priorities and new concerns. Use of a guidance document is also appropriate because whilst local authorities must have regard to the guidance, they will be able to depart from the guidance where they have justification for this.

28. Clause 46: Power to make regulation on amounts recovered under rent repayment orders

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

28.1 Clause 46(1) provides that amounts of housing benefit or universal credit recovered by a local housing authority under a rent repayment order following a determination by the First-tier Tribunal are recoverable as a debt, and subsection (2) that such sums are not an amount of housing benefit or universal credit. Subsection (3) provides that the Secretary of State may make regulations about how the amounts recovered must be dealt with.

Justification for delegation

28.2 The power in subsection (3) consolidates existing provision in sections 74(15)(b) and 97(15)(b) of the Housing Act 2004 and extends it to the new grounds for making rent repayment orders established in Part 2 Chapter 4. Subsection (2) establishes the important principle that the recovered sums are no longer accounted for as recovered benefit or universal credit. How to apply those sums is suitable to be dealt with by secondary legislation, because of the level of detail that may be required, and to allow the opportunity to make any necessary changes to
the provision over time, such as to reflect changes in local government administration arrangements. It is anticipated that regulations will provide that any funds recovered should be re-used by a local authority in the discharge of functions under the Housing Act 2004, and any surplus paid into the Consolidated Fund.

**Justification for procedure selected**

28.3 The Department considers the negative resolution procedure to be appropriate. The clauses already set out the major points of principle relating to rent repayment orders, up to the point of recovery by local housing authorities. Provision for what those authorities are to do with the recovered sums is subject to adequate scrutiny under the negative procedure.

**Part 3: Recovering Abandoned Premises in England**

29. **Clause 57: Power to specify form of warning notices**

*Powers conferred on:* Secretary of State  
*Powers exercised by:* Regulations (Statutory Instrument)  
*Parliamentary procedure:* Negative Procedure

**Purpose and context**

29.1 Clause 57 provides that a landlord has to provide three warning notices before bringing the tenancy to an end under the abandonment procedure. This is to provide increased protection for tenants, to give them as many opportunities as possible to respond and halt the abandonment procedure where they have not actually abandoned a property.

29.2 The third warning notice must be fixed to a conspicuous part of the premises, in order to attract the attention of the tenant and potentially any neighbours, who may know the whereabouts of the tenant and could alert them to the abandonment procedure taking place.

29.3 Subsection (10) contains a power for the Secretary of State may make regulations setting out the form that this third warning notice must take. The third warning notice will be served towards the end of the warning period, and the tenant or any other occupiers will have a minimum of only 5 days in which to respond to halt the abandonment procedure before the landlord is entitled to bring the tenancy to an end. It is therefore important that the form makes very clear what the tenant needs to do in order to prevent their tenancy from being brought to an end. For this reason we would like to be able to prescribe the content of this form.

**Justification for delegation**

29.4 The Department considers that this level of detail is more suited to secondary legislation than to be set out in the primary legislation. There is precedent within existing housing legislation where various forms that a landlord may serve on their tenants are prescribed in secondary legislation (for example, the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 (SI 2015/620)). Secondary legislation also provides flexibility by allowing the
prescribed form to be amended or updated over time, to reflect changes in practice or to respond to any feedback from landlords or tenants.

**Justification for procedure selected**

29.5 The negative procedure is considered to be appropriate here given the fairly detailed nature of the information and the fact that the content of the prescribed form is likely to be uncontroversial. Many of the existing forms for landlords and tenants contained in housing legislation are subject to the negative procedure (see for example the Assured Shorthold Tenancy Notices and Prescribed Requirements Regulations (England) 2015 (SI 2015/1646)), so there is precedent for this approach.

**Part 4: Social Housing in England**

**Chapter 1: Implementing the Right to buy on a voluntary basis**

30. **Clause 64: Monitoring**

*Power conferred on: Secretary of State*

*Power exercisable by: Published criteria*

*Parliamentary procedure: None*

**Purpose and context**

30.1 Clause 64 enables the Secretary of State to set home ownership criteria relating to the sale of properties to tenants by private registered providers under voluntary, or non-statutory, right to buy arrangements. The clause also allows the Secretary of State to require the housing Regulator to monitor and report on compliance with these criteria, subject to the criteria being published.

**Justification for delegation**

30.2 Setting criteria by delegated powers has been chosen because the content of the criteria will be detail pertinent to the changing nature of the housing market, and home ownership more specifically.

30.3 The content will contain expectations as to how home ownership is facilitated and then demonstrated by a provider and specify the information required for a response to the Regulator. It will attempt to make the requirement clear and straightforward for providers by specifying criteria and listing the type of data required in response. The criteria (rather than material on the face of the Bill) and any request for particular types of data may need to change (in the light of experience once the system has been in operation), should that need arise. Criteria allow for this adjustment to be made without delay or inconvenience to the social housing sector.
Justification for procedure

30.4 For the above reasons the information is considered suitable for inclusion in criteria, rather than in a statutory instrument. The content, and application, of the criteria is considered to be a matter of detail and good administration, rather than of principle. The principle of monitoring against criteria is already set out on the face of the clause.

Chapter 2: Vacant high value local authority housing in England

31. Clauses 67, 69 and 70 and 71: Power to make a determination requiring local authorities to make a payment to the Secretary of State

Powers conferred on: Secretary of State
Powers exercised by: Determination
Parliamentary procedure: None

Purpose and context

31.1 These clauses enable the Secretary of State to make a determination requiring local housing authorities in England who keep a housing revenue account (i.e. who own social housing stock) to make a payment to the Secretary of State in respect of a financial year. Currently there are 165 stock holding authorities in England. The amount of the payment must represent an estimate of the market value of the authority’s interest in any high value housing which is likely to become vacant during the year, less any deductions described in the determination. Clause 67 sets out the housing to be taken into account and requires the Secretary of State to define “high value” in regulations. The provisions also place a duty on local housing authorities to consider selling such housing and enable the Secretary of State to enter into an agreement with a local authority to reduce the amount of the payment, so long as the money is spent on housing or on things that will facilitate the provision of housing.

31.2 The provisions are intended to encourage the sale of high value housing held by local authorities so that the value locked up in high value properties can be released to support an increase in home ownership and the supply of more housing.

31.3 Clause 67 allows for all, or part, of the amount to be calculated using a formula and provides for assumptions to be made in making a calculation. The formula and the assumptions must be set out in the determination.

31.4 Clause 70 specifies that the determination must be made before the financial year to which it relates, but that the determination may be varied or revoked by a subsequent determination made before, after or during the financial year to which it relates. It also allows a determination made under clause 67 to relate to one or more than one financial year.
The determination may make different provision for different areas, different local housing authorities and for different purposes (see clause 70(6)).

A determination may make provision about how and when a payment is to be made, including provision for payments by instalment (see clause 70(4)). It also allows for interest to be charged in the event of late payments, where provided for in the determination.

Clause 69 (Procedure for determinations) requires the Secretary of State to consult before making a determination. Where the determination relates to all authorities or a description of authorities the Secretary of State must consult with such representative and professional bodies as he considers appropriate, and where the determination relates to a particular local authority he must consult that local authority. It also requires that, as soon as possible after making a determination under clause 67, a copy of the determination must be sent to each local housing authority to which it relates.

Justification for delegation and for procedure selected

The power to make determinations is necessary as the amounts of the payments are dependent upon both the information provided by individual local authorities and the varying circumstances of the local authorities.

Determinations, which provide flexibility to respond to new information and changing circumstances, are therefore the most appropriate method to set out how the relevant amounts are calculated for each local authority and to make provision about the timing of payments. Whilst the technical detail of the calculation will be set out in the determination, the overarching principle on which the calculation will be based is set out in the Bill in clause 67(2). Furthermore, the key component of the calculation – the definition of “high value” – will be set out in regulations which will be subject to further Parliamentary scrutiny. It is therefore not considered necessary for the exercise of the determination-making power to be subject to further Parliamentary scrutiny.

There are a number of precedents for the approach taken. Under the housing subsidy system in the Local Government and Housing Act 1989 (sections 79 to 88) a determination was used to calculate the amount of housing subsidy payable to a local authority under section 80 or by a local authority to the Secretary of State under s80ZA (negative subsidy). Those provisions are very similar to the clauses in this Chapter and determinations made under those provisions were not subject to Parliamentary scrutiny.

Further precedent is found in sections 168 to 175 of the Localism Act 2011, which reformed local government housing financing in England. The Act abolished the housing subsidy system in England and made provision for the Secretary of State to make a determination providing for a calculation of each authority’s “settlement payment” – a payment by a local authority to the Secretary of State or by the Secretary of State to a local authority (see section 168). As with clause 67, section 168 of the Localism Act provides for the calculation – which may be based on a formula – to be set out in the determination and for assumptions to be made in
making the calculation. Again, the provisions in the Localism Act are similar to the clauses in this Chapter and determinations made under those provisions are not subject to further Parliamentary scrutiny.

32. Clause 67(8): Power to define “High value” housing

Powers conferred on: Secretary of State
Powers exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

32.1 Clause 67(8) requires the Secretary of State to define “high value” in regulations for the purposes of the Chapter. A definition of high value is necessary in order to enable the Secretary of State and local housing authorities to determine which housing falls within the scope of the Chapter. This is relevant both to the calculation of the payment under a determination under clause 67 and to the duty in clause 74 (duty to consider selling high value housing). The regulations may make different provision for different areas.

Justification for delegation

32.2 Defining “high value” in regulations will provide greater flexibility over the definition than if it was included in primary legislation. This is important because the definition of ‘high value’ will differ across the country and will change over time. What constitutes ‘high value’ housing in the Royal Borough of Kensington and Chelsea will not be the same as that in the London Borough of Enfield or in the North East of England. The use of regulations will provide greater flexibility to allow for regional differences and to change the definition of ‘high value’ in the future to reflect changing circumstances. Setting the definition in regulations will also ensure that there is sufficient time to collect and properly analyse up-to-date housing market valuation data.

Justification for procedure selected

32.3 The range of values within which it will be possible to set the definition of “high value” will be limited by normal public law principles. The Department considers that the negative resolution procedure is appropriate for the exercise of this power.

33. Clause 68(2) and 74(3): Power to exclude specified descriptions of housing

Powers conferred on: Secretary of State
Powers exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure
Purpose and context

33.1 Clause 68 sets out the housing which is to be taken into account when making a determination under clause 67. The housing to be taken into account is any housing which the authority is required to account for within its housing revenue account under section 74 of the Local Government and Housing Act 1989 (primarily, a local authority’s principal housing stock); however subsection (2)(b) provides the Secretary of State with a power to make exclusions through regulations so that any housing prescribed in the regulations cannot not be taken into account by the Secretary of State when making a determination under clause 67. Likewise, in relation to local authorities’ duty to consider selling high value housing, the Secretary of State has the power to exclude housing from the scope of the duty through regulations. These powers will enable the Secretary of State to exclude housing from these provisions where it is considered appropriate to do so. Under these powers, exclusions could be framed by reference to, for example, the characteristics or geographical location of the housing.

Justification for delegation

33.2 The Department considers that it is appropriate to use regulations for these purposes as this approach will provide flexibility to ensure that if circumstances change over time or if a need for further exclusions is identified in the future this can be easily addressed by adding, amending or removing exclusions. This approach is similar to the approach taken in section 74 of the Local Government and Housing Act 1989 which enables the Secretary of State to direct that housing, as specified in the direction, is to be excluded from the requirement to account for housing within the housing revenue account. No parliamentary procedure applies to directions made under section 74.

33.3 Using regulations will also allow for continuing engagement with local authorities and for further analysis of the data to ensure that any exclusions are appropriate and are framed correctly.

Justification for procedure selected

33.4 Given that the regulations would contain exclusions which would have the effect of reducing the amount authorities are required to pay under clause 67 and/or limiting the housing to which the duty to consider selling in clause 74 applies, the Department considers that it would not be a good use of Parliamentary time to require a debate every time the powers are exercised and that the negative resolution procedure is therefore appropriate for the exercise of both of these powers.

34. **Clause 72(6): Power to make further exceptions from the requirement in clause 72(4) (reduction of payment by agreement with local authorities in London)**

*Powers conferred on: Secretary of State*
*Powers exercised by: Regulations (Statutory Instrument)*
*Parliamentary procedure: Negative procedure*
**Purpose and context**

34.1 This clause enables the Secretary of State to enter into an agreement with a local authority which reduces the amount of the payment which the local authority would otherwise be required to pay to the Secretary of State under a determination under this Chapter. The agreement must include terms and conditions requiring the local authority to use the retained amount to provide new housing or to provide things which facilitate the provision of housing e.g. infrastructure. Where an agreement is entered into with a local authority in Greater London, the agreement must require the local authority to provide two new affordable homes (as defined in clause 72) for each old dwelling which has been taken into account by the Secretary of State when calculating that local authority’s payment under the determination. Subsection (5) contains an exception to that requirement where the Greater London Authority has agreed to ensure that some of the new affordable homes are delivered instead of the local authority. Subsection (6) contains a power for the Secretary of State, by regulations, to make further exceptions to the requirement in subsection (4) in relation to one or more local authorities in case the need arises in the future.

**Justification for delegation and procedure selected**

34.2 As with the power to exclude descriptions of housing, the Department considers that it is appropriate to use regulations for these purposes as this approach will provide flexibility to ensure that if circumstances change over time or if a need for further exclusions is identified in the future this can be easily addressed.

34.3 Given that the power would ensure that London authorities are able to deliver new affordable homes in circumstances where this would not otherwise be possible if the requirement in subsection (4) were to apply - for instance because it has been determined that due to specific factors it would not viable for an authority (on its own or together with the GLA) to be required to deliver two new affordable homes as required by subsection (4) – and the power would, therefore, be exercised to the benefit both local authorities and those in need of affordable housing, the Department considers that the negative resolution provides the appropriate level of Parliamentary scrutiny.

35. **Clause 72(9): Power to amend the definition of “new affordable home”**

- **Powers conferred on:** Secretary of State
- **Powers exercised by:** Regulations (Statutory Instrument)
- **Parliamentary procedure:** Affirmative procedure

**Purpose and context**

35.1 As mentioned above, where the Secretary of State and a local authority in Greater London enter into an agreement under clause 72 (reduction of payment by agreement), the agreement must require the local authority to provide two “new affordable homes” for each old dwelling which has been taken into account by the Secretary of State when calculating that local authority’s payment under the determination. “New affordable home” is defined in the clause as:
(a) a new dwelling in England which is to be made available for people whose needs are not adequately served by the commercial housing market; or

(b) a new dwelling in England that is a starter home as defined in clause 2 of the Bill.

35.2 Subsection (9) confers a power on the Secretary of State to amend that definition by regulations.

**Justification for delegation**

35.3 Despite the definition of new affordable home being broad, the Department acknowledges that housing is an area where there is, and needs to be, a great deal of change and innovation. Flexibility is required to ensure that the new provision can remain relevant. The provision of housing generally and particularly types of housing which are considered affordable to a wide range of people throughout the country is a major concern for the Government and consequently one of its key priorities. It encourages local authorities, and other housing providers to think about new ways in which types of housing which is affordable can be delivered, including developing new types of tenures and ownership models.

35.4 The Department is concerned that a fixed definition may not cover all of the new and innovative types of housing which are being developed. This means that the requirement in subsection (4) to ensure that two new affordable homes are provided for each “old dwelling” risks becoming irrelevant or too restrictive if only existing types of affordable housing are covered.

**Justification for procedure selected**

35.5 The Department acknowledges that the power to amend the definition of new affordable home enables the Secretary of State to amend primary legislation, and for that reason considers the affirmative resolutions procedure to be appropriate.

35.6 There is also relevant precedent for this approach. Section 106BA of the 1990 Act contains an analogous definition of “affordable housing” which the Secretary of State may amend by affirmative regulations. It is therefore considered appropriate that this should also be the procedure used in the exercise of this power.

36. **Clause 74: Power to specify circumstances in which housing is not to be treated as becoming vacant**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

36.1 Under clause 67 the amount of the payment must be determined by reference to high value housing which is likely to become vacant during the year. Likewise, the duty to consider selling high value housing only applies to housing which has become vacant. Under clause 77 housing “becomes vacant” when a tenancy comes
to an end and is not renewed either expressly or by operation of law, however subsection (3) provides the Secretary of State with the power to specify, in regulations, circumstances in which housing is not to be treated as having become vacant. This will enable the Secretary of State to exclude housing from the scope of these provisions by reference to the reason by which the housing became vacant.

Justification for delegation and procedure selected

36.2 As with the power to exclude descriptions of housing, the Department considers that it is appropriate to use regulations for these purposes as this approach will provide flexibility to ensure that if circumstances change over time or if a need for further exclusions is identified in the future this can be easily addressed. The Department would note that secondary legislation is used for similar purposes in other legislative contexts – see, for example, section 37(6) of the Immigration Act 2014 and section 9(3) of the Local Government Act 2003. For the same reasons set out above in relation to the power to exclude descriptions of housing from the definition of ‘housing to be taken into account’ the Department considers that the negative resolution procedure is appropriate.

Chapter 3: Rents for High income Social Tenants

37. **Clause 78: Power to make regulations that provide for mandatory rent levels for high income social tenants**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure, save in relation to powers to amend legislation detailed in clause 82, which is affirmative procedure – see below*

**Purpose and context**

37.1 The Government announced at Budget 2015 that social housing tenants with household incomes of £40,000 and above in London, and £30,000 and above in the rest of England, will be required to “Pay to Stay”, by paying a market or near market rent for their accommodation.

37.2 The power to make rent regulations is intended to confer on the Secretary of State the ability to set out the detail of how the Pay to Stay policy will operate and adjust the operation of the policy in future.

37.3 In overview, Clause 78 concerns the setting of rent payments that local housing authorities must charge high income social tenants. It establishes the principle that the Secretary of State may by regulations (referred to as “rent regulations”) specify the rent payments that local housing authorities must charge high income social tenants (for further details see below). Clauses 79, 80 and 81-85 then set out additional detail that rent regulations under clause 78 may or must include (the provisions of which are discussed in more detail below).
Clause 78 concerns the setting of rent payments that local housing authorities must charge high income social tenants. It establishes the principle that the Secretary of State may by regulations (referred to as “rent regulations”) specify the rent payments that local housing authorities must charge high income social tenants.

The clause provides that the basis on which such rents are set may include whether the rent payments are equal to the market rate or a proportion of the market rate and other factors. The clause also enables the Secretary of State to require local housing authorities to charge different rents for people on different incomes and in different areas of England.

A strong role for guidance is anticipated to be a feature of the new policy, and therefore regulations may require that local housing authorities have regard to guidance issued by the Secretary of State.

Justification for delegation and for procedure selected

Given that the provisions setting out how the policy should operate are likely to be detailed, and to allow for the policy to be adjusted over time, the Department considers it appropriate that this be dealt with in secondary rather than primary legislation. This provides the flexibility to make changes to the operation of the policy if this is thought necessary following policy review, including, in particular, rent levels, income thresholds, evidential and income requirements, the penalty for a failure to disclose and procedures.

The secondary legislation will be brought forward under the negative resolution procedure following the clear policy framework that has been set out in Clause 78 and the related clauses of the primary legislation (as to which see below).

Clause 79: Definition of “high income” etc.

Power conferred on: Secretary of State
Powers exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

This clause sets out part of the framework within which the Regulation making power in Clause 78 will be exercised. Rent regulations are to make provision for rent setting for high income social tenants; it is not a general rent setting power. Accordingly, clause 79 provides that rent regulations must define what is meant by “high income” and make provision about how a tenant’s income should be calculated.

At Budget 2015 the Government announced that the income threshold for a high income social tenant will be based on a household income of £30k (or £40k in London). The savings estimated at Budget were based on taxable income. The regulations allow for different income thresholds to be put in place and for income to be calculated on a different basis (for example, earnings rather than taxable income).
Rent regulations may also require a local housing authority to have regard to guidance given by the Secretary of State when calculating or verifying a person’s income. The process will likely involve the verification of income data with HMRC under the primary powers given to HMRC under clause 81.

**Justification for delegation and for procedure selected**

The justifications are the same as those set out in relation to the rent regulations power under clause 78; this power is a sub-set of that power and will be exercised in the same statutory instrument.

**Clause 80: Information about income**

*Power conferred on:* Secretary of State  
*Powers exercised by:* Regulations (Statutory Instrument)  
*Parliamentary procedure:* Negative procedure

**Purpose and context**

This clause sets out a further aspect of the framework within which the Regulation making power in Clause 78 will be exercised. To operate the policy, local housing authorities will be required to determine the income of their tenants. Rent regulations may be used by the Secretary of State to give landlords the power to require income information from their tenants, specify what kind of information should be declared and how and when it should be provided.

In practice this will involve written requests from landlords to tenants to declare income information within a specified timeframe and to an agreed format – using forms that will be issued by Government guidance.

This clause provides that rent regulations may also require local housing authorities to raise rents to a market rate where tenants have not complied with requirements to declare income information. This penalty has been designed so as to avoid the creation of a criminal offence. (Rent regulations will be used to require local housing authorities to re-evaluate the level of rent following subsequent declaration of income information by the tenants (see clause 83)).

**Justification for delegation and for procedure selected**

The justifications are the same as those set out in relation to the rent regulations power under clause 78; this power is a sub-set of that power and will be exercised in the same statutory instrument.

**Clause 81: HMRC information**

*Power conferred on:* Secretary of State  
*Powers exercised by:* Regulations (Statutory Instrument)  
*Parliamentary procedure:* Negative procedure
Purpose and context

40.1 Regulations under this clause allow the Secretary of State to designate a body for the purposes of carrying out the function referred to in subsection (2)(c) – that being the passing of income information between HMRC and registered providers. Regulations can be used to say how that body should carry out that function.

40.2 The use of this power would be linked to decisions made regarding the costs and complexity of the process for verification provided for in rent regulations (see clause 79). A single contact point might be favoured if the verification requirements are more complex or demanding in order to reduce the administrative burden on HMRC.

Justification for delegation and for procedure selected

40.3 The Department considers that regulations are appropriate to specify what body may exercise the function mentioned in subsection (2)(c) and how it may carry out that function given the additional layer of safeguard provided by the requirement to obtain the consent of HMRC to these Regulations. Furthermore, provision about the carrying out of that function is likely to be detailed, technical and uncontroversial.

41. Clause 82: Power to increase rents and procedure for changing rents

Power conferred on: Secretary of State
Powers exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure as per clause 78, save in relation to the power to amend a provision of an Act, which is affirmative procedure.

Purpose and context

41.1 This clause sets out a further aspect of the framework within which the Regulation making power in Clause 82 will be exercised. Once a local housing authority has taken a decision on the appropriate level of rent for a high income social tenant, they may be constrained by existing tenancy agreements about when they can apply the rent increase. Pursuant to this clause rent regulations may give local housing authorities the power to make rent increases.

41.2 Rent regulations can also be used to set out the circumstances in which rent should be reviewed. There will be certain life events that will certainly be included – these include the death of a partner (leading to reduction in income below the income threshold), provision for review in cases of redundancy will also be included.

41.3 Clause 82 allows regulations to be made to enable tenants of local housing authorities housing to appeal decisions by their landlords to the First Tier Tribunal (property tribunal). Regulations will be made to give effect to this right.

41.4 Clause 82 provides for a Henry VIII power to amend legislation passed before the Act or in the same session if this is necessary to give effect to the rent regulation provisions concerning increases in rent and appeal rights.
Justification for delegation and for procedure selected

41.5 Delegation of these powers is necessary as it will not be known what aspects of existing legislation require amendment until the policy to be set out in the rent regulations is fully developed. The Department considers that an affirmative procedure is required to give the appropriate degree of parliamentary scrutiny to any amendments to other enactments required to align provisions of other legislation, for example in relation to appeal rights and provisions restricting rent increases, with the requirements of the rent regulations.

41.6 Other aspects of the rent regulations for which the framework is set out in this clause will be subject to negative procedure for the reasons set out in relation to clause 78.

42. **Clause 83: Power to revert to original rent levels**

Power conferred on: Secretary of State
Powers exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure as per clause 78.

Context and purpose

42.1 The framework of this clause provides for rent regulations to make provision to moderate the impact of the clause 80(2) penalty for tenants who do not declare income information, by requiring local housing authorities to carry out a review following a declaration that has been made by a tenant after rent has been raised to market rate.

Justification for delegation and for procedure selected

42.2 The justifications are the same as those set out in relation to the rent regulations power under clause 78; this power is a sub-set of that power and will be exercised in the same statutory instrument.

43. **Clause 84: Payment by a local authority of increased income to the Secretary of State**

Power conferred on: Secretary of State
Powers exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

43.1 This clause sets out a further aspect of the framework within which the Regulation making power in Clause 78 will be exercised. Rent regulations will be used to set out how the additional rental income that is collected by local authorities will then be returned to the exchequer. There are options for how this might work – either based on actual or estimated levels of rental income. The Secretary of State may also use regulations to allow local authorities to retain the administrative costs associated with operating the scheme on behalf of central Government. The use of these powers is subject to the outcome of a planned consultation that will seek
further evidence from registered providers of social housing on how the scheme can be administered successfully.

Justification for delegation and for procedure selected

43.2 The justifications are the same as those set out in relation to the rent regulations power under clause 78; this power is a sub-set of that power. An added justification in relation to this provision is the quasi-technical nature of the aspects of the rent regulations for which it provides the framework.

44. **Clause 85: Provision of information to the Secretary of State**

Power conferred on: Secretary of State  
Powers exercised by: Regulations (Statutory Instrument)  
Parliamentary procedure: Negative procedure

Purpose and context

44.1 This clause sets out a further aspect of the framework within which the Regulation making power in Clause 78 will be exercised. Rent regulations can be used to collect data for the purposes of reviewing the operation of the policy in respect of payments to the Secretary of State. It is therefore only necessary to take this power for the provision of data from local authorities.

Justification for delegation and for procedure selected

44.2 The justifications are the same as those set out in relation to the rent regulations power under clause 78; this power is a sub-set of that power. An added justification in relation to this provision is the quasi-technical nature of the aspects of the rent regulations for which it provides the framework.

Chapter 3: Reducing regulation of Social Housing etc

45. **Clause 90: Reducing social housing regulation**

Schedule 4, paragraphs 16 and 29: Powers for the Regulator of Social Housing to give directions about notifications required under new section 176(1)-(3) and new sections 169A – 169C of the Housing and Regeneration Act 2008

Power conferred on: Regulator of Social Housing  
Power exercisable by: Directions  
Parliamentary procedure: None

Purpose and context

45.1 The Schedule makes amendments to existing legislation to reduce social housing regulation. New section 176(1) introduced by paragraph 16 of the Schedule places a notification requirement on a private registered provider of social housing where it disposes of a dwelling that is social housing, even where that land has ceased to be
a dwelling. Section 176(2) requires a non-profit registered provider which disposes of land other than a dwelling to notify the regulator.

45.2 Paragraph 29 inserts three sections after section 169. Sections 169A – 169C require a provider to notify the regulator of specified changes to the constitution of the provider.

45.3 In all these cases, the statutory changes the Bill makes are to require notification in place of the existing requirement to seek the consent of the regulator. This reflects the intended reduction in social housing regulation.

45.4 The powers of the regulator are to give directions about the timing and content of these notifications, and connected details.

*Justification for delegation*

45.5 The provision of these details by directions has been chosen because the content of the directions will be to deal with the notification requirement already set out expressly in the new provisions. The regulator by directions will not be able to add to the notification requirements or the situations in which they may arise. It will be able to dispense with notification requirements if it sees fit.

45.6 The content of the directions will include the timing of, and content included in, the notifications. The direction may be general or specific, whether to specific providers, particular kinds of notification/property, or in any other way.

45.7 A direction dispensing with a notification requirement may, in the case of a disposal notification under section 176, be expressed by reference to a policy for disposals submitted by a provider. In relation to both disposal and constitutional notifications, any dispensation from the notification requirement may include conditions.

45.8 In all cases, the regulator is required to bring a direction to the attention of every provider to which it applies.

45.9 The content of directions is considered to be a matter of detail and good administration, rather than of principle. The principle is already set out on the face of the Bill. The content will be confined to setting time periods for notifications, and to specify what information is required, in order to facilitate regulation and to make the requirement clear and straightforward for providers. For these reasons they are considered suitable for inclusion in directions, rather than on the face of the Bill or in a statutory instrument. Directions will allow for practical adjustment in relation both to timings of notifications and to the information which is helpful for regulatory purposes and should be included (in the light of experience once the system has been in operation), should that need arise. Directions allow for this adjustment to be made without delay or inconvenience to the social housing sector.
Chapter 5: Insolvency of Registered Providers of Social Housing

46. **Clause 97: Conduct of administration etc.**

   *Power conferred on: Secretary of State*
   *Power exercised by: Rules made by statutory instrument*
   *Parliamentary procedure: Affirmative resolution procedure*

**Purpose and context**

46.1 Part 4, Chapter 5 of the Bill introduces a new Housing administration regime with the objective of ensuring that if a private registered provider of social housing which is a company, a registered society (within the meaning of the Co-operative and Community Benefit Societies Act 2014) or a Charitable Incorporated Organisation (within the meaning of Part 11 of the Charities Act 2011) gets into financial difficulty its social housing will remain within the regulated sector.

**Justification for delegation**

46.2 The modifications of Schedule B1 to the Insolvency Act 1986 contained in Schedule 5 of this Bill deal with private register providers of social housing who are companies.

46.3 Clause 97(2) permits the Secretary of State to make regulations to provide for any provision of Schedule B1 to the Insolvency Act 1986 or any other insolvency legislation to apply, with or without modifications, to cases where a housing administration order is made in relation to a registered society or a charitable incorporated organisation. The insolvency landscape for registered societies and charitable incorporated organisations is technical including both the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (SI 2014 No 229) and the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (SI 2012 No 3013). Necessary amendments will need to be made to ensure that the housing administration regime created by Part 4, Chapter 5 of the Bill operates as intended for registered societies and charitable incorporated organisations, as opposed to companies, who are registered providers of social housing.

46.4 Clause 97(3) permits the Secretary of State to make regulations to modify any insolvency legislation as it applies in relation to a registered society or a charitable incorporated organisation if the Secretary of State considers the modifications are appropriate in connection with any provision made by or under Part 4, Chapter 5 of this Bill.

**Justification for procedure selected**

46.5 As these provisions permit the amendment of primary legislation as appropriate to give effect to the housing administration regime in relation to a private registered provider of social housing that is a registered society or a charitable incorporated
organisation the Department considers that the affirmative resolution procedure is appropriate.

47. **Clauses 97 and 112: Conduct of administration etc. and Application of Part to Northern Ireland**

*Power conferred on:* Secretary of State  
*Power exercised by:* Rules made by statutory instrument  
*Parliamentary procedure:* Negative resolution procedure

**Purpose and context**

47.1 Clause 97(5) extends the power to make company insolvency rules conferred by section 411 of the Insolvency Act 1986, for the purposes of giving effect to Part 4, Chapter 5 of the Bill. Such rules would be likely to cover procedural issues such as the quorum required for various meetings and the detail of what constitutes service of documents. In accordance with section 411, rules will be made, in the case of England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State and in the case of Scotland by the Secretary of State. Such rules would be made by statutory instrument and need to be laid before each House of Parliament after being made.

47.2 The requirement in section 413(2) of the Insolvency Act 1986 to consult the Insolvency Rules Committee in relation to rules made under section 411 is disapplied in respect of the power to make housing administration rules. There are precedents for this in the case of the special administration regimes for the water industry, railways and postal services. The requirement is disapplied on the basis that the intention is that the housing administration rules will be modelled closely on the existing rules for an ordinary administration (on which the Insolvency Rules Committee has been consulted) with only such modifications as are necessary to adapt them to a housing administration. It is also the intention that the housing administration rules should be closely modelled on the rules for an energy administration under the Energy Act 2004. The Insolvency Rules Committee was consulted on those rules as they were the first set of rules to be made in respect of a special administration regime based on the new administration procedures introduced into the Insolvency Act 1986 by the Enterprise Act 2002. In these circumstances, a full and formal consultation with the Insolvency Rules Committee as regards the housing administration rules does not seem appropriate.

47.3 By virtue of clause 112(2), in the case of Northern Ireland, rules will be made under the provision of the Insolvency (Northern Ireland) Order 1989 which equates to section 411 of the Insolvency Act 1986. The rules will be made by the Lord Chancellor with the concurrence of the Department for Enterprise, Trade and Investment and the Lord Chief Justice in Northern Ireland.

**Justification for delegation**

47.4 In the same way as it is necessary for “ordinary” administration to provide by rules for the detailed procedural requirements, this power is necessary to provide the
detailed procedural requirements applicable to the special housing administration regime which is provided for in the Bill. Without it the Bill would need to be expanded to address the very detailed issues of procedure applicable to the various aspects of a housing administration.

Justification for procedure selected

47.5 The Department considers that the negative resolution procedure is appropriate for statutory instruments providing for these detailed procedural matters and also to deal with adjustments which need to be made to the procedures.

48. Clause 108: Modification of this Chapter under the Enterprise Act 2002

Power conferred on: Secretary of State
Power exercised by: Order or regulations under the Enterprise Act 2002
Parliamentary procedure: Negative resolution procedure

Purpose and context

48.1 The Enterprise Act 2002 made substantial changes to the regime for ordinary administration and inserted Schedule B1 (which sets out the new provisions on administration) into the Insolvency Act 1986. The special administration regime in Part 4, Chapter 5 of the Bill is based on Schedule B1 of the Insolvency Act 1986.

48.2 Under sections 248, 254 and 277 of the Enterprise Act 2002 the Secretary of State has power to make consequential amendments to the administration regime and to apply it to foreign companies. Clause 108 provides that those powers include the power to make such consequential modifications of Part 4, Chapter 5 of the Bill as the Secretary of State considers appropriate. This would enable any changes made to the ordinary administration regime under the powers in the Enterprise Act to be included where appropriate in the regime for housing administration to ensure that the two do not get out of line.

Justification for delegation and Procedure selected

48.3 Although the power enables the amendment of primary legislation, the negative resolution procedure was considered appropriate for the exercise of the powers in the Enterprise Act 2002 and the Department considers it appropriate that the negative resolution procedure should apply to consequential amendments of Part 4, Chapter 5 of the Bill.

49. Clause 109: Registered Societies: ordinary administration procedure etc.

Power conferred on: Treasury with concurrence of the Secretary of State
Power exercised by: Order made by Statutory Instrument
Parliamentary Procedure: Negative resolution procedure
49.1 Section 118 of the Co-operative and Community Benefit Societies Act 2014 gives a power to the Treasury with the concurrence of the Secretary of State to provide by order provision about company arrangements and administration to registered societies. This does not apply to registered societies that are private registered providers of social housing. This clause removes that exception and thus extends the delegated power in section 118 of the Co-operative and Community Benefit Societies Act 2014.

49.2 The negative resolution procedure was considered appropriate for the exercise of the power in the Co-operative and Community Benefit Societies Act 2014 and the Department considers it is appropriate that the negative resolution procedure should apply when making provisions about company arrangements and administration to registered societies that are private registered providers of social housing.

50. **Schedule 5: Conduct of housing administration: companies**

*Part 1 – Modification of Schedule B1 to the Insolvency Act 1986*

**Paragraph 1 – Introductory**

*Power conferred on: Secretary of State*
*Power exercised by: Order*
*Parliamentary procedure: Negative resolution procedure*

50.1 Paragraph 1 of Schedule 5 applies various paragraphs of Schedule B1 to the Insolvency Act 1986 to a housing administration, including paragraph 110 of Schedule B1. Paragraph 110 confers on the Secretary of State a power to amend provisions in the Schedule about time limits for doing things or giving notice etc. This allows certain procedural matters to be adjusted where for any reason the time limit specified in the Schedule needs to be modified. Although this is a power to amend primary legislation, it is subject to the negative resolution procedure which the Department considers appropriate given the limited and technical nature of the changes to which it relates.

51. **Part 2 – Further modifications of Schedule B1 to Insolvency Act 1986: foreign companies**

**Paragraph 30 – Introductory**

*Power conferred on: Secretary of State*
*Power exercised by: Order*
*Parliamentary procedure: Negative resolution procedure*

51.1 Paragraph 30(3) of Schedule 5 confers on the Secretary of State a power to make modifications to the provisions of Part 2 of Schedule 5. Part 2 applies specified provisions of Schedule B1 to the Insolvency Act 1986 with further modifications in
respect of foreign companies (defined in clause 143(1) as a company incorporated outside the United Kingdom).

51.2 The new special administration regime has largely been formulated with UK-registered companies in mind, since foreign companies do not play a role in the relevant activities at present. Although a number of adaptations to the special administration regime to cater for foreign companies have been made by Part 2 of Schedule 5, it may be that as the social housing market continues to develop more foreign companies could become active in the delivery of housing services and that further modifications are needed to Schedule B1 to account for this.

51.3 The power will only enable the Secretary of State to make new modifications not to amend modifications that have already been made by Schedule 5 of the Bill to ensure that a housing administration can proceed appropriately. Although this is a power to modify primary legislation, the Department considers it appropriate that the order is subject to the negative resolution procedure as it would be making detailed technical changes.

52. **Part 3 – Other modifications**

**Paragraph 44 – Power to make further modifications**

*Power conferred on: Secretary of State*

*Power exercised by: Order*

*Parliamentary procedure: Affirmative resolution procedure*

52.1 Paragraph 44(1) of Schedule 5 confers on the Secretary of State the power to amend Part 3 of that Schedule by making further modifications of the Insolvency Act 1986 and any other enactment made before the passage of the Housing and Planning Bill which relates to or impacts on insolvency. The modifications must be ones the Secretary of State considers appropriate in relation to provisions made by or under Part 4, Chapter 5 of the Bill. This power is needed to enable additional modifications to be made to the insolvency regime, insofar as it impacts on housing administration. There is a need to be able to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern.

52.2 The power can only be used to make new modifications (not to alter those modifications already provided for in the Bill). The Department considers it appropriate that the order is subject to the affirmative resolution procedure because this is a power to modify statutory provisions relating to ordinary administration so as to apply to housing administration. It is considered appropriate that the exercise of the power should be open to debate by Parliament.
Chapter 6: Secure Tenancies etc.

53. **Clause 113 and Schedule 7: Secure tenancies etc.: phasing out of tenancies for life**

**Changes to the Housing Act 1985, clause (81B(1)(a)) - power to make regulations setting out when an old style tenancy should be granted.**

Powers conferred on: Secretary of State
Powers exercised by: Regulation
Parliamentary procedure: Affirmative procedure

**Purpose and context**

53.1 The Government’s intention is that most new tenancies granted after the coming into force of this Bill should be for a fixed term of between 2 – 5 years. In certain limited circumstances old style secure tenancies may still be granted to tenants who already hold a lifetime tenancy. We are placing on the face of the Bill one such circumstance – where the tenant is moved by the landlord, for example as part of a regeneration programme. The Department recognises that it would be unfair to a tenant, in those circumstances, to lose their security of tenure when they are moved through no fault of their own. This power allows the Secretary of State to set out other circumstances in which an old style tenancy may be granted.

**Justification for delegation**

53.2 The Department considers that regulations are appropriate to specify the circumstances in which local housing authorities (LHAs) should be able to offer a lifetime tenancy as this provides flexibility in the event that it is considered necessary to amend the description over time. Examples of circumstances likely to be included in the regulations are where an existing lifetime tenant is under-occupying their current social home or where they need to move for work related reasons.

53.3 However, as this is a new policy, other circumstances may emerge in which it may be helpful for local housing authorities (LHAs) to be able to offer a lifetime tenancy. We wish to retain a power for the Secretary of State to specify other such circumstances in regulations in order to respond flexibly to such situations as we see how the policy is working in practice.

**Justification for procedure selected.**

53.4 The affirmative procedure will also ensure that Parliament has the opportunity to fully scrutinise any proposals in relation to new purposes for which lifetime tenancies may be used before these are enacted.

54. **Changes to the Housing Act 1985, clause 81D(6): Power to regulate in relation to the procedure on review**

Powers conferred on: Secretary of State
54.1 Where a person is offered a secure tenancy, except an old style secure tenancy, they have a right to request a review about the length of the tenancy. That review can only concern itself with whether the length of the tenancy offered is in accordance with any policy the prospective landlord has about the length of secure tenancies it grants. This clause gives a power to the Secretary of State to regulate to make provision about the procedure to be followed in connection with a review under this section.

**Justification for delegation**

54.2 This provision replaces section 107B Housing Act 1985 which gives a similar power in relation to the existing flexible tenancy regime. This power was exercised to make the Flexible Tenancies (Review procedures) Regulations 2012 (SI2012/695). This regime is being replaced by this Bill but in respect of this type of review the power to regulate will remain the same as the current one.

**Justification for procedure selected**

54.3 The current power in clause 107B of the Housing Act 1985 is subject to the negative procedure. We think this continues to be the appropriate procedure as provisions setting out how a review should take place are likely to be detailed, and may require adjustment over time. The Department considers it appropriate that this be dealt with in secondary rather than primary legislation. This provides the flexibility to make changes to the operation of the policy if this is thought necessary following policy review.

55. **Changes to the Housing Act 1985, clause 86 (C)(6): Power to regulate in relation to the procedure to be followed in connection with reconsidering a decision not to grant a tenancy**

- Powers conferred on: Secretary of State
- Powers exercised by: Regulations (Statutory Instrument)
- Parliamentary procedure: Negative procedure

**Purpose and context**

55.1 Where a tenant is notified that the outcome of a review under section 86A (review at the end of a fixed term tenancy) is that the landlord has decided to seek possession of the dwelling house at the end of the current tenancy, the tenant may request the landlord to reconsider its decision. These changes give the Secretary of State a power to make provision about the procedure to be followed in connection with reconsidering a decision of this type.
**Justification for delegation**

55.2 This provision replaces section 107E of the Housing Act 1985 which gives a similar power in relation to the existing flexible tenancy regime where a flexible tenancy is not being renewed. This power was exercised to make the Flexible Tenancies (Review Procedures) Regulations 2012 (SI 2012/695). This regime is being replaced by this Bill but in respect of this type of review the power to regulate will remain the same as the current one.

**Justification for procedure selected**

55.3 The Department considers that the negative procedure used in section 107E continues to be appropriate for the new power for the reasons given in relation to 81(D)(6)

56. **Changes to the Housing Act 1985, clause 124B(6): Power to regulate about the procedure to be followed in connection with a review about the length of an introductory tenancy**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

56.1 A person who is offered an introductory tenancy of a dwelling house in England may request a review, the purpose of which is to consider whether the length of the tenancy is in accordance with any policy that the prospective landlord has about the length of introductory tenancies is grants. This section mirrors the provisions about the review of decisions concerning the length of secure tenancies in 81(D)(6).

56.2 124B(6) gives the Secretary of State power to make regulations about the procedure to be followed in connection with such a review. In particular they may require a review to be carried out by a person of appropriate seniority who was not involved in the original decision, and/or make provision as to the circumstances in which the person who requested the review is entitled to an oral hearing and whether and by whom that person may be represented.

**Justification for delegation**

56.3 This provision gives a similar power to that in the existing flexible tenancy regime. This regime is being replaced by this Bill; part of the new regime is that introductory tenancies will have the possibility of being of different lengths. That means that a review mechanism is needed which mirrors the one for secure tenancies.

**Justification for procedure selected**

56.4 The Department considers that the negative procedure used for a similar review about the length of the tenancy in the current s107E continues to be appropriate for the new power for the reasons given in relation to 81(D)(6)
Part 5: Housing, estate agents and rentcharges: other changes

Housing regulation in England

57. **Clause 117 and Schedule 9: Financial penalty as alternative to prosecution under Housing Act 2004**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

57.1 Clause 117 introduces Schedule 9 to the Bill, which makes amendments to the Housing Act 2004 to provide that financial penalties may be imposed as an alternative to prosecution for certain offences in the Housing Act 2004. Schedule 9 contains a power for the Secretary of State to make regulations setting out how local housing authorities are to deal with financial penalties recovered under these provisions. There is also a power for the Secretary of State to make regulations to amend the amount of financial penalty that may be imposed by a local authority, to reflect changes in the value of money.

**Justification for delegation**

57.2 The Department considers that it is appropriate to use secondary legislation to set out the detail of how local authorities are to deal with financial penalties recovered, given that this is largely a technical matter, the detail of which is unlikely to be appropriate for primary legislation. Secondary legislation also provides the Department with the opportunity to make any necessary changes to the provision over time, such as to reflect changes in local government administration arrangements.

**Justification for procedure selected**

57.3 The Department considers that the negative procedure is appropriate here as the use of this power is expected to be uncontroversial. It is anticipated that funds recovered should be re-used by a local authority as part of their housing functions.

Housing information in England

58. **Clause 119: Tenancy deposit information**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Affirmative procedure*
**Purpose and context**

58.1 Clause 119 makes amendments to the provisions in relation to the tenancy deposit schemes which are set out in Part 6 of the Housing Act 2004. The tenancy deposit schemes are schemes which are authorised by the Secretary of State to provide a service to landlords and tenants by protecting the deposit that a landlord may collect from a tenant under an assured shorthold tenancy agreement. The effect of this clause is to provide that the Secretary of State must make administrative arrangements to require the scheme administrator of the tenancy deposit schemes to provide facilities for the sharing of data with local housing authorities in England. This data will be used by local authorities for specified purposes only, as set out in the primary legislation. The clause contains a power to amend section 237 of the Housing Act 2004 by affirmative resolution.

**Justification for delegation**

58.2 The Department considers that it is necessary to have the power to amend the primary legislation in order to provide some flexibility, in the event that in the future, local authorities need to use the data for additional purposes. The Data Protection Act requires that each specific use of data must be justified and it is not possible to envisage at this point in time every possible circumstance in which local authorities may need to use this data in future.

**Justification for procedure selected**

58.3 Given that a power is being taken to amend primary legislation, the affirmative procedure is the appropriate procedure to be used here. The affirmative procedure will also ensure that Parliament has the opportunity to fully scrutinise any proposals in relation to new purposes for which the tenancy deposit data may be used before these are enacted.

**Enforcement of estate agents legislation**

59. **Clause 121(1): Power to make arrangements for the carrying out of functions under the Estate Agents Act 1979**

*Power conferred on:* Secretary of State  
*Power exercised by:* arrangements made by the Secretary of State  
*Parliamentary procedure:* none

**Purpose and context**

59.1 This clause inserts new section 24A into the Estate Agents Act 1979. New section 24A(2) enables the Secretary of State to make arrangements for the carrying out of his functions as the lead enforcement authority under the Act.

59.2 The Secretary of State may delegate the lead enforcement authority functions to a trading standards authority who will then act as the lead enforcement authority for the whole of the United Kingdom.
Justification for delegation and procedure selected

59.3 In making arrangements for the delivery of the functions of the lead enforcement authority the Secretary of State is bound to follow a fair and open procurement process. The award of the contract will be liable to legal challenge. The Government is of the view that this will provide sufficient safeguard in the exercise of this power.

59.4 This power is broadly in line with:

(a) Section 13(1)(b) National Minimum Wage Act 1998 which enables the Secretary of State to make arrangements for the delivery of functions under that Act to be carried out by officers of a Minister, Department or body performing functions on behalf of the Crown.

(b) Section 15(2) Gangmasters (Licensing) Act 2004 which enables the Secretary of State to make arrangements for the delivery of functions under that Act to be carried out by officers of a Minister, Department or body performing functions on behalf of the Crown.

60. **Clause 121(1): Power to make transitional provision for a change in the lead enforcement authority**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: None*

**Purpose and context**

60.1 The purpose of the power in new section 24A(4) and (5) is to enable the Secretary of State to smooth the transition between trading standards departments should the lead enforcement authority change at any time. It may be necessary, for example, to provide transitional provisions and savings relating to costs orders and general notices issued by a trading standards department in anticipation of their contract to carry out the functions of the lead enforcement authority coming to an end.

Justification for delegation and procedure selected

60.2 No parliamentary procedure is proposed for regulations made under new section 24A(4) as any use of these powers would only be for transitional purposes on the transfer of functions from one trading standards department to another.

60.3 The power is very similar to that in section 7(5) Mesothelioma Act 2014.

Enfranchisement and extension of long leaseholds in England

61. **Clause 122 and Schedule 10: Enfranchisement and extension of long leaseholds: calculations**

*Power conferred on: Secretary of State*
Purpose and context

61.1 The purpose of the power is to prescribe the method of calculation of the price or value of minor intermediate leasehold interests for leasehold enfranchisement and lease extension purposes. A formula set out in the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993 is currently used to make this calculation. This formula requires amendment as it relies on a gilt which was redeemed in July 2015 but cannot at present be updated without primary legislation. The power allows for the prescription of a revised formula, a new formula or the provision of a non-formula based instruction as to how the redemption price is to be calculated.

Justification for delegation

61.2 The formula has to date been set out in primary legislation. Enabling the making of regulations allows for adjustment in future if, as is the case arising this year, surrounding circumstances change which necessitates amendment with greater speed and flexibility than primary legislation can afford. The intention is to make the first such regulations on Royal Assent and to bring them into force at the end of 21 days from laying. The content of the regulations will be informed by a consultation on options for replacing the redeemed gilt with an instrument which produces a similar yield.

Justification for the procedure selected

61.3 It is considered proportionate for the regulations to be subject to the negative resolution procedure. Regulations under the 1993 Act are already subject to this procedure by virtue of section 12 and it is considered proportionate for regulations made under the section 9 once amended to be subject to this procedure also. Provision is inserted into the 1967 Act to apply the same procedure to the Regulations where made under it.

Rentcharges

62. Clause 123: Redemption price for rentcharges

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

62.1 The clause gives the Secretary of State a power to make regulations in accordance with which the price to be paid on the redemption of a rentcharge must be calculated.
62.2 A rentcharge is a periodic payment charged on land which is not payable under a tenancy or mortgage, so that although the rent payer has an interest in the land, the rent owner need not have an interest other than the rentcharge. (Note that rentcharges are to be phased out by 22 July 2037, with the exception of certain types specified in section 2(3) of the Rentcharges Act 1977 ("the 1977 Act").

62.3 Sections 8 to 10 of the 1977 Act set out the statutory procedure for the redemption of rentcharges. Section 10 makes provision for the calculation of the redemption price. Currently, this must be calculated by applying a formula which is very similar to the one used for the valuation or pricing of minor intermediate leasehold interests in leasehold enfranchisement and lease extension claims under the Leasehold Reform Act 1967 and the Leasehold Reform, Housing and Urban Development Act 1993. This formula requires amendment as it relies on a gilt which was redeemed in July 2015 but cannot at present be updated without primary legislation.

62.4 The power allows for the prescription of a revised formula, a new formula or the provision of a non-formula based instruction as to how the redemption price is to be calculated.

**Justification for delegation**

62.5 The formula has to date been set out in the 1977 Act which lacks a power to amend. By allowing the formula or any other calculation method to be set out in regulations, the Bill will mean that in future any necessary adjustment can be made more quickly than is currently the case. This will benefit the parties involved in statutory redemption as it will mean that where there is a need to update or replace the formula and regulations are used to achieve this, there is less likely to be a significant delay in the Secretary of State issuing redemption certificates than if primary legislation was used. The certificates are dependent on the calculation of the redemption price using the formula first being carried out. Currently, no certificates can be issued whilst the formula remains in need of updating. This means that rent payers wishing to redeem remain unable to do so until they have a certificate and are still liable to pay rent charges until redemption occurs. However, it is open to rent payers to seek to redeem outside the statutory procedure through private agreement with rent owners. The Government envisages a continuing role for the formula under the new redemption procedure to be set out in regulations made under clause 124.

62.6 The intention is to make the first such regulations as soon as possible after Royal Assent. The content of the regulations will be informed by responses received to a discussion paper on options for replacing the redeemed gilt.

**Justification for the procedure selected**

62.7 Given that the subject matter of regulations made under the new power relates solely to the calculation method for the redemption price, it is considered proportionate for the regulations to be subject to the negative procedure.
Clause 124: Procedure for redeeming English rentcharges

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

63.1 The clause gives the Secretary of State a power to make regulations setting out a new statutory redemption procedure for rentcharges (excluding those specified in new section 7A(2) of the Rentcharges Act 1977 as inserted by subsection (2) of the amendment.

63.2 Currently a rent payer can apply to the Secretary of State under section 8 of the 1977 Act for a redemption certificate. The clause will allow this procedure to be replaced with a mechanism which is to be set out in regulations. The new procedure will no longer involve the Secretary of State in the redemption of rentcharges. Instead the rent owner and rent payer will be required to take certain steps for the redemption of a rentcharge. It will still be possible for the parties to reach a private agreement on redemption voluntarily outside of the statutory regime. The clause will not change the position in relation to apportionment orders under section 7(2) of the 1977 Act and section 20(1) of the Landlord and Tenant Act 1927 which result in an annual charge of £5 or less for an apportioned part, applications for redemption certificates can continue to be made to the Secretary of State in such cases.

Justification for delegation

63.3 The existing redemption procedure is set out in primary legislation. As this is a new policy, there may be a need to adjust it to address ‘teething problems’ or to adapt to circumstances as they change over time. Input needs to be sought from stakeholders in relation to the provision to be made in the regulations. The power allows for that provision to cover matters such as the steps that a rent payer and rent owner must take under the new procedure, the information that a party must provide, payments to be made and the resolution of disputes. Given the complex issues which the regulations must deal with, we anticipate the need for detailed procedure.

Justification for the procedure selected

63.4 As the regulations will be concerned with the property rights of both the rent payer and the rent owner and will include provision on the resolution of disputes, it is considered that their substance should be the subject of Parliamentary debate and therefore necessitates the use of the affirmative resolution procedure.

Part 6: Planning in England
Neighbourhood planning

64. **Clause 125: Designation of neighbourhood areas**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

64.1 The first step in the neighbourhood planning process is the designation by a local planning authority of a neighbourhood area. The authority must designate at least some of the area specified in the application (unless it is all already designated) and must have regard to the desirability of designating the whole of the area of a parish council as a neighbourhood area (see section 61G of the 1990 Act).

64.2 Experience suggests that nearly all authorities are designating all of the area applied for, particularly where the area applied for is the whole of the area of a parish council (some 90% of applications are by parish councils and 90% of these applications are for the whole of the area of the parish to be designated). Yet there is still considerable variation in the time taken for designation to take place and some authorities are taking longer than the prescribed period (the period prescribed in regulation 6A of the Neighbourhood Planning (General) Regulations 2012, as amended by regulation 2(3) of the Neighbourhood Planning (General) (Amendment) Regulations 2015).

64.3 New subsections (12) and (13) of section 61G of the 1990 Act, inserted by clause 125, enable the Secretary of State to make regulations requiring local planning authorities to designate all of the area applied for (or to modify existing designations to achieve that effect) if the application meets prescribed criteria or has not been determined within a prescribed period. The Secretary of State may prescribe exceptional circumstances or cases where this requirement does not apply.

**Justification for delegation**

64.4 The Department considers that this power is appropriate to enable the Secretary of State to make provision for those cases where a local planning authority decision on a neighbourhood area application, or a failure to take a decision, frustrates the ambitions of the local community to embark on the neighbourhood planning process.

64.5 One circumstance which the Department anticipates will be prescribed under this power is where a parish council applies for the whole of the area of the parish to be designated as a neighbourhood area. The Department also intends to exercise the power to require a local planning authority to designate all of the area applied for where the local planning authority has not determined the application within the prescribed period (13 or 20 weeks, depending on the circumstances).

64.6 Before making regulations under this new power, the Department intends to consult on the criteria and periods that should be specified (and any exceptional cases or circumstances). In the light of consultation responses, and further experience, there
may be other circumstances where it would be appropriate for a local planning authority to be required to designate all of a neighbourhood area applied for (or other exceptional circumstances or cases where this requirement should not apply). Due to the need for flexibility, the Department considers it appropriate that these circumstances are prescribed in secondary legislation rather than set out on the face of the Bill.

**Justification for procedure selected**

64.7 The Department considers that the negative resolution procedure is appropriate here: the designation of a neighbourhood area is a necessary but preliminary step in the neighbourhood planning process. Compulsory designation of a neighbourhood area will enable the qualifying body (the parish council, where there is one, or designated neighbourhood forum) to prepare a neighbourhood development order or plan proposal. But a proposal may only come into legal force after completing an examination and referendum process. This level of Parliamentary scrutiny is also consistent with other neighbourhood planning powers (except those relating to referendums).

**65. Clause 126: Timetable in relation to neighbourhood development orders and plans**

Power conferred on: Secretary of State  
Powers exercised by: Regulations (Statutory Instrument)  
Parliamentary procedure: Negative procedure

**Purpose and context**

65.1 Local planning authorities play a key role in neighbourhood planning. One function is to receive the report of the independent examiner of a neighbourhood development plan or order proposal, and to decide whether to hold a referendum on the proposal (and, if so, what the referendum area should be). If the authority disagrees with any of the examiner’s recommendations, they must invite representations and may hold a further examination on the issue. Experience suggests that a small but significant number of authorities are failing to take these decisions and actions promptly, causing unnecessary delay to the whole process. Clause 126 enables the Secretary of State to prescribe time limits for:

(a) a local planning authority to decide whether to hold a referendum on a neighbourhood plan or order proposal, and the area of that referendum (new paragraph 13A(a) of Schedule 4B to the 1990 Act, inserted by sub-clause (1) of Clause 126);  
(b) the receipt of representations on a local planning authority proposal to depart from recommendations of the independent examiner of the plan or order (new paragraph 13A(b) of Schedule 4B to the 1990 Act, inserted by sub-clause (1) of Clause 126); and
(c) a local planning authority to bring a neighbourhood development order or plan into force following a successful referendum or referendums (section 61E(4)(b) of the 1990 Act and section 38A(4)(b) of the 2004 Act, as amended by sub-clauses (2) and (3) of Clause 126).

**Justification for delegation**

65.2 Due to the need to keep these time periods under review and potentially to make future adjustments in light of experience, the Department considers it appropriate that time periods are prescribed in secondary legislation rather than set out on the face of the Bill.

**Justification for procedure selected**

65.3 The Secretary of State may already prescribe time limits at other stages of the neighbourhood planning process. For example, sections 61F(12)(b) and 61G(11)(f) of the 1990 Act, inserted by Schedule 9 to the Localism Act 2011, enable the Secretary of State to make regulations requiring an application for designation of a neighbourhood forum or area to be determined by a prescribed date. Regulations made under these existing powers are subject to the negative resolution procedure. The Department considers it appropriate and consistent that the new powers should be subject to the same level of Parliamentary scrutiny.

66. **Clause 127: Making neighbourhood development orders and plans: intervention powers**

*Power conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

66.1 Clause 127 enables the Secretary of State, at the request of a parish council or neighbourhood forum responsible for neighbourhood planning in a neighbourhood area, to decide whether a neighbourhood plan or order proposal should be put to a referendum. This power may be exercised where the local planning authority fail to take a decision by the date prescribed under the new powers in clause 93, or do not follow the independent examiner’s recommendations, or make modifications to the proposal not recommended by the examiner (other than modifications to secure compliance with EU obligations or Convention rights, or to correct an error).

66.2 New paragraph 13C of Schedule 4B to the 1990 Act, inserted by sub-clause (1) of Clause 127, enables the Secretary of State to make regulations for the procedure to be followed by qualifying bodies requesting intervention by the Secretary of State, and by the Secretary of State in considering and responding to any such request, and when intervening in response to a request.
Justification for delegation

66.3 The Department considers that, should Parliament accept the principle that the Secretary of State may intervene in the limited circumstances set out on the face of the Bill, it is appropriate that the procedural detail should be dealt with in secondary rather than primary legislation. These are matters of detail that will need to be kept under review and may need to be updated from time to time in light of experience.

66.4 The Secretary of State may already, by Regulations, make provision as to requirements that must be complied with by a qualifying body (a parish council, where there is one, or a designated neighbourhood forum) before proposals for a neighbourhood development order are submitted to a local planning authority. The Secretary of State may also prescribe matters that a local planning authority, or an independent examiner of a neighbourhood development order or plan proposal, must take into account in undertaking their neighbourhood planning functions (see, for example, paragraphs 4(1) and (2), 8(1)(e) and (2)(g), 9(2) and (3), 10(8), 11, 12(3) and (11), 13(1) and (3) of Schedule 4B to the 1990 Act, inserted by Schedule 10 to the Localism Act 2011; these provisions apply to neighbourhood development plans by virtue of section 38A(3) of the 2004 Act, inserted by Schedule 9 to the Localism Act 2011).

66.5 The Department considers it appropriate and consistent that the procedures for a qualifying body to request intervention by the Secretary of State, and for the Secretary of State to consider and respond to such a request, should also be prescribed in regulations.

Justification for procedure selected

66.6 Regulations made under the existing powers described above are subject to the negative resolution procedure. The Department considers that this level of Parliamentary scrutiny is also appropriate for procedures governing the new intervention power.

Local planning

67. Clause 129: Power to direct amendment of local development scheme

Power conferred on: Secretary of State
Powers exercised by: Directions (Statutory Instrument)
Parliamentary procedure: None

Purpose and context

67.1 Where a local planning authority has not produced a Local Plan by early 2017, the Government has committed to intervene to arrange for a plan to be written in consultation with local people.

67.2 This clause updates the powers of the Secretary of State and Mayor of London under section 15(4) of the 2004 Act to direct modifications to an authority’s local development scheme (which sets out the documents which comprise the Local Plan
that the authority intend to produce and the timetable for their production). The purpose of the amendment is to ensure that modifications can be required to the subject matter of a document specified in a local development scheme (the Department feels that the current wording may be open to an unnecessarily narrow interpretation).

Justification for delegation

67.3 As these are amendments to an existing power, the Department considers that it is appropriate that directions may continue to be made under the amended power.

Justification for procedure selected

67.4 As this is an amendment to an existing power that is not subject to Parliamentary scrutiny, and the amendment clarifies rather than enlarges the power, the Department considers that it is appropriate that directions may continue to be made without Parliamentary scrutiny. The power must be exercised according to general public law principles and is subject to challenge by way of judicial review.

68. Clause 130: Power to give direction to examiner of development plan document

Power conferred on: Secretary of State
Powers exercised by: Directions (Statutory Instrument)
Parliamentary procedure: none

Purpose and context

68.1 Section 20 of the 2004 Act requires a local planning authority to submit every development plan document to the Secretary of State for independent examination. New subsection (6A) of section 20, inserted by clause 130, would enable the Secretary of State to direct the person appointed to examine the document to:

(a) ‘suspend’ the examination of a document, or part of a document;
(b) consider any specified matters;
(c) allow specified persons to appear before and be heard at the examination; and
(d) take any other specified procedural step in connection with the examination.

68.2 The new powers enable the Secretary of State to make directions to support the Government’s position that planning inspectors examining development plan documents should work pragmatically with local planning authorities and provide them with the opportunity to address any significant issues.

Justification for delegation

68.3 Existing powers for the Secretary of State to intervene in local plan-making are exercised by direction (see sections 21(1), 21(4), and 26(2) of the 2004 Act). The
Department considers it appropriate and consistent that the new powers in section 20 should also be exercisable by direction.

**Justification for procedure selected**

68.4 Existing powers for the Secretary of State to intervene in local plan-making are exercised by direction (see sections 21(1), 21(4), and 26(2) of the 2004 Act). The Department considers it appropriate and consistent that the new powers in section 20 should be exercised by direction. There is no Parliamentary scrutiny of directions given under these powers but they must be exercised according to general public law principles and are subject to challenge by way of judicial review.

69. **Clause 131: Intervention by Secretary of State**

*Power conferred on: Secretary of State*

*Powers exercised by: Directions*

*Parliamentary procedure: none*

**Purpose and context**

69.1 The general principle is that local planning authorities are responsible for preparing their development plan documents. However, the 2004 Act does enable the Secretary of State to intervene in the plan-making process. Under these powers, the Secretary of State takes over the documents, with all decisions made in Whitehall. These amendments made by clause 131 add the flexibility to return a document to the local planning authority for decisions to be made at the local level.

69.2 Clause 131 amends section 21 of the 2004 Act to ensure that a direction may be withdrawn, or partially withdrawn. The clause also inserts a new section 21A to enable the Secretary of State to issue a ‘holding direction’ to prevent a local planning authority from taking any step in connection with the adoption of a document while considering whether to intervene.

**Justification for delegation**

69.3 Clause 131 does not give the Secretary of State any greater powers of intervention in local plan-making but does give greater flexibility over how existing powers are exercised. Ensuring that the Secretary of State may partially withdraw a direction allows for the power to be exercised in the most proportionate way. A ‘holding direction’ gives an opportunity to better consider the case for intervention and only to intervene where appropriate. As these are amendments to existing powers to issue directions, the Department considers that it is appropriate and consistent that directions may continue to be made under the amended powers.

**Justification for procedure selected**

69.4 There is no Parliamentary scrutiny of directions given under section 21 but the power must be exercised according to general public law principles and is subject to challenge by way of judicial review. As these are amendments to existing powers, and enable the Secretary of State to intervene in a more proportionate way, the
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Department considers that it is appropriate that directions under the amended powers may be made without Parliamentary scrutiny.

70. **Clause 132: Secretary of State’s default powers**

*Power conferred on: Secretary of State*

*Powers exercised by: Directions*

*Parliamentary procedure: none*

**Purpose and context**

70.1 Government policy is to get Local Plans in place in all areas but to retain decision-making at the local level where possible. Currently, if the Secretary of State thinks that a local planning authority is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document he/she may intervene to prepare or revise a development plan document, have it examined and approve the document. Clause 132 substitutes section 27 of the 2004 Act to give the Secretary of State a broader range of options.

70.2 Existing powers are retained, but amendments made by clause 132 would enable the Secretary of State to direct an authority to take specific actions to get a plan in place, leaving responsibility for the document with the local planning authority.

70.3 Should the Secretary of State need to intervene to prepare or revise a document, the amendments enable responsibility for the document to be returned to the local planning authority at a later stage in the plan-making process. The Secretary of State may direct a local planning authority to prepare or revise a document, submit it for examination and publish the recommendations of the person appointed to examine the document. The Secretary of State may also direct the authority to consider adopting the document but the final decision remains one for the authority to take.

**Justification for delegation**

70.4 Clause 132 gives the Secretary of State more targeted intervention powers, to address instances of local planning authorities failing or omitting to put Local Plans in place. Current powers require the Secretary of State to take over responsibility for a document. The amended powers enable decisions on local plan-making to be taken at the local level where possible.

70.5 Existing powers for the Secretary of State to intervene in local plan-making are exercised by direction (see sections 21(1), 21(4), and 26(2) of the 2004 Act). The Department considers it appropriate and consistent that the new powers should also be exercisable by direction.

**Justification for procedure selected**

70.6 There is no Parliamentary scrutiny of directions given under existing intervention and the Department considers that this is appropriate for the new powers, which
enable the Secretary of State to intervene in a more proportionate way, retaining local responsibility for plan-making. The powers must be exercised according to general public law principles and are subject to challenge by way of judicial review.

71. **Clause 133: Default powers exercisable by Mayor of London or combined authority**

*Power conferred on: Secretary of State*

*Powers exercised by: Directions*

*Parliamentary procedure: none*

**Purpose and context**

71.1 The Secretary of State has power under section 27 of the 2004 Act to prepare or revise development plan document (which comprise the Local Plan which guides development in a local planning authority area). This power may be exercised only where the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of the document.

71.2 Clause 132 of the Bill substitutes a new section 27. The new section enables the Secretary of State to direct a local planning authority to prepare or revise a development plan document and take other steps necessary for it to become part of the development plan for their area. This enables more targeted intervention without the Secretary of State taking over the preparation of the document.

71.3 Clause 133 provides a further option for the Secretary to State to invite the Mayor of London or a combined authority to prepare or revise a development plan document for a local planning authority in their area. The Secretary of State would have similar powers to intervene in the preparation of a document by the Mayor or a combined authority as he does in respect of documents prepared by local planning authorities.

**Justification for delegation**

71.4 The Government believes that the strong and accountable governance that the Mayor of London and combined authorities provide make it appropriate to devolve responsibility for ensuring that plans are in place that support the delivery of new homes and other development in their areas.

**Justification for procedure selected**

71.5 As with existing powers, these new powers may only be exercised in the limited circumstances set out on the face of the Bill. There is no Parliamentary scrutiny of directions given under existing intervention powers and the Department considers that this is appropriate for the new powers, which enable the Secretary of State to intervene to provide certainty for businesses and communities, while ensuring that Local Plans are, as far as possible, developed locally.
Planning in Greater London

72. **Clause 135: Planning powers of the Mayor of London**

*Power conferred on: Secretary of State*

*Powers exercised by: Order (Statutory Instrument)*

*Parliamentary procedure: Negative*

**Purpose and context**

72.1 Section 2A of the 1990 Act enables the Mayor of London to ‘call in’ planning ‘applications of potential strategic importance’ (‘PSI applications’) to decide in place of the relevant London borough (‘PSI applications’, defined in the Mayor of London Order 2008 (S.I. 2008/580), as amended by the Mayor of London (Amendment) Order 2011 (S.I. 2011/550)). Section 74(1B) of the 1990 Act enables the Secretary of State to make provision in a development order enabling the Mayor of London, in prescribed circumstances, and subject to such conditions as may be prescribed, to direct a London borough to refuse a planning application of a prescribed description in any particular case.

72.2 This clause amends sections 2A and 74(1B) of the 1990 Act to enable the Secretary of State to prescribe matters in an order under either section by reference to the Mayor’s spatial development strategy under Part 8 of the Greater London Authority Act 1999 (‘the London Plan’) or London borough development plan documents adopted or approved under Part 2 of the 2004 Act.

72.3 This clause also enables the Secretary of State, by development order, to enable the Mayor to make directions requiring local planning authorities to consult the Mayor before they grant planning permission for development described in the direction.

72.4 This clause also clarifies that ‘prescribed’ in subsections (1B) and (1BA) of section 74 includes matters prescribed in directions made by the Mayor of London under a development order made by the Secretary of State.

**Justification for delegation**

72.5 London’s wharves and vistas are currently protected from development by directions made by the Secretary of State requiring local planning authorities to consult the Mayor before granting planning permission. Once a direction is in place, the Mayor may direct the authority to refuse the application (and must give reasons for the decision). The Department intends to use the amended power to enable the Mayor, rather than the Secretary of State, to identify which Thames wharves and London ‘vistas’ should be protected in this way. The Department also intends that the London Plan should be able to define certain areas where a more focused Mayoral intervention is considered to be beneficial, and to set thresholds for Mayoral intervention in planning applications in those areas. It is also intended to use this power to define the boundaries of central London and the Thames Policy Area, for the purposes of the Mayor’s planning powers, by reference to the London
Plan and London borough planning documents, in the first instance, rather than by reference to maps maintained by the Department.

72.6 The Department considers that it is appropriate to enable the Mayor, as well as the Secretary of State, to make directions requiring the Mayor to be consulted on planning applications. The power will be exercisable only in circumstances prescribed by the Secretary of State, and subject to prescribed conditions. The Department also considers it appropriate that the Secretary of State should be able to prescribe matters in orders made under existing powers by reference to the London plan and London borough local development documents. These documents are subject to public consultation and independent examination, and the Secretary of State has reserve powers to modify these documents. The amendments will enable the Secretary of State to devolve decisions over PSI application areas and thresholds to the most appropriate local level while retaining the ability to make different provision for different cases or different areas, and to prescribe exceptions or exclusions.

**Justification for procedure selected**

72.7 Given that these provisions reflect and amend existing powers to make orders under the negative resolution procedure, the Department considers that this remains the appropriate degree of Parliamentary scrutiny.

### Permission in principle and local registers of land

**73. Clause 136 (1), (3) and (4): Permission in principle for development of land**

*Power conferred on: Secretary of State*

*Powers exercised by: Order (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

73.1 This clause inserts new section 58A and section 59A into the Town and Country Planning Act 1990 (the “1990 Act”). Section 58A provides that, a new planning consent model called ‘permission in principle’ can be granted for development of land in England as provided for by section 59A.

73.2 Permission in principle is designed to separate the consideration of ‘in principle’ issues (such as land use, location and quantum of development) from the consideration of the technical details of development within the planning process. The grant of permission in principle will be followed by an application to the local planning authority to agree the technical details of the scheme before planning permission is granted and development can begin on site.

73.3 The policy aims to give certainty that the fundamental principles of development (but not at this stage, the technical details of the development) are acceptable and are established only once in the process; reducing up-front financial cost for
applicants and minimising wasted or repeated work for local planning authorities. The Government will be discussing the detailed process throughout the Bill to inform subsequent secondary legislation.

73.4 Section 59A(1)(a) gives the Secretary of State the power, by a development order, to grant permission in principle to development of land that is allocated for development in a ‘qualifying document’. The development order will set out the documents which qualify. Initially, the Government intends that only land allocated for development in the Brownfield Register, Local Plans and Neighbourhood Plans will be capable of being granted permission in principle. The development order will also set out the type and scope of development that may be granted permission in principle.

73.5 Where a qualifying document (such as a new local plan) allocates a site for housing-led development that site will be granted permission in principle, provided that the qualifying document meets the following prescribed requirements:

(a) that the document should include a formal statement that the site is suitable for development for the purposes of permission in principle; and

(b) specifies the quantum of development (e.g. the amount of housing-led development).

73.6 Section 59A (1)(b) provides for the granting of permission in principle by the local authority in accordance with a procedure set out in a development order. Subsection (1)(b) gives the Secretary of State the power to set out, in a development order, the process that must be followed when local planning authorities process and consider applications for permission in principle. This provision will allow applicants to have the opportunity to apply for permission in principle for sites that are not included within qualifying documents (i.e. the Brownfield Register, Local plans or Neighbourhood Plans).

73.7 Under this power a development order will set out the procedure to be adopted, including publicity and consultation requirements, before a local planning authority can grant permission in principle. The development order will also set out the type of development that can be granted permission in principle. Initially this will be limited to applications for minor development (but not including householder development), but may be extended to other categories of development in the future.

73.8 Section 59A(5)(a) provides that a development order may set out the lifespan of a permission in principle. Section 59A(5)(a) sets out that a development order may specify that permission in principle is granted for a defined period and then ceases to have effect after this period. Section 59A(5)(b) allows the Secretary of State, by development order, to provide for transitional provisions and savings when permission in principle ceases to have effect.

73.9 Section 59A(6) allows the Secretary of State, by development order, to make provision in relation to an application for technical details consent in respect of which permission in principle has been granted. This power is needed so we can set out the procedure that local authorities and applicants must follow in granting
planning permission in relation to land that has been previously granted permission in principle. This application will be called an application for ‘technical details consent’ (see clause 136(3)(b)). The Government envisages that this will closely follow the existing procedure for granting planning permission and therefore proposes to amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 (‘Development Management Procedure Order 2015’) to set out this application process.

Section 59A(7) allows the Secretary of State, by development order, to require that the local authority prepare and maintain a register of permissions in principle granted by the development order. Local authorities are already required to hold a planning register under section 69 of the Town and Country Planning Act 1990. The provision in section 59A(7) will extend this existing requirement to cover permissions in principle that are granted by the development order itself.

Clause 136(3)(b) will insert new section 70(2ZZA) into the 1990 Act. It provides that after permission in principle is granted for a site, an applicant must submit an application for technical details consent in accordance with the permission in principle granted in order to secure full planning permission. The term ‘technical details consent’ is introduced by new subsection (2ZZB) and is defined as an application for planning permission that relates to, and is in accordance with, the permission in principle approval on the site. Clause 136(3)(b) will insert new section 70(2ZZC) into the 1990 Act. Section 70(2ZZC) allows the Secretary of State to prescribe the circumstances when the local planning authority no longer has a duty to determine an application for technical details consent in accordance with the permission in principle to which it relates, provided that there has been a material change in circumstances.

**Justification for delegation**

There are a number of important reasons why section 59A(1)(a) has been designed this way and it is the Department’s view that the scope and significance of these powers are not such that Parliament would need the opportunity to debate each exercise of them.

Firstly, the new provision closely follows the existing legislative mechanism in existing planning legislation, namely, section 59(2)(a) of 1990 Act provides that a development order, subject to a negative procedure, may itself grant planning permission for development specified in the order or for development of any class specified. There are no legislative restrictions on the nature or type of developments in relation to which this existing wide power may be exercised. In practice in exercising this existing power of the Government to act is circumscribed by its obligations under EU and International law (for example, the Habitats Directive, the Environmental Impact Assessment Directive and the Aarhus Convention) and the Human Rights Act. The same restrictions would apply to circumscribe the exercise of the new power in new section 59A(1)(a).

Secondly, the new power needs to be flexible enough to enable the Secretary of State to prescribe new documents where necessary in the future. To ensure
permission in principle is granted to sites allocated in the most appropriate documents, the Secretary of State has made an undertaking to Parliament that a document will only be prescribed as a 'qualifying document' if it is made or adopted by a public body and he is satisfied that the document has gone through a robust process before being made or adopted.

73.15 Thirdly, the Government's intention is that the power will be limited to housing-led development. In the future, permission in principle could be extended to apply to other development that does not include housing (such as solely commercial or retail development) to encourage a greater level of plan-led development. The power needs to be flexible to achieve this.

73.16 Section 59A(1)(b) has been designed to enable the Secretary of State to replicate (as far as appropriate) the existing procedure for dealing with applications for planning permission. Section 59A(1)(b) closely follows the precedent set by the existing power in section 59(2)(b) of the 1990 Act which already provides for the procedure to be followed by local planning authorities when dealing with applications for planning permission. The existing power to set these procedures is subject to negative resolution procedure in Parliament. It will also set out the type of development that can be granted permission in principle. As set out above, initially this will be limited to applications for minor development but may extend to other categories of development in the future. The power needs to be flexible to achieve this.

73.17 The existing procedure for obtaining planning permission and the new permission in principle regime must mesh together to form a consistent planning regime. The Government's intention is to amend the existing procedure order, set out in the Development Management Procedure Order 2015, to include the new provisions for applications for permission in principle. The procedure under section 59A(1)(b) will follow closely the procedure which is required for full and outline planning permission under the Development Management Procedure Order 2015 and will include procedures (such as consultation, publicity) to ensure that local communities and statutory consultees are involved, as appropriate, when the local planning authority considers an application for permission in principle.

73.18 The ability to set out the duration of a permission in principle pursuant to the power in section 59A(5)(a) in a development order, will give flexibility to set out differing timeframes as they apply in different contexts. For example, permission in principle generated by a local plan allocation document may be expected to live longer, to coincide with the length of lifespan of that document. Whereas sites allocated on the brownfield register may be granted permission in principle for a shorter period to coincide with a more regular review of the register. Similarly, it may be appropriate for permission in principle granted following an application to reflect the time-limits for outline or full planning permission. We will be consulting about the duration of permission in principle shortly.

73.19 The duration of the permission in principle merely sets the time by which a technical details consent must be submitted – it does not set the time by which any development must be begun. Planning permission will only be obtained if technical
Section 70(2ZZC) is linked to the provisions relating to the duration of permission in principle in section 59A(5). We want to be able to provide that after a specified number of years and where there has been a material change in circumstances since the permission in principle came into force, the requirement in section 70(2ZZA) to determine an application in accordance with the permission in principle no longer applies. We will be consulting about what may be an appropriate period shortly.

The flexibility for timeframes relating to permission in principle is needed to ensure that the new permission in principle regime operates effectively in all circumstances. The Department will be consulting about these issues in due course.

The power in section 59A(5)(b) is required in order for the Secretary of State to provide for transitional provisions for example where the permission in principle has ceased to have effect either because the allocation has been removed from a plan or register or has expired following a period to be prescribed. This power is needed so we can provide transitional and saving provisions when permissions in principle cease in order to ensure that the planning system continues to operate effectively.

The technical power in section 59A(6) is needed, so we can set out the procedure that local authorities and applicants must follow in granting planning permission in relation to land that has been previously granted permission in principle. This application will be called an application for ‘technical details consent’ (see clause 136(3)(b)). The Government envisages that this will closely follow the existing procedure for granting planning permission and therefore proposes to amend the Development Management Procedure Order 2015 to set out this application process.

It is important that information about planning decisions are made publicly available and for the Secretary of State to have the power in section 59A(7) to require local planning authorities to do this. Local authorities are already required to hold a planning register under section 69 of the 1990 Act. The provision in section 59A(7) will extend this existing requirement to cover permissions in principle that are granted by the development order itself.

Justification for procedure selected

Under the existing planning legislation Parliament does not scrutinise, by affirmative procedure, the nature of development to which planning permission is granted under existing section 59(1)(a) of the 1990 Act. Consequently, we do not consider it would be appropriate for the affirmative procedure to apply to the subordinate legislation which sets the types of development to which permission in principle is to be applied to under new section 59A(1)(a). It is important for the Secretary of State to be able to respond quickly, to prescribe the nature of developments and to amend that prescription in a responsive way.
73.26 The setting out of a procedure which provides for the processing of applications for permission in principle by a local authority in section 59A(1)(b) is a technical procedural matter. The Department considers it is appropriate for the exercise of this power to be subject to the negative resolution procedure in Parliament, which is also consistent with the existing procedure for planning applications.

73.27 Similarly, the setting of the duration of permissions in principle under section 59A(5)(a) is a technical power that is appropriate to be made in a development order, which is subject to the negative resolution procedure in Parliament.

73.28 It is our view that the power to make consequential amendments in section 59A(5)(b) and the power to make provision in relation to an application for technical details consent in section 59A(6) are both technical procedural powers, which are appropriate to be made in a development order that is subject to the negative resolution procedure in Parliament. For example, it will be necessary to make a number of amendments to subordinate planning legislation, including planning appeals rules and the environmental impact assessment regulations, so they mesh with the new permission in principle regime.

73.29 The power in section 59A(7) is not controversial; it is a procedural expectation that local planning authorities should make details of planning decisions public. We consider that it is appropriate, as is the case for the existing planning register under section 69 of the 1990 Act, that the exercise of the procedural power in section 59A(7) is contained in a development order that is subject to the negative resolution procedure in Parliament.

73.30 The power to prescribe the period in section 70(2ZZC) is a technical provision and it is considered it would be appropriate for this power to be exercised in an order which is subject to the negative resolution procedure in Parliament.

74. Clause 136(2): Permission in principle for development of land

*Power conferred on:* Secretary of State  
*Power exercised by:* Guidance  
*Parliamentary procedure:* None

**Purpose and context**

74.1 Section 59A(8) gives the Secretary of State the power to issue guidance on the operation of the permission in principle model.

**Justification for delegation**

74.2 There may be circumstances in which the Secretary of State may need to give guidance under section 59A(8) to a local planning authority as to how they should exercise their functions under new section 59A of the 1990 Act in order to ensure the effective operation of permission in principle provisions.
Justification for procedure selected

74.3 It is our view that it is appropriate that the power to issue guidance in section 59A(8) is subject to no procedure in Parliament. Guidance will not change the meaning of anything in the Bill. We suggest that any guidance issued is unlikely to be controversial and therefore does not warrant more parliamentary scrutiny.

75. Clause 137: Local planning authority to keep register of particular kinds of land

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary scrutiny: Negative procedure

Purpose and context

75.1 This clause enables the Secretary of State to require, by regulations, local planning authorities to compile and maintain registers of land in their area and allows for the procedure and matters of administrative detail to also be prescribed in regulations.

Justification for delegation

75.2 The Government wishes to have a power to require local planning authorities to keep a register of particular types of land. This is primarily to implement the manifesto commitment to require local authorities to have a register of brownfield land suitable for housing. The intention is that the register will ensure that up to date, transparent information about the amount and location of brownfield land which is suitable for housing, is more readily available to the public. The Government considers that the ability to require transparent public registers could be used beneficially in relation to other types of land and therefore that a wider power requiring local planning authorities to establish registers for other types of land is justified.

75.3 Clause 137(1) will insert a new section 14A into the 2004 Act. The provision will enable the Secretary of State to require a local planning authority in England, by regulations, to compile and maintain a register of land of a description that he prescribes (see subsection (1)(a)), which is either wholly or partly within the authority’s area. It is envisaged that the power will be used to require those local planning authorities which are responsible for deciding planning applications for housing, usually the district council, to compile and maintain a register of brownfield land which is suitable for housing development. “Brownfield land” is the term commonly used for land which has previously been developed. Various types of land are excluded from the definition, for example land in built up areas such as private residential gardens, parks, recreation grounds and allotments.

75.4 The Secretary of State will also be able to prescribe certain criteria (see subsection (1)(b)) which the land must meet before it can be included on the register. It is envisaged that these criteria will include for example that the land must be available already or in the near future for housing development, that it must not be affected by severe physical or environmental constraints that cannot be mitigated and that it
must be capable of supporting 5 or more dwellings. The Secretary of State will be able to require that the register should be kept in two or more parts, see new section 14A(2). The brownfield register might be kept in two parts, one part, Part A which could include land which is both brownfield land suitable for housing and which meets the prescribed criteria and a second part, Part B which could include land identified on Part A of the register which has additionally gone through a process of consultation and which the local planning authority considers is suitable for a grant of permission in principle.

75.5 The reason that the description of land to be included on the register and any prescribed criteria has been left to secondary legislation is so that the power is capable of being used in the future to encourage much needed house building. For example it might be used to require local planning authorities to prepare other registers of land, for example, a register of small sites which would help promote custom build housing.

75.6 The Secretary of State will also be able to provide in the regulations for some discretion on the part of the local planning authority. It is envisaged that the power in new section 14A(3) will be exercised to allow the local planning authority the discretion to place land on Part A of the register where it is brownfield land suitable for housing but it would only be capable of supporting 4 houses or fewer because in that circumstance, strict adherence to the criteria would be counter to the overall policy intention of encouraging housing development on brownfield sites.

75.7 Subsection (4)(a) of new section 14A allows the Secretary of State to make provision about consultation and other procedures to be carried out in relation to entries on the register. We envisage that this power could be used to prescribe a process of consultation which the local planning authority must undertake before land identified on Part A of the register can be included on Part B as land which is suitable for a grant of permission in principle.

75.8 Subsection (4)(b) allows the Secretary of State to prescribe in the regulations descriptions of land that are not to be entered on the register. We envisage that this could be used for example to exclude land from Part B of the register where it already has planning permission for new housing.

75.9 Subsection (4)(c) allows the Secretary of State to confer a discretion on the local planning authority not to enter land onto the register which it would otherwise be obliged to enter. It is envisaged that this will be used to give a local planning authority discretion not to enter land onto Part B of the register in particular circumstances, for example in exceptional circumstances where a site is likely to be suitable for the grant of permission in principle but the development of the site is particularly controversial and the authority considers that it should be decided through the planning application route. Under subsection (4)(d), the Secretary of State may also require the local planning authority to give reasons as to why it has exercised its discretion. It is envisaged that this could be used so that it is made clear to the local community by the local planning authority why a piece of land has been kept off Part B of the register.
75.10 Subsection (4)(e) enables the Secretary of State to prescribe certain types of information that must be included on the register in relation to the pieces of land on the register. It is envisaged that this power could be used for example to require the local planning authority to record information on Part A of the register about each parcel of land such as the site reference, address, size, an estimate of the maximum number of dwellings that the site would be likely to support and its planning status.

75.11 Subsection (4)(f) allows the Secretary of State to make provision in the regulations about revising the register. It is envisaged that this could be used to make provision about how entries on the register should be amended. For example, if planning permission is granted for a site, its planning status would change and Part A of the register would have to be amended accordingly and the site would be removed from Part B.

75.12 Subsection (6)(a) provides that the Secretary of State may require a local planning authority to prepare or publish the register or to revise it by a specified date. It is envisaged that this power could be used to require local planning authorities to prepare and publish their registers by a set date and to revise them annually. This is so that the Government can fulfil part of its manifesto commitment “We will ensure that brownfield land is used as much as possible for new development. We will require local authorities to have a register of what is available and ensure that 90 per cent of suitable brownfield sites have planning permission for housing by 2020.”

75.13 Subsection (6)(b) is a power for the Secretary of State to make regulations to require a local planning authority to provide specified information to him in relation to the register. It is envisaged that this power will be used for example to measure the progress made by local planning authorities towards obtaining planning permission for 90 per cent of suitable brownfield sites by 2020. It might also be used by the Secretary of State initially to measure the progress being made by local planning authorities towards the compilation of the register.

Justification for procedure selected

75.14 The Department recognises that the power to require local planning authorities to compile and maintain registers of land in their area, of a description that may be prescribed, is wide. However, it is our view that the scope and significance of these new powers are not such that Parliament would need the opportunity to debate each exercise of them. This is for three reasons: firstly authorities are presently under a duty to review the principle purposes for which land is used in their area, secondly various of the regulation making powers relate to matters such as procedure for which the negative resolution procedure is appropriate and thirdly, there are pre-existing duties on authorities to maintain registers where further specifics are also prescribed by statutory instruments subject to the negative resolution procedure.

75.15 The essence of these powers is that the local planning authority may be required to keep registers of land in their area. Local planning authorities are already under a duty to keep under review matters which may be expected to affect the
development of their area and the planning of its development, see section 13 of the 2004 Act. This includes at section 13(2)(b) the principal purposes for which land is used in the area. In relation to brownfield land in particular, local planning authorities already identify brownfield land suitable for housing as part of their (non-statutory) Strategic Housing and Land Availability Assessment which is carried out in preparation for the making of their local plan of development in their area.

75.16 Further, several of the limbs of the regulation making power relate to matters of form (subsection (2) which provides that regulations may require the register to be kept in two or more parts), procedural detail (subsections (4)(a) and (f) which provide for consultation and other procedures in relation to entries in the register and for the revision of the register), administrative matters (subsection (4)(e) which allows the regulations to prescribe the information to be included in the register), or instances in which discretion is given to the local planning authority (subsection (3) and (4)(c)) either to add or exclude matters from the register. The Secretary of State also has a power to prescribe descriptions of land that are to be excluded from the register (subsection (4)(b)).

75.17 In relation to the matters of procedural detail, which are yet to be prescribed and which may be subject to change in the future, it is considered that the negative resolution procedure is proportionate and appropriate. This will give the Department the flexibility to change the processes underlying the creation and maintenance of the register, without imposing unduly on Parliamentary time.

75.18 In relation to the local planning authority’s discretion to exclude land from the register and the Secretary of State’s power to do the same, as the effect of those provisions will be to narrow the ambit of the duty on the local planning authority to compile a register of land, the negative resolution procedure is appropriate. Similarly, local planning authorities’ power to add land to the register is discretionary, the duty on them is not increased in scope and the negative procedure is proportionate.

75.19 The negative resolution procedure is the same Parliamentary procedure as is used for the prescription of the procedure for planning applications, see sections 59 and 333(5)(b) of the 1990 Act which provide for such matters to be included in “development orders”. Further, local planning authorities already keep a register of planning applications and decisions, see section 69 of the 1990 Act, and the power to prescribe the information that the register is to contain is also exercisable by development order. Section 188 of that Act makes similar provision in relation to a register of enforcement orders and notices, the detail of the register is again prescribed by development order. We therefore consider that the negative procedure is the most appropriate in this instance.

76. **Clause 137(1) (new section 14A(5)): Describing land by reference to a description of land contained in guidance national policies and advice**

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations (Statutory Instrument) and guidance
Parliamentary procedure: Negative procedure and none

Purpose and context

76.1 This power will mean that if the definition of previously developed land in the National Planning Policy Framework were changed in the future, it would automatically be reflected in the duty to compile a register, so the registers and the overarching policy framework would remain closely aligned.

Justification for delegation

76.2 The power in section 14A(5) is ambulatory and the Department accepts that this means that the description of land could be amended without Parliamentary scrutiny. However, the advantage of this approach is that the definitions in national policies, in practice this will be the National Planning Policy Framework, are well understood by local planning authorities and are not generally changed without consultation.

Justification for procedure selected

76.3 No parliamentary procedure is proposed as it is unlikely that the definitions in the National Planning Policy Framework (guidance) would be substantially changed given that they are settled and well understood by local planning authorities and developers, further, it is likely that any change to a definition in the National Planning Policy Framework would first be subject to consultation. We consider that this provides an appropriate level of review whilst achieving the objective of keeping the definitions in guidance and legislation aligned.

Clause 137(1) (new section 14A(7)(c)): Power for the Secretary of State to issue guidance for the purposes of regulations made under new section 14A

Power conferred on: Secretary of State
Power exercised by: Guidance
Parliamentary procedure: None

Purpose and context

77.1 This subsection will allow the Secretary of State to issue guidance for the purposes of the regulations, to which local planning authorities must have regard in exercising their functions under the regulations.

Justification for the delegation

77.2 There may be circumstances in which the Secretary of State could wish to give guidance to local planning authorities as to how they should exercise their functions under regulations made under new section 14A. Guidance would be supplementary to the regulations, and may, for example, concern what local planning authorities could consider when deciding whether land satisfies the prescribed criteria.
**Justification for the procedure selected**

77.3 Local planning authorities should be able to comply with the new requirements in section 14A by following the procedure in any regulations made by the Secretary of State and the precise nature of the requirement to maintain a register should be capable of being understood without reference to any guidance issued. Subsection (4) provides that the regulations may prescribe details in respect of preparing and maintaining the register, and the intention behind any guidance issued would be to assist local planning authorities by presenting examples and suggesting ways in which local planning authorities could exercise these new functions. Therefore, our intention is that the guidance should not be critical to the way in which the clause is given effect by local planning authorities.

77.4 No parliamentary procedure is proposed in common with other powers of the Secretary of State to issue guidance in relation to planning matters, see for example, section 34 of the 2004 Act (in relation to local plan making), under which guidance is also not subject to a parliamentary procedure.

**78. Clause 137(2): Disapplication in the case of Urban Development Corporations**

*Power conferred on: Secretary of State*

*Power exercised by: Direction*

*Parliamentary procedure: None*

**Purpose and context**

78.1 This is an amendment to an existing Secretary of State direction making power which will allow flexibility in disapplying any regulations made under section 14A from the area of an urban development corporation.

**Justification for the delegation**

78.2 Clause 137(2) amends the direction making power of the Secretary of State in section 33 of the 2004 Act. Under that section, the Secretary of State may direct that Part 2 of that Act does not apply to the area covered by an urban development corporation. An urban development corporation is a body established by the Secretary of State under section 135 of the Local Government Planning and Land Act 1980 and made the local planning authority for the area under section 149 of that Act in order to regenerate it.

78.3 Clause 137(2) amends the direction making power so that the Secretary of State may direct that in addition to Part 2 of the Act not applying to the area of an urban development corporation, the regulations, or some of the regulations, made under section 14A should not apply. This is because if a direction were made disapplying Part 2 from the area of an urban development corporation, so that it did not have to prepare a local plan, it might not be appropriate for the urban development corporation to have to prepare a register of brownfield land under regulations made under section 14A. In addition, there might be circumstances in the future in which it
is decided that Part 2 of the Act and certain regulations made under section 14A should apply to an urban development corporation, but not all of those regulations.

**Justification for procedure selected**

78.4 As the power is one which would exempt a particular urban development corporation from some or all of the requirements of any regulations made under section 14A, it is considered appropriate for the power to remain one of direction that is, for it not to be subject to parliamentary scrutiny.

**Planning permission, etc.**

79. **Clause 138: Approval condition where permission for building operations granted by development order**

*Power conferred on: Secretary of State*

*Power exercised by: Order (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

79.1 This clause amends the Secretary of State’s existing power in relation to planning permissions for building operations granted by development order. In relation to development which is a material change of use of premise, the Secretary of State has an existing power to grant planning permission by development order subject to a condition requiring the prior approval of the planning authority in respect of matters specified in the development order. This clause extends the power of the Secretary of State so he may include provisions as to prior approval when granting planning permission in respect of building operations.

79.2 Granting a national planning permission through a development order is an important feature of the planning system – it allows the Government to prescribe the types of development which it considers should be permitted. Often minor development is permitted, e.g. fences, hard-standing, loft extensions. But it is also used to grant permissions which are in the national interest, e.g. mobile phone masts, extensions to commercial premises. Justification for delegation

79.3 The existing power in Part 3 of the Town and Country Planning Act 1990 to make a development order which grants planning permission is subject to the negative procedure in Parliament. Developments granted planning permission through a development order do not by definition deal with every issue that might arise locally, so including a prior approval provision in the conditions of the development order enables the local planning authority to make decisions based on the local circumstances of each individual case. As such, prior approval provisions are a very significant safeguard which allows local conditions and sensitivities to be taken into account when development is proposed under any nationally exercised right.
Justification for procedure selected

79.4 Given that the existing power to make a development order which grants planning permission is subject to the negative procedure in Parliament (see 77.3 above), and that prior approval provisions (as extended by the Bill) provide an important safeguard to enable local planning authorities to make appropriate local decisions, we do not consider that the use of the power in section 60 of the 1990 Act, once amended by the Bill, will require a greater level of Parliamentary scrutiny. We therefore consider it is appropriate that the power to make development orders, as amended by this clause, remains subject to the negative resolution procedure in Parliament.

80. Clause 139(2): Planning applications that may be made directly to Secretary of State

Power conferred on: Secretary of State
Power exercised by: Order (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

80.1 This clause amends the Secretary of State’s existing power to prescribe categories of planning application in respect of which a local planning authority can be designated for poor performance (the power is currently limited to applications for major development, as prescribed by the Secretary of State). It also allows the Secretary of State to prescribe certain descriptions of planning application which may not be made directly to the Secretary of State as a result of the designation.

80.2 The designation regime set up in sections 62A and 62B of the 1990 Act is intended to incentivise good and timely decision-making by measuring local authorities against existing duties. Where an authority falls below specified targets, it will be liable for designation and applications falling within that description may be made directly to the Secretary of State, at the option of the applicant.

Justification for delegation

80.3 Procedural requirements which planning applications must meet vary according to the nature and scale of the proposed development. These requirements are established in secondary legislation (see, for example, the timescales for decision which vary according to the scale of development: Article 34 of the Development Management Procedure Order 2015). In order to maintain flexibility to reflect these categories of application, where appropriate, and to respond to particular problems with local planning authority performance, it is necessary for the Secretary of State to maintain flexibility to establish, by secondary legislation, various descriptions of application. This is consistent with the Secretary of State’s existing power in section 62A of the 1990 Act to define major development.

80.4 In tandem with the widening of the category of applications to which a designation may apply, the Secretary of State is given a new power to exclude certain descriptions of application from those which may be made directly to him following a
designation. This is to maintain a proportionate approach: it may not be feasible for the Secretary of State to determine high volume, small-scale applications (for example, householder applications), and it is likely he would use the power to exclude such applications. This power will enable the Secretary of State to monitor application data and respond appropriately, to ensure the system can operate effectively.

**Justification for procedure selected**

80.5 We consider it appropriate that the powers to prescribe certain categories of planning application and the power to exclude certain descriptions of application from those which may be made directly to the Secretary of State are exercised by secondary legislation which is subject to the negative procedure in Parliament. The designation regime does not impose new requirements on local planning authorities, but serves to reinforce existing procedural requirements. This is consistent with the existing power to define what amounts to ‘major development’ in section 62A of the 1990 Act, which is subject to the negative resolution procedure. Similarly, Article 2 of the Development Management Procedure Order 2015, which is subject to the negative resolution procedure, sets out definitions of types of development or planning applications to which different procedural requirements will apply.

81. **Clause 140: Local planning authorities: information about financial benefits**

*Power conferred on:* Secretary of State  
*Power exercised by:* Regulations (Statutory Instrument)  
*Procedure:* Negative procedure

**Purpose and context**

81.1 Financial benefits can accrue to local areas as a result of development, such as increased council tax or business rate revenue or payments under section 106 of the 1990 Act. The previous Government implemented a number of measures to increase the financial benefits accruing to local areas from development, including the introduction of the New Homes Bonus, the implementation of the Community Infrastructure Levy and enabling local authorities to retain a share of business rates from new development.

81.2 An evaluation of the New Homes Bonus published by the Department at the end of 2014 found that the bonus had had a positive impact on local authority attitudes towards new housing, but was not necessarily a material consideration in most planning decisions themselves and so was not often referenced in reports made to planning committees by local planning authority officers. The Government, therefore, amended the National Planning Policy Guidance to make clear that local finance considerations may be cited for information in planning committee reports, even where they are not material to the decision.
Despite these changes, the Government is concerned that potential financial benefits of planning applications (especially those which are not material in planning terms) are not fully set out publicly during the course of the decision making process, particularly major applications which are more likely to be considered by a planning committee. This has a negative impact on transparency, preventing local communities from understanding the full benefits that development can bring to an area. This clause seeks to address this transparency deficit whilst not changing what decision makers will look at when they take decisions on planning applications.

This clause inserts section 75ZA into the 1990 Act, to provide that potential financial benefits of development proposals are made public when a local planning authority is considering whether to grant planning permission. The majority of decisions on planning applications are taken under delegated authority by an officer of the authority, with the more controversial or larger developments often being considered by a committee or sub-committee. Where a committee is considering an application, it will normally be assisted by an officer’s report making a recommendation as to how an application should be determined. Section 75ZA places a requirement on local planning authorities to make arrangements for officers’ reports to planning committees, or to the authority itself, containing such a recommendation to include a list of certain financial benefits which are likely to be obtained by the authority as a result of the proposed development. It allows the Secretary of State to prescribe by regulations the financial benefits that must be listed in a planning report and any information that must be provided for each financial benefit that is so listed.

Justification for delegation

Under new section 75ZA(2) the information that must be included in planning reports includes a list of any “local finance considerations” (which includes grants or other financial assistance provided to an authority by a Minister of the Crown and sums that could be received under the Community Infrastructure Levy) and any other financial benefit which the Secretary of State prescribes in regulations, which it appears to the officer are likely as a result of development if it is carried out. Under 75ZA(2)(a) the officer must record details of a financial benefit where it is likely to be obtained by the authority determining the planning application, but also where it will be obtained by another person prescribed in regulations or, where so prescribed, by any person.

The Department has sought to identify some of the main financial benefits that it is seeking to see listed in planning reports, by including “local financial considerations” on the face of the bill. However, the range of financial benefits accruing to local areas as a result of development can change over time as a result of the introduction of new grants or mechanisms to incentivise house building and other development. It is appropriate for the Secretary of State to maintain flexibility to establish, by secondary legislation, an up to date description of the financial benefits that must be considered for listing in planning reports. This is a matter
which may need adjustment more frequently than Parliament can be expected to legislate for via primary legislation.

81.3 The clause aims at ensuring that a financial benefit must be listed where the authority deciding the planning application is the potential recipient. However, it is considered that it may also be necessary to require a benefit to be listed in a report where the recipient is some other person or authority, or indeed any person if so prescribed, and the clause allows for this possibility to be dealt with. The extent to which the exercise of this power is necessary will depend on the nature of the financial benefits prescribed; accordingly, this is technical detail and the Department considers that it is not helpful or practical to set this out on the face of the bill. As with the financial benefits themselves, this is a matter which may need adjustment more frequently than Parliament can be expected to legislate for via primary legislation.

81.4 Under new section 75ZA(2)(c) the Secretary of State also has power to set out in regulations the information that must be provided in respect of each financial benefit that is listed in a planning report. The clause currently requires reports to include only a list of financial benefits. Primarily, the Department is interested in ensuring that planning reports record the simple fact that a financial benefit is likely to flow from development and, as far as is possible, an idea of the scale of benefit. However, it may be necessary to set out further detail as to the information that should be required about a prescribed benefit. If so, the Secretary of State will need to be able to tailor the information requirements so as to achieve the policy aim while seeking to avoid placing unnecessary burdens on Local Planning Authorities. Accordingly, the Secretary of State needs to maintain flexibility to describe, by secondary legislation, the information that must be provided for each financial benefit that is listed in a planning report. This is considered to be a matter of technical detail which it is uncontroversial to provide for by way of secondary legislation.

81.5 New section 75ZA(4) provides that regulations made under this clause may make different provision for different kinds of local planning authority or development. It also allows the Secretary of State, when prescribing a financial benefit, to do so with reference to the amount of value of the benefit. It is considered that this provision is necessary because it may be necessary, in light of experience, to make differential provision to ensure that the Secretary of State can achieve the aim of maximising transparency while ensuring the measure may be tailored to deal with the needs of particular authorities or types of development if necessary. Similarly, the Secretary of State may wish to require a financial benefit to be listed in planning reports only if, for example, it exceeds a prescribed value.

Justification for procedure selected

81.6 It is considered that the negative resolution procedure is proportionate and appropriate in respect of all of these powers. Fundamentally, these powers relate to a procedural requirement in respect of the handling of planning applications. Such powers are normally subject to the negative resolution procedure (see for example section 59 of the 1990 Act which allows the Secretary
of State to make development orders). The same negative resolution procedure is appropriate in this case for a number of reasons. Firstly, this is the usual procedure for administrative requirements relating to applications for planning permission. Secondly, the matters are considered to be uncontroversial and not such as to require Parliamentary debates in every case. And finally, this procedure will give the Department the flexibility to respond to changing circumstances without imposing unduly on Parliamentary time.

82. **Clause 141: Planning Applications etc.: Setting of fees**

*Power conferred on: Secretary of State*
*Power exercised by: Regulations*
*Parliamentary scrutiny: Affirmative*

**Purpose and context**

82.1 This clause amends section 303 of the 1990 Act and provides that regulations made under that section, which would otherwise be treated as hybrid for the purposes of the standing orders of either House of Parliament, shall proceed as if they were not hybrid. Therefore, the usual affirmative procedure would apply.

82.2 Clause 141 will insert a new subsection into section 303 of the 1990 Act which will de-hybridise any regulations made under that section which would otherwise be treated as hybrid. Regulations made under that section are normally subject to the affirmative procedure.

**Justification for delegation and procedure selected**

82.3 Fees for planning applications are currently set by central government on a national basis under the powers in section 303 of the 1990 Act. Many parts of the planning and development sector have made the case for local flexibility in fees, in return for improved performance, and the Government is keen to respond positively through the negotiation of “deals” to decentralise power and responsibility. For example, in return for offering applicants the option of a shorter determination period for particular planning applications, those local authorities could be allowed to charge a higher fee. Therefore we might move to a situation in which instead of having one set of nationally prescribed planning fees for all local authorities in England, there could be two or even more national systems of planning fees in operation.

82.4 A fees statutory instrument which allowed for fee setting in a particular way for certain named authorities could be treated as a hybrid instrument for the purpose of standing order 216 of the House of Lords, in that applicants for planning permission in those areas would pay a higher fee than applicants for planning permission in the rest of England. If the instrument were treated as hybrid, this would result in an extended Parliamentary procedure allowing for individuals to petition and for those petitions to be considered by the select committee formed specifically to consider the instrument.
Against the backdrop of changes to the funding formula for local government, increased devolution of powers to local areas and the importance of driving greater efficiency and effectiveness in planning, the Government believes it is important to be able to devolve planning fee setting, without the statutory instrument which would make such changes needing to be subject to a long hybrid procedure.

It is our view that the hybrid procedure is unnecessary. Petitions would be unlikely to be made against a relevant fees instrument as:

(a) the fee for a planning application is usually a very small percentage of the overall cost of the development and this would continue to be the case, even if fees were to change significantly (for example, even a 20% increase in the application fee for a scheme of 100 units would, we estimate, increase overall development costs by just 0.02%);

(b) where a fast-track service was offered, it would be open to an applicant for planning permission to continue to make their application in the normal way to the local authority, paying the prescribed nationally set fee before the instrument was in force, rather than making a petition against the instrument; and

(c) in return for any change in fees, we would want to ensure that applicants for planning permission in affected areas receive an improved service from their local planning authority which may well be attractive to the applicant (for example a shorter determination time).

Given that any such instrument would still be subject to the usual affirmative procedure and the scrutiny which that entails, the Department considers that applying the hybrid procedure to such instruments would not be the most effective use of Parliamentary time and resources.

Planning obligations

Section 106 of the 1990 Act enables someone with an interest in land to enter into a planning obligation enforceable by the local planning authority. Such obligations are usually entered into in conjunction with an application for planning permission. The negotiation of such obligations can become protracted. This Schedule requires the Secretary of State to appoint someone to resolve issues that are holding up the completion of planning obligations.
83.2 The duty to make an appointment arises where certain conditions are met. The key conditions are that there must be an existing planning application and that the local planning authority must be likely to grant planning permission if satisfactory planning obligations are entered into. There must either be a request or the expiration of a prescribed time period.

83.3 The powers in paragraph 1 and 10(1) to (3) and (4)(a) enable the Secretary of State to make regulations setting out further detail about the appointment process. The regulations may prescribe:

(a) the timing and form of requests;

(b) who, other than the local planning authority and applicant, can make a request for the appointment of a person (this might include a landowner or another party to the proposed instrument containing the planning obligations);

(c) if the appointment is to be triggered by the expiration of a period (rather than a request), what that period should be, and how the Secretary of State should be informed that the circumstances exist;

(d) any other types of planning applications, other than applications for planning permission, to which an appointment could be made;

(e) other circumstances or conditions that must exist before a request can be made;

(f) any circumstances in which a request could be refused;

(g) what qualifications or experience the appointed person must have; and

(h) any fees payable.

Justification for delegation

83.4 The Department considers that these matters are appropriate for regulations because:

(a) These are matters of detail that are not considered fundamental to the structure the appointment process and therefore are not considered appropriate for detailed Parliamentary scrutiny.

(b) The Department wishes to undertake a consultation on these details, which it proposes to do shortly. The Department considers that local authorities, developers and others’ responses will help better inform how these details should be prescribed. For example:

- There may be other circumstances where it would not be appropriate for a person to be appointed, which may come to light through engagement with interested parties.

- We need to ensure that the right level of detail is contained within the request for dispute resolution to enable the Secretary of State to determine whether this process should apply.
We consider that it is right that the views of interested parties, including the potential body responsible for delivering the service, are sought to determine the level of qualifications or experience necessary to undertake such a process.

We anticipate that the fees would in normal circumstances be split equally between the two sides, but given the potential cost to local planning authorities and applicants we would like to give all those with an interest in this process the opportunity to comment on this proposal through consultation.

83.5 The Secretary of State may wish to vary these details from time to time (for example, to reduce or increase the amount of detail to be supplied with a request) to take into account any issues that arise from the operation of this new process and having these details in regulations is considered the appropriate way to deal with such variations.

**Justification for procedure selected**

83.6 The Department considers that the negative procedure is appropriate. There are several precedents in planning legislation for these types of matters being dealt with under the negative procedure, including:

(a) In relation to the detail of planning applications, the powers in sections 62, 65 and 71 of the Town and Country Planning Act 1990 and section 37 of the Planning Act 2008; and

(b) In relation to fees, the power to prescribe application fees under section 4 of the Planning Act 2008.

84. **Clause 142 and paragraphs 2 and 3 and 10(4)(b), (c) and (d) of Schedule 13: Powers relating to the appointed person’s report**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument) (and publication of a template)*

*Parliamentary procedure: Negative procedure (other than the template)*

**Purpose and context**

84.1 The appointed person must produce a report that sets out, inter alia, the terms agreed during the dispute resolution process, or, where the terms have not been agreed, recommendations as to what terms would be appropriate.

84.2 The powers in paragraphs 2 and 3 and 10(4)(b), (c) and (d):

(a) enable the regulations to give the appointed person power to award costs if one of the parties fails to co-operate with the appointed person or comply with any reasonable requests or behaves unreasonably;

(b) enable the Secretary of State to publish a template or model terms that the appointed person must take into account;
(c) enable regulations to set out further details about what the appointed person must and must not take account of;

(d) enable regulations to require the local planning authority to publish the report in line with any requirements set out in those regulations;

(e) enable regulations to provide a process for making revisions to a report.

Justification for delegation

84.3 The Department considers that delegation of these matters is appropriate because:

(a) We would like to test, through consultation with those likely to be involved in the dispute resolution process, the practical matters to be dealt with under these powers, including the appropriate time and manner of publication of reports, the procedures for requesting the correction of errors and other revisions to reports, and the particular matters that the appointed must take into account and not take into account.

(b) It is essential that some of these procedural matters are able to be amended from time to time to reflect experience of this new process, and it is not considered an appropriate use of Parliamentary time for such changes to be debated in Parliament.

Justification for procedure selected

84.4 The Department considers the negative procedure to be appropriate here. These provisions are likely to be uncontroversial and there are precedents for these types of matters being dealt with under the negative procedure, including the procedural rules for planning appeals under the 1990 Act.

85. Clause 142 and paragraphs 5, 6 and 7 and 10(4)(e) and (f) of Schedule 13: Powers relating to procedures after the appointed person issues a report

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Negative procedure

Purpose and context

85.1 After the appointed person issues a report, a local planning authority must comply with certain obligations:

(a) Where planning obligations are entered into in line with the report, then the local planning authority must not refuse permission for reasons relating to the appropriateness of the planning obligations.

(b) The parties may agree different terms, but they will only have a limited period to do so.

(c) Where no obligations are entered into with a specified period, the application must be refused.
85.2 The powers under paragraphs 5, 6 and 7 and 10(4)(e) and (f) enable regulations to prescribe:

(a) the periods referred to in the provisions above;

(b) restrictions on the local planning authority’s ability to ask for additional obligations after the report is issued (any such restrictions would be designed to ensure that the report is given proper effect by the local planning authority);

(c) minimum and maximum periods for determining planning applications after a report is issued;

(d) circumstances or cases where the obligations referred to in these provisions do not apply;

(e) any further steps required to be taken by the appointed person, the local planning authority or the applicant in connection with the report.

Justification for delegation

85.3 The Department considers that these matters are appropriate for regulations because:

(a) We would like to test these matters through consultation, for example to ensure that appropriate timescales are set to allow for the completion of section 106s and the determining of applications.

(b) Being able to do this through regulations enables a degree of flexibility to be able to amend the period of time in the future.

Justification for procedure selected

85.4 The Department considers the negative procedure to be appropriate. In each case, the principle of the matter will have been set out in primary legislation. There should be no need for further Parliamentary debate on the detailed implementation of the measures. We do not consider that specifying a time period after the appointed person’s report is published will be controversial. The process after the report is published needs to be time limited to ensure that negotiations about the planning obligations do not drag on indefinitely. Once the report has been published the parties can either accept the appointed person’s report or agree different terms.

86. Clause 143 Planning obligations and affordable housing

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

86.1 Clause 143 inserts a new section 106ZB into the 1990 Act which permits the Secretary of State to make regulations which impose restrictions or conditions on the enforceability of planning obligations which relate to the provision of affordable housing.
86.2 The Government is concerned that some planning obligations which provide for affordable housing hinder the development of new housing. There are various potential reasons for this including the time taken to negotiate obligations, the cost of fulfilling the obligations and the timing of any payments within the life-cycle of the development. The Government wants to ensure that in circumstances where affordable housing obligations are preventing a site from being developed (and therefore stopping new housing from being completed) that it can make regulations to prevent such obligations from being enforceable.

Justification for delegation

86.3 The Department understands that taking a blanket approach to how restrictions on the enforceability of planning obligations that provide affordable housing apply on every site may be inappropriate. There are a huge range of different types of development site, both in terms of size, nature, and the type of development proposed. Affordable housing obligations may not impact on different development sites in the same way. It is therefore important to recognise these differences and design any restrictions and conditions on enforceability of planning obligations to take account of this.

86.4 For example, it may be the case that there should be different restrictions on different types of affordable housing, or specific types of site where the restrictions should apply (such as sites which are below a certain size). The clause indicates the different circumstance in which new powers could be imposed giving a clear indication of how the power might be used. However the Department considers the detail of how the restrictions will work more suitable for regulations. This would allow the Department the opportunity to consult on how affordable housing obligations impact on the numerous different types of development site so it can tailor the restrictions effectively.

86.5 The Department also notes that issues such as site viability change over time and it is important that the restrictions are not being imposed on development sites which could support affordable housing. Having the restrictions set out in regulations makes it easier for the Government to seek their amendment if this becomes necessary.

Justification for procedure selected

86.6 The Department considers that the affirmative procedure is appropriate because the consequence of any regulations would be to restrict the ability of local authorities to enforce planning obligations in certain circumstances. Authorities are not currently subject to an equivalent legislative restriction, and therefore it is right that such restrictions be subject to a higher level of scrutiny before being implemented.

87. Clause 143 Planning obligations and affordable housing – definition of affordable housing

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

87.1 The new section 106ZB also sets out a definition of the term “affordable housing” and the Secretary of State has taken a regulation making power enabling him to modify this definition.

Justification for delegation

87.2 Despite the current definition of affordable housing being broad, the Department acknowledges that housing is an area where there is, and needs to be, a great deal of change and innovation. Flexibility is required to ensure that the new provision can remain relevant.

87.3 The provision of housing generally and particularly types of housing which are considered affordable to a wide range of people throughout the country is a major concern for the Government and consequently one of its key priorities. It encourages local authorities, and other housing providers to think about new ways in which types of housing which is affordable can be delivered, including developing new types of tenures and ownership models.

87.4 The Department is concerned that a fixed definition may not cover many of the new and innovative types of housing which are being developed. This means that the provisions of s106ZB risk becoming irrelevant if it can only restrict the enforceability planning obligations which of certain types of affordable housing, and not everything that might be considered more generally as being affordable housing.

Justification for procedure selected

87.5 The Department acknowledges that the power to amend the definition of affordable housing enables the Secretary of State to amend primary legislation, and for that reason considers it appropriate that the procedure for Parliamentary approval of the regulations is by affirmative resolution.

87.6 There is also relevant precedent for this approach. S106BA of the 1990 Act contains an analogous definition of “affordable housing” which the Secretary of State may amend by affirmative regulations. It is therefore considered appropriate that this should also be the procedure used in the exercise of this power.

Powers for piloting alternative provision of processing services

Clauses 145, 146 147 and 148: Processing of planning applications by alternative providers

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
**Procedure: Negative procedure**

**Purpose and context**

88.1 Clause 145 gives the Secretary of State a power to make regulations as to the processing (but not the determination of) planning applications by designated persons. Any regulations made under the power would be time-limited, that is, they will be pilot schemes – not permanent and the power makes clear that the regulations must make clear that nothing affects the local planning authority's responsibility for determining planning applications;

88.2 Clauses 145 to 148 set out in more detail what may be included in the regulations, including in particular specifying

(a) the local authority areas where the pilots will take place;

(b) how persons will be designated, eligibility, professional standards and powers of investigating complaints;

(c) the procedures to be followed by designated persons and local planning authorities in relation to planning applications during a pilot;

(d) how fees will be set by designated persons and planning authorities in pilot areas, and their publication;

(e) the procedures to be followed where the Mayor of London or Secretary of State wishes to call-in a planning application which is being processed by a designated person;

(f) what information is to be shared between designated persons and local planning authorities and restricting the use to which the information shared may be put.

**Justification for delegation**

88.3 The process for handling the processing of planning applications is currently established in secondary legislation (see, the Development Management Procedure Order 2015). It is important for the Secretary of State to have the flexibility to adjust the procedures, from time to time and where appropriate, to respond to particular problems in the processing of planning applications, In order to set up a pilot scheme to test the value of allowing persons other than planning authorities to process (but not decide) planning applications, it is necessary for the Secretary of State to provide detailed rules explaining each step in the processing of such applications. It is likely that different procedures may be trialled in different pilots, to see what works best. It is therefore essential that the Secretary of State has the flexibility to describe, by secondary legislation, the procedures to be followed in the processing of planning applications in pilot areas. This approach to delegation of these powers to the Secretary of State is consistent with the Secretary of State’s existing powers in Part 3 of TCPA (in particular sections 59, 61, 61W, 62, 65, 69, 71 and 74) to set these procedures for local planning authorities through a development order.
Justification for procedure selected

88.4 We consider it appropriate that the powers to set out the process for pilots for the processing of planning application are exercised by secondary legislation which is subject to the negative procedure in Parliament. The regime for processing planning applications is technical, detailed and procedural. Use of the negative procedure is consistent with the current statutory framework – the existing regime for processing of planning applications by local planning authorities is subject to the negative resolution procedure, as set out in the Development Management Procedure Order 2015. We consider that in order to ensure the effective administration of the new regime for these pilots, including enabling the Secretary of State to react quickly to amend the procedures for pilots, it is appropriate for the regulations to be subject to negative resolution procedure in Parliament.

Urban Development Corporations

89. **Clauses 149 and 150: Amendments to the 1980 Act**

**Powers conferred on:** Secretary of State  
**Powers exercised by:** Order (Statutory Instrument)  
**Procedure:** Negative procedure

**Purpose and context**

89.1 Clauses 149 and 150 of the Housing Bill amend sections 134 and 135 of the Local Government, Planning and Land Act 1980 (the 1980 Act). The purpose of clauses 149 and 150 is to change the delegated powers conferred on the Secretary of State in sections 134 and 135 of the 1980 Act from affirmative to negative.

89.2 The issues raised in respect of clauses 149 and 150 came to the Government’s attention during the passage of the Deregulation Act 2015, in establishing a new Urban Development Corporation at Ebbsfleet, Kent. Clauses 149 and 150 reflect the amendments made to sections 134 and 135 of the 1980 Act by the Deregulation Act 2015. However, they remove the sunset provision provided for in the Deregulation Act 2015 and make the amendments to the 1980 Act permanent.

89.3 The 1980 Act is amended in respect of England only. Whilst there are amendments in respect of Scotland and Wales these amendments are clarificatory only and restate the existing law.

89.4 Clauses 149 and 150 amend the procedure governing the exercise of existing powers in the 1980 Act conferred on the Secretary of State. The effect of the amendment is that:

(a) Subsection 4 of section 134 of the 1980 Act is substituted by a new subsection 4. The new subsection 4 provides that orders made by the Secretary of State establishing an urban development area are to be made by negative instrument.
New subsections (4A) and (4B) are inserted in section 134 of the 1980 Act. These set out the position in respect of Wales and Scotland respectively.

Subsection 3 of section 135 of the 1980 Act is substituted by a new subsection 3. The new subsection 3 provides that orders made by the Secretary of State establishing an urban development corporation are to be made by negative instrument.

New subsections (3A) and (3B) are inserted in section 135 of the 1980 Act. These set out the position in respect of Wales and Scotland respectively.

New subsection (1A) is inserted in sections 134 and 135 of the 1980 Act. New subsection (1A) provides that before the Secretary of State makes an order he must consult:

- persons who appear to the Secretary of State to represent those living within, or in the vicinity of, the proposed urban development area;
- persons who appear to the Secretary of State to represent businesses with any premises within, or in the vicinity of, the proposed urban development area;
- each local authority for an area which falls wholly or partly within the proposed urban development area; and
- any other person whom the Secretary of State considers it appropriate to consult.

**Justification for procedure selected**

89.5 The Department is of the view that it is not necessary for orders under sections 134 and 135 of the 1980 Act to be subject to the hybrid or the affirmative procedure provided that the use of those powers is subject to a statutory duty to consult.

89.6 The proposed process is simple, transparent, well used and easily understood. The requirement for public consultation will be more accessible to local communities than the petitioning arrangements. It will result in more public engagement than the hybrid and affirmative procedure. The new process will also reduce uncertainty and delay for local communities, businesses and developers.

**Sufficient protection and an appropriate level of Parliamentary control**

89.7 The Department considers that, given the effect of Statutory Instruments designating Urban Development Areas and establishing Urban Development Corporations, the combination of a statutory consultation process and the negative procedure would provide sufficient protections for local citizens and business and provide an appropriate level of Parliamentary control.

89.8 Whilst the proposed amendments would remove the right to petition, the creation of a new permanent statutory consultation duty would provide a new statutory procedure through which local objections could be raised. Such consultation is now standard practice and by putting consultation on a statutory footing, the rights of
affected parties to make their views known are protected and the Department would be required as a matter of public law to take those views into account.

89.9 Judicial Review will be available if it is considered that the statutory procedure for consultation has not been properly followed. The Department will need to balance the interests of affected persons against the public interest in establishing the Urban Development Area and Corporation. If the Department does not carry out this balancing exercise properly then it can be held to account by the courts.

89.10 Parliament would of course retain the option of annulling the Negative Statutory Instrument if it was not satisfied with how the Government had responded to any local objections raised. Indeed, persons affected would be able to ask Members in both Houses to ask that a prayer be brought against the instrument. Given the significant consequences of the instrument being annulled, the Department would in practice ensure that it had considered the issues raised in the consultation responses and responded to them properly before laying the instrument.

An effective and efficient process

89.11 In terms of good policy-making, it is more effective and efficient for any local objections to be raised at earlier stages of the policy making process rather than at the petition stage once an affirmative Statutory Instrument is before Parliament.

89.12 The hybrid process gives rise to considerable uncertainty about how long the decision-making process will take. This uncertainty is unhelpful to communities and businesses.

89.13 The Ebbsfleet Development Corporation was established by negative order following considerable public engagement and consultation. That process enabled affected persons to raise their views and for the Department to consider and respond to them properly within a clearly set timetable. This reduced uncertainty for all of those affected.

89.14 In summary the Department believes that the rights of affected persons can be sufficiently protected by the combination of consultation, scrutiny by the courts and ultimately by the fact that if the Department does not deal with the concerns raised by individuals and organisations then the negative instrument can be prayed against.

Part 7: Compulsory purchase

90. **Clause 163 and paragraph 8(1) of Schedule 15: Notice of general vesting declaration procedure**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Procedure: Affirmative procedure where the regulations amend or repeal a provision of an Act (see clause 190(2)(g))*
Purpose and context

90.1 This clause introduces Schedule 15 to the Bill which changes the notice requirements for general vesting declarations.

90.2 Schedule 15 amends section 15 of the Acquisition of Land Act 1981 to require additional information (in respect of the general vesting declaration procedure) to be included in a confirmation notice of a compulsory purchase order under the Acquisition of Land Act 1981. The notice will need to include a prescribed statement about the effect of Parts 2 and 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 and an invitation to any person who would be entitled to claim compensation if a vesting declaration were made to give the acquiring authority information about the person's name, address and interest in the land. (This information previously had to be included in a preliminary notice of intention under section 3 of the Compulsory Purchase (Vesting Declarations) Act 1981 which is to be repealed by paragraph 5 of Schedule 15 to the Bill).

90.3 The delegated power in paragraph 8(1) of Schedule 15 will allow the Secretary of State to make corresponding amendments to other legislation where the compulsory purchase order is not subject to the Acquisition of Land Act 1981.

Justification for delegation

90.4 Some Acts containing compulsory purchase powers do not depend on the Acquisition of Land Act 1981 for the procedure to make an order. They instead contain their own procedure. The power in paragraph 8(1) of Schedule 15 will allow the Secretary of State to make regulations amending the procedure set out in such Acts to reflect the revisions made by Schedule 15 to section 15 of the Acquisition of Land Act 1981. Corresponding amendments of this type were also made in secondary legislation when the Acquisition of Land Act 1981 was amended by the Planning and Compulsory Purchase Act 2004 (see the Planning and Compulsory Purchase Act 2004 (Corresponding Amendments Order 2007 (SI 2007/1519)).

Justification for procedure selected

90.5 The regulations will be technical and uncontroversial in nature as they will make amendments corresponding to the changes made by paragraphs 2 and 3 of Schedule 15. However, the Department considers that they should be subject to the affirmative procedure where they amend primary legislation. This follows precedent as a similar power to make corresponding amendments in section 110(2) of the Planning and Compulsory Purchase Act 2004 is subject to the affirmative procedure. (The Order made under this section is referred to in the paragraph above.)

91. **Clause 171: Making a claim for compensation**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Procedure: Negative procedure*
Purpose and context

91.1 Clause 171 inserts a new section 4A into the Land Compensation Act 1961.

91.2 New section 4A(1) enables the Secretary of State to make regulations imposing further requirements about the notice in section 4(1)(b) of the Land Compensation Act 1961. This is the notice to claim compensation in respect of the land to be acquired. The purpose of imposing further requirements about the form and content of the notice would be to help provide greater clarity and certainty to claimants about the information that acquiring authorities need to determine the amount of compensation payable. At the moment, good quality claims are not always provided because the current legislation does not specify in any detail what is required.

Justification for delegation

91.3 The Department initially intends to produce a model claim form in guidance. However, should take up not be as desired, the Secretary of State may exercise the power in new section 4A(1). A delegated power to make provision in regulations will allow the Secretary of State to develop and test the form and content of the notice with interested parties and to more easily review the content in the light of practical experience.

91.4 The further requirements are also more suitable for secondary legislation as they will be technical in nature. They will relate to the detailed information which should be provided in a compensation claim for each separate head of compensation (e.g. the claim for the value of the interests to be purchased, any claim for injurious affection of other lands and any claim for disturbance etc.) to allow the acquiring authority to make a proper assessment.

Justification for procedure selected

91.5 Given the limited scope of the delegated power and the technical nature of the further requirements that would be imposed (as set out above), the Department considers that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny.

92. Clause 172: Making a request for advance payment of compensation

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Procedure: Negative procedure

Purpose and context

92.1 Clause 172(3) inserts new section 52ZD into the Land Compensation Act 1973 in relation to the making of an advance payment of compensation.

92.2 Currently, where an acquiring authority takes possession of land, it is obliged, if so requested by a person entitled to compensation, to make an advance payment on account of any compensation that is due for the acquisition of the land (section 52
of the Land Compensation Act 1973). The Bill makes various reforms to advance payments so that they may be claimed and made earlier in the compulsory acquisition process.

92.3 New section 52ZD(1) of the Land Compensation Act 1973 provides that the Secretary of State may by regulations impose requirements about the form and content of a request for an advance payment of compensation or a request to make a payment to a mortgagee under section 52ZA(3) or 52ZB(3). The regulations may permit or require a specified person to design a form to be used in making a request. They may also require an acquiring authority to supply a copy of the form to be used in making a request at a specified stage in the compulsory acquisition process.

92.4 The purpose of prescribing a form would be to help provide greater clarity and certainty to claimants about the information that acquiring authorities need to make an advance payment and to drive up the quality and consistency of the information provided by claimants. Better information on the claim, will help speed up the acquiring authority’s consideration and settlement of the claim.

92.5 Respondents to the previous Government’s “Technical consultation on improvements to compulsory purchase processes”, published in March 2015, overwhelmingly supported the principle of introducing a form for claimants to use to seek an advance payment of compensation.

Justification for delegation

92.6 The Department initially intends to produce a model form in guidance. However, should take up not be as desired, the Secretary of State may exercise the power in section 52ZD(1). A delegated power to make provision in regulations will allow the Secretary of State to develop and test the content of the form in consultation with interested parties and to more easily review the form in the light of practical experience. It will be important to ensure that the form provides sufficient information, without being overly burdensome on claimants.

92.7 The requirements to be imposed about the content of a request are also more suitable for secondary legislation as they will be technical in nature. They will relate to the detailed information which should be provided in a request for an advance payment for each separate head of compensation (e.g. the claim for the value of the interests to be purchased, any claim for injurious affection or other lands and any claim for disturbance etc.) to allow the acquiring authority to make a proper assessment.

Justification for procedure selected

92.8 Given the limited scope of the delegated power and the technical and uncontroversial nature of the requirements that would be imposed about the form and content of a request for an advance payment (as set out above), the Department considers that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny.
93. **Clause 174: Interest on advance payments of compensation**

*Power conferred on:* Treasury  
*Power exercised by:* Regulations (Statutory Instrument)  
*Procedure:* Negative procedure

**Purpose and context**

93.1 Clause 174(3) inserts a new section 52B into the Land Compensation Act 1973. New section 52B(1) provides that if an acquiring authority are required to make an advance payment of compensation but pay some or all of it late, the authority must pay interest on the amount which is paid late. This will ensure there is an effective sanction against acquiring authorities who fail to make the payment on time.

93.2 New section 52B(4) provides that the Treasury must by regulations specify the rate of interest to be paid on advance payments of compensation which are paid late. The regulations may contain further provision in connection with the payment of interest under section 52B(1).

**Justification for delegation**

93.3 Using a delegated power will provide an opportunity for the Treasury to engage with interested parties on what the appropriate rate of interest should be and allow a faster mechanism for review of the interest rate in the light of experience. It will be important to set a rate of interest that acts as an effective deterrent to late payment, but is not disproportionate and unfairly damaging to the delivery of development in the public interest. The rate may need to be increase / decreased over time to ensure it continues to meet this objective.

**Justification for procedure selected**

93.4 Given the limited scope of the delegated power and its technical nature, the Department considers that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny. The rate of interest after entry on any compensation in respect of the compulsory acquisition is similarly prescribed by regulations subject to the negative resolution procedure under section 32 of the Land Compensation Act 1961.

94. **Clause 181(2): Power to override easements and other rights – definition of “specified authority”**

*Power conferred on:* Secretary of State  
*Power exercised by:* Regulations (Statutory Instrument)  
*Procedure:* Affirmative procedure

**Purpose and context**

94.1 Clause 179 enables a person to interfere with easements and other rights (except where the right is a “protected right”) when undertaking building or maintenance works on, or using, land which has been vested in or acquired by a “specified
authority”. A “specified authority” is defined in clause 181(1) so as to limit it to public bodies and statutory undertakers.

94.2 Clause 179 is intended to give a wider range of acquiring authorities the statutory power to override easements already available to some public bodies. For instance, local planning authorities already have the powers under section 237 of the 1990 Act and the Homes and Communities Agency has the powers under section 11 of, and paragraphs 1 and 2 of Schedule 3 to, the Housing and Regeneration Act 2008.

94.3 The main conditions / limitations on the use of the power are set out in subsections (2) and (5) of clause 179. There must be planning consent for the building or maintenance work / use of the land and the authority must have been able to acquire the land compulsorily for the purpose of the building or maintenance work / the purpose of erecting or constructing any building, or carrying out any works, for the use. Clause 180 provides that compensation must be paid for any interference with a relevant right or interest etc. that is authorised by clause 179.

94.4 Clause 181(2) enables the Secretary of State to make regulations to amend the definition of a “specified authority” in clause 181(1).

Justification for delegation

94.5 This is a reserve power. The Department only intends to use the regulation making power in clause 181(2) if, in the future, it becomes apparent that an additional acquiring authority exercising public functions needs to be captured that is not caught by the existing definition.

Justification for procedure selected

94.6 As the power to override easements represents an interference with property rights, the Department considers that any regulations amending the definition of a “specified authority” should be subject to the affirmative procedure.

Part 8: Public Authority Land

95. **Clause 183(1): Power to specify public authorities with which a Minister of the Crown must engage when developing proposals to dispose of land**

*Power conferred on: Minister for the Cabinet Office*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: negative procedure*

Purpose and context

95.1 The purpose of this clause is to require that when public authorities are developing proposals for the sale of land they engage with local authorities in whose area the land is situated and any other public authorities with an interest in the disposal.
95.2 The Government believes there is a need to promote greater co-operation of this kind to ensure that relevant local authorities and other public bodies contribute effectively to proposals to dispose of land. This will better ensure disposals reflect the full range of local policy considerations and achieve best value for money.

95.3 The clause therefore imposes a duty on Ministers of the Crown when developing proposals to dispose of land to engage on an ongoing basis with local authorities in whose area the land is situated and each public authority specified, or of a description specified, in regulations made by the Minister for the Cabinet Office (MCO).

**Justification for delegation**

95.4 This is a new policy and therefore there may be a need to adjust which authorities a Minister of the Crown should be required to consult in relation to proposals to dispose of land. It is clear enough that local authorities in whose area the land is situated must be involved in developing such proposals, but there may be other authorities that may not have an obvious interest generally, but may have interest in a particular proposal (for example, heritage or environment bodies) who should be consulted in particular cases.

95.5 The duty also covers a wide range of scenarios in different areas of Great Britain, and concerns a highly practical issue. The appropriate authorities for engagement may vary as between urban, rural and coastal areas. It is therefore sensible to provide power for the duty to be adjusted to take account of actual experience as the policy settles.

95.6 There may be a need to make detailed provision for different cases (in particular for different areas of the country or different Ministers of the Crown). This is more appropriately done in secondary legislation, especially in light of the likely need to revise the provisions from time to time when the bodies with which engagement should occur change, whether as a result of amalgamation or of new bodies being created to replace existing ones.

**Justification for procedure selected**

95.7 The power does not enable primary legislation to be amended or directly engage the rights or duties of individuals or businesses. It simply allows the MCO to adjust duties of engagement between public authorities. The power is expected to be used to make relatively detailed provision for different cases about which public authorities should be engaged in which parts of the country and in which circumstances. The Government therefore considers the negative procedure is appropriate.

96. **Clause 183(3): Power to specify public authorities which must engage with other specified public authorities when developing proposals to dispose of land**

*Power conferred on: Minister for the Cabinet Office*

*Power exercised by: Regulations (Statutory Instrument)*
Parliamentary procedure: Negative procedure

Purpose and context

96.1 Clauses 183(2) and 183(3) pursue the same objective described in relation to clause 183(1) (see paragraphs 95.1 to 96.7).

96.2 Clause 183(2) imposes a separate duty, parallel to the duty imposed by clause 183(1). A relevant public authority must, when developing proposals to dispose of land, engage on an ongoing basis with other relevant authorities. Under clause 183(3) the MCO may by regulations specify public authorities, or descriptions of public authorities, which are ‘relevant public authorities’ for this purpose.

96.3 In Scotland this power may only be used to specify certain public authorities, namely bodies that are listed in paragraph 3 of Part 3 to Schedule 5 to the Scotland Act 1998, or Her Majesty’s Revenue and Customs.

96.4 The power may not be used to impose the duty on an authority which has functions that are exercisable only in or as regards Wales and are wholly or mainly functions relating to a matter the Welsh Ministers may exercise functions in relation to, or which is within the legislative competence of the National Assembly for Wales.

96.5 The duty imposed by clause 183(2) supplements the duty imposed by clause 183(1) to ensure that public authorities other than Ministers of the Crown which have large, or significant, land holdings can be made subject to the duty when developing proposals to dispose of those holdings.

Justification for delegation

96.6 Given the novelty of this policy it may be necessary to adjust the duty imposed by clause 183(2) to apply it to public authorities other than Ministers of the Crown. Some such bodies have large, and potentially significant, land holdings.

96.7 Further, the bodies with which they should be required to engage may vary from time to time, and there may be relevant bodies that come into existence and cease to exist. As with the power under clause 183(1) the duty also covers a wide range of scenarios in different areas of Great Britain, and concerns a highly practical issue. The appropriate authorities for engagement may therefore also vary as between urban, rural and coastal areas. For these reasons, such changes can more effectively be provided for in secondary legislation.

96.8 There may also be a need to make detailed provision for different cases (in particular for different areas of the country or different public authorities). Given the need for detailed provision and, in particular, the likely need to revise the provisions from time to time when the bodies with which engagement should occur change, whether as a result of amalgamation or of new bodies being created to replace existing ones, the Government considers that a power to make regulations is appropriate.
The power does not enable primary legislation to be amended or directly engage
the rights or duties of individuals or businesses. As with the power conferred by
clause 183(1) it simply allows the MCO to adjust duties of engagement between
public authorities. The power is expected to be used to make relatively detailed
provision for different cases about which public authorities should be engaged in
which parts of the country and in which circumstances. The Government therefore
considers the negative procedure is also appropriate in this case.

97. **Clause 183(4): Guidance on compliance with duty to engage with public
authorities**

*Power conferred on: Minister for the Cabinet Office*

*Power exercised by: Guidance*

*Parliamentary procedure: None*

**Purpose and context**

This clause requires any person subject to a duty under clause 183(1) or 183(2) to
have regard to guidance issued by the MCO about how that duty is to be complied
with. This is intended to enable the MCO to issue more specific guidance about the
process for engagement with other relevant public authorities, in order to give public
authorities subject to the duty greater certainty about what is required of them.

**Justification for delegation**

The guidance would give assistance on different levels of engagement that would
be appropriate in different circumstances, reflecting the need to ensure that the duty
is proportionate and effective in practice. Matters to be covered in the guidance
include detailed technical and commercial considerations relevant to the required
engagement and questions of process. This material is not appropriate for
legislation, but can be covered effectively in guidance.

The concept of ‘engagement’ is broad and the Government considers public
authorities will benefit from further guidance as to what is expected of them.

Guidance, which can be revised from time to time, will enable particular issues to be
highlighted as the focus of Government policy, and the public interest in disposals
of land by public authorities, evolves.

**Justification for procedure selected**

Any guidance issued by the MCO will not change the meaning of clause 183 and
will simply supplement the statutory provisions. For example the guidance cannot
be used to change fundamental aspects of the duty, such as its scope. The
guidance will rather cover technical matters and detailed matters of process, which
the Government is best placed to assess from time to time within the broad
framework laid down by Parliament.
97.6 There are examples of similar powers for the MCO to issue guidance to which public authorities must have regard, for example section 39(7) and 39(8) of the Small Business, Enterprise and Employment Act 2015.

97.7 The Government considers the present guidance fulfils a similar function in that it is intended to supplement duties imposed by legislation in relation to the asset management activities of public authorities, where specific technical guidance (including guidance on processes) is likely to be necessary. Different guidance for engagement with different authorities, or authorities of different descriptions, as well as for varying levels of engagement, will help to ensure the duty operates in a proportionate manner.

97.8 A person subject to a duty under clause 183 is required only to have regard to the guidance. In particular clause 183 does not subject them to any specific procedure, and does not expressly require them to give reasons for departing from the guidance. In light of this, the Government considers it is not necessary to impose a procedure for the MCO issuing guidance in this context; although the MCO would normally expect to publish such guidance.

98. **Clause 183(5): power to specify land excluded from scope of duty to engage**

*Power conferred on: Minister for the Cabinet Office*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

**Purpose and context**

98.1 This clause enables the MCO to make regulations specifying land (or a description of land) in relation to which proposals to dispose of that land are not subject to the duties imposed by clause 183(1) or 183(2). This is intended to allow the MCO to exclude certain land, or land of a certain description, for example where as a result of a likely shifting matrix of considerations land that would otherwise fall within the duty should be excluded.

**Justification for delegation**

98.2 It may be necessary from time to time to exclude specific parcels of land, or land of a particular description (such as land where there are particular security or environmental considerations) from the scope of the duty to engage with other public authorities. Given the potential need to specify specific areas of land, and the likely shifting matrix of considerations, the Government considers it is appropriate to take a power for these purposes.

**Justification for procedure selected**

The power can only be used to remove specified land, or land of a specified description, from the scope of the duty to engage. An exclusion would not directly
affect the rights or interests of any private individual, but again only adjust the scope of a duty holding between public authorities.

The power cannot be used to amend primary legislation or to alter the nature of the underlying duty. The Government therefore considers that the negative procedure is appropriate in this case.

99. **Clause 184: Power to impose duty on public authorities to prepare report of surplus land holdings**

**Purpose and context**

99.1 The purpose of this clause is to require a relevant public authority to prepare a report about land it owns that is surplus to requirements. The Secretary of State will prepare guidance about determining whether land is surplus to a body’s requirements.

100. **Clause 184(4): power to specify what is a relevant public authority**

**Power conferred on:** Secretary of State  
**Power exercised by:** Regulations (Statutory Instrument)  
**Parliamentary procedure:** Negative procedure

**Purpose and context**

100.1 The purpose of this clause is to give the Secretary of State the powers to make regulations to specify what constitutes a relevant public authority for the purposes of this clause. Clause 184(10) makes clear that the power may not be used to specify a public authority which has functions that are exercisable only in or as regards Wales and are wholly or mainly functions relating to a matter the Welsh Ministers may exercise functions in relation to, or which is within the legislative competence of the National Assembly for Wales. Clause 184(11) makes clear that in Scotland this power may only be used to specify certain public authorities, namely bodies that are listed in paragraph 3 of Part 3 to Schedule 5 to the Scotland Act 1998, or Her Majesty’s Revenue and Customs.

**Justification for delegation**

100.2 Delegated power is required to reflect the changing nature of public authorities that should be covered by this duty. This includes both authorities that come into existence and cease to exist. A power also provides flexibility to respond to changes in the functions of individual public authorities or types of authority, so as to ensure increased accountability regarding how they deal with their assets. Furthermore, this is a new policy and therefore there may be a need to adjust from time to which authorities should be placed under the duty to prepare a report.
**Justification for procedure selected**

100.3 The power does not enable primary legislation to be amended or directly engage the rights or duties of individuals or businesses. The purpose of the power is to increase the transparency and accountability of public authorities in terms of how they deal with, and manage, their land assets. The procedure selected reflects the nature of the duty, which is simply to prepare a report.

101. **Clause 184(5): Secretary of State guidance**

*Power conferred on: Secretary of State*

*Power exercised by: Guidance*

*Parliamentary procedure: None*

**Purpose and context**

101.1 The purpose of this power is to provide for the Secretary of State to issue guidance to which a relevant public authority must have regard in determining whether it has land surplus to its requirements and in carrying out its functions under clause 184.

**Justification for delegation**

101.2 The determination by a public authority of whether or not land it owns is surplus will require an assessment of a number of considerations some of which may be technical. Such considerations and how they are taken into account by a public authority are likely to vary depending on the individual circumstances and nature of the functions of the authority in question. The purpose of the guidance is therefore to assist the public authority in that decision-making process. Given that this is a new policy, the particular decision-making process will be unfamiliar to public authorities and the Secretary of State can provide useful guidance to public authorities in adapting to the process needing to be undertaken.

101.3 The guidance might cover, for example, how to determine whether land is held pending use for a different purpose (e.g. housing development or urban regeneration) or is instead surplus to requirements.

**Justification for procedure selected**

101.4 Any guidance issued by the MCO will not change the meaning of clause 184 and will simply supplement the statutory provisions. The guidance will deal with technical questions about how a local authority should assess whether property it holds is surplus. The decision as to whether land is surplus will remain for the public authority concerned.

101.5 Public authorities are only required to have regard to the guidance. In particular clause 184 does not subject them to any specific procedure, and does not expressly require them to give reasons for departing from the guidance. In light of this, the Government considers it is not necessary to impose a procedure for the MCO issuing guidance in this context; although the MCO would normally expect to publish such guidance.
102. Clause 184(7): power to make regulations that extend the duty to report to circumstances where the land has not been surplus for the time periods expressed in clause 184(3)(c)

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: negative procedure

Purpose and context

102.1 Clause 184(7) gives the Secretary of State power to list in regulations specific public authorities, or a description of public authorities, that are under a duty to prepare a report about surplus land, in circumstances where the determination that the land is surplus does not meet the time requirements set out in clause 184(3)(c).

Justification for delegation

102.2 The definition of surplus land in clause 184(3) identifies circumstances in which land should be considered surplus and therefore a public authority should be placed under a duty to prepare a report about it. The Government recognises, however, that there may be a case for certain public authorities to report in respect of surplus land where the determination that it is surplus does not meet the time requirements in clause 184(3)(c), but that land nonetheless should still be considered surplus for the purpose of the duty to report. This could for example be the case for public authorities that, because of their area or functions, tend to hold kinds of land which it is reasonable to expect could be sold within the relevant time limit after being determined surplus. A delegated power provides the flexibility to identify effectively the circumstances in which the time requirement should not be applied, which is likely to depend on factors specific to each individual public authority and may well change from time to time depending on market conditions.

Justification for procedure selected

102.3 The power does not enable primary legislation to be amended or directly engage the rights or duties of individuals or businesses. The purpose of the power is to increase the transparency and accountability of public authorities in terms of how they deal with, and manage, their land assets. The power can only be use to adjust the scope of the duty to report on surplus land by dis-applying the time limits in certain cases. This is a relatively small change to the nature of the duty. The procedure selected also reflects the nature of the underlying duty, which is simply to prepare a report.

103. Clause 184(8): Exempting land from the duty to report

Power conferred on: Secretary of State
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: negative procedure


**Purpose and context**

103.1 The purpose of this power is to specify land or descriptions of land that are exempt from the duty to report about whether or not they are surplus.

**Justification for delegation**

103.2 A delegated power allows the Government to respond to changing circumstances where it would not be appropriate to impose a duty on a public authority to report, even though the land in question would meet the definition of surplus land in clause 184(3). For example, the Government might wish to exempt land transferred to, and held by, the Homes and Communities Agency that would meet the definition of clause 184(3) but which forms part of a wider development or regeneration scheme.

**Justification for procedure selected**

103.3 The power can only be used to limit the obligation to prepare a report on surplus land. It can only be used to exempt land, or specified land. It cannot be used to impose new burdens either on local authorities or on individuals or businesses. Further, the underlying duty is simply a duty to prepare a report. The Government therefore considers that the negative procedure is appropriate.

104. **Clause 184(9): Provision about reports**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: negative procedure*

**Purpose and context**

104.1 This clause gives the Secretary of State power to make further provision about reports, including the information to be provided in the reports, the form of the reports, their timing and publication.

**Justification for delegation**

104.2 This power will be used to set out requirements, including procedural requirements, such as arrangements for publication and the form of reports. The power also enables the Secretary of State to specify the information to be included in the reports. However, given the nature of the primary obligation to report on ‘details of surplus land’ this is a power to specify technical matters such as exactly what information about the relevant land should be included. We consider it would not be appropriate to set out this level of detail on the face of the Bill. A delegated power also allows the Government to adjust the requirements imposed, following consideration of how they operate in practice. This is likely to be necessary for matters of technical commercial detail of this kind.
Justification for procedure selected

104.3 This power focuses on matters of a procedural nature such as the form and timing of reports and their publication, and the specific details of land to be included in a report. Again, the power can only be used to make provision about the required contents of a report by a public authority. Given this, we consider that the negative procedure affords an appropriate level of Parliamentary scrutiny.

105. Clause 185: power to direct bodies to dispose of land

Power conferred on: Secretary of State
Power exercised by: Power to direct
Power exercised by: Regulations (Statutory Instrument)
Parliamentary procedure: negative procedure

Purpose and context

105.1 This clause amends Part X (land held by public bodies) of the Local Government, Planning and Land Act 1980 to add to the circumstances in which the Secretary of State can issue a power to direct a public authority specified under Schedule 16 to that Act, to take steps for the disposal of its freehold or leasehold interest in any land (or any lesser interest in land). These circumstances will be set out in regulations.

105.2 Under section 93(2) of that Act, the Secretary of State may, by order, amend that Schedule by adding an entry naming a public body that is not, for the time being, specified in that Schedule.

Justification for power to direct

105.3 A power to direct is appropriate because the Government is amending a pre-existing power to direct public authorities to dispose of land. The approach taken by the Government in clause 185 makes the power to direct operate in the same way as the existing legislative scheme provided by Part X of the 1980 Act. This promotes and maintains the integrity of the existing legislative scheme, which is a scheme that already applies to public authorities. The existing scheme provides for public authorities to be able to make representations in relation to any direction proposed by the Secretary of State. Following representations being made, the Secretary of State may only give the direction if satisfied that the interest in the land can be disposed of without serious detriment to the performance of the body’s functions. The Government wishes to ensure that this ability to make representations, and the effect of making such representations, is also available in this extension to the existing scheme.

Justification for regulations

105.4 The Government considers it is appropriate that the power to direct be available in circumstances which have been clearly and precisely set out in regulations in advance of a direction being given, so that relevant public authorities can anticipate cases in which they may be subject to a direction, and make appropriate plans.
The power to specify in regulations the circumstances in which a direction can be given, will provide public authorities with certainty about when such a direction might arise. As this is a new policy, having a power to specify in regulations will provide the flexibility to refine and adjust the circumstances in which the direction can be issued. This will allow the Government to respond to practical considerations that are likely to arise in the future. These would include where it may become necessary or appropriate to provide exceptions to the circumstances in which a direction can be issued.

105.5 The power could for example be used to specify in regulations that a direction to dispose of land may be given where that land is reported as surplus under clause 184(3).

**Justification for the procedure selected**

105.6 The power concerns decision-making within the public sector and does not directly engage the rights of individuals or companies. The power will be housed within a legislative scheme where the body affected can make representations in response to a proposed direction, which must then be taken into account by the Secretary of State. Following such representations, the Secretary of State may only proceed if satisfied disposal of land does not cause serious detriment to the functions of the body in question. The power will therefore operate within the context of those existing safeguards. The Government accordingly considers that the negative procedure is appropriate.

106. **Clause 186(6): guidance to local authorities on compliance with duty to report on efficiency and sustainability of buildings**

- **Power conferred on:** Minister for the Cabinet Office
- **Power exercised by:** Guidance
- **Parliamentary procedure:** None

**Purpose and context**

106.1 The purpose of this clause is to require local authorities in England to prepare annual reports about the efficiency and sustainability of the buildings in their estate. The report must in particular assess the authority’s progress towards reducing the size of its estate and ensuring its buildings are in the top quartile of energy performance.

106.2 The duty applies only to local authorities listed in new Schedule 8, all of which are local authorities in England. In carrying out its functions under this clause any relevant authority must have regard to guidance issued by the MCO under clause 186(6).

**Justification for delegation**

106.3 The guidance, like the guidance issued under clause 183(4), is expected to concern detailed provision as to the form and content of the report and to cover questions of process. The power also allows the guidance to address detailed technical
questions about how contributions to sustainability should be assessed in light of scientific, technological and economic developments. The Government considers this detailed provision can more appropriately and effectively be made in secondary legislation. These are also matters that are likely to require updating to reflect changes in scientific and technological understandings of sustainability form time to time.

106.4 The concept of ‘efficiency’ is broad and this provision enables the Government, if it wishes, to provide further guidance as to what is expected of public authorities in relation to this aspect of the report. By addressing such issues in guidance, the Government can provide detailed provision that will assist public authorities in a practical way, in contrast to what would inevitably be more general wording if included on the face of the Bill. Guidance, by its nature, can be revised from time to time to allow particular issues to be highlighted as the focus of Government policy, and the public interest in different dimensions of efficiency, evolves from time to time. Similar points apply in relation to the concept of sustainability.

Justification for procedure selected

106.5 Any guidance issued by the MCO will not change the meaning of clause 186 and will simply supplement the statutory provisions. The guidance cannot be used to change any fundamental aspect of the reporting duty such as its scope. The guidance will cover technical matters that the Government is best placed to assess within the broad framework laid down by Parliament.

106.6 Local authorities are only required to have regard to the guidance. In particular clause 186 does not subject them to any specific procedure, and does not expressly require them to give reasons for departing from the guidance. In light of this, the Government considers it is not necessary to impose a procedure for the MCO issuing guidance in this context; although the MCO would normally expect to publish such guidance.

107. **Clause 186(8): power to provide for buildings of a specified description to be treated as part, or not part, of an authority’s estate**

**Power conferred on:** Minister for the Cabinet Office  
**Power exercised by:** Regulations (Statutory Instrument)  
**Parliamentary procedure:** Negative procedure

**Purpose and context**

107.1 This clause advances the purpose described in relation to clause 186. It confers on the MCO a power to provide in regulations that buildings of a specified description must be treated as part of, or as not part of, a public authority’s estate for the purposes of clause 186.

**Justification for delegation**

107.2 A report on the efficiency and sustainability of a local authority’s estate necessarily covers a wide range of issues, and a wide variety of kinds of buildings and
structures. It also covers buildings held in a variety of ways for a variety of periods and purposes. Local authorities will require certainty about the scope of their reporting requirements. Similarly, it is important that the reports compiled provide a realistic picture of the estate and local authority, and its level of efficiency and sustainability.

107.3 This means there is a need for the MCO to have power to specify cases where land of a particular description is to be included, or excluded, from the scope of a report to ensure both certainty about the scope of the reporting duty and to avoid distortions to the reports. An example of what might be specified is a very short lease of a building, whose inclusion within the duty to report could create a disproportionate burden on the public authority and moreover distort the contents of the report.

107.4 Although the power provides for buildings of a specified description to be treated as being part of an authority’s estate, the intention behind this is simply to clarify inclusion of buildings in case of doubt. The Government considers it more likely that the power would be used to specify buildings to be treated as being excluded from part of an authority’s estate, in circumstances such as the example given above.

107.5 The nature of the appropriate exclusions and inclusions are inherently difficult to anticipate and might vary from time to time. There may also be a need to make different provision for different cases, depending on the evolving character of the estate of particular local authorities; most notably what is appropriate for urban local authorities may make little sense for rural authorities, whilst authorities with extensive foreshore may be a different case again. The Government therefore considers a delegated power most appropriate.

Justification for procedure selected

107.6 The power does not enable primary legislation to be amended or directly engage the rights or duties of individuals or businesses. It simply allows the MCO to adjust the reporting duty. The power cannot be used to directly require a disposal of land, and is expected to be used to make relatively detailed provision for different cases. The Government therefore considers the negative procedure is appropriate.

108. Clause 187(7B): power to provide for buildings of a specified description to be treated as part, or not part, of the military estate

Power conferred on: Minister for the Cabinet Office
Power exercised by: Order (Statutory Instrument)
Parliamentary procedure: Affirmative procedure

Purpose and context

108.1 The purpose of clause 187 is to ensure the existing duty under section 86 of the Climate Change Act 2008 (report on the civil estate) also includes the military estate. Section 86 currently requires the MCO to present to Parliament each year a report containing an assessment of the progress made in the year towards
improving the efficiency and contribution to sustainability of buildings that are part of the civil estate

108.2 The report must, in particular, include an assessment of progress made in the year towards reducing the size of the civil estate and ensuring that buildings in the civil estate fall within the top quartile of energy performance. Under section 86(7) of the 2008 Act, the MCO may by regulations provide that buildings of a particular description are to be treated as being, or not being, part of the civil estate for the purpose of section 86. However, buildings will not fall within the scope of section 86 unless they are part of the civil estate. This excludes, in particular, central government buildings that are part of the military estate.

108.3 Clause 187 amends section 86 of the 2008 Act to extend it to buildings that are part of the military estate. Clause 187(7B) replicates, for the military estate, the power of the MCO to specify descriptions of building that are, or are not, to be treated as part of the military estate for these purposes. This ensures consistency with the existing structure of section 86 of the 2008 Act.

**Justification for delegation**

108.4 Just as with a report on the efficiency and sustainability of a local authority estate, a report on the same matters in relation to the military estate necessarily covers a wide range of issues, and a wide variety of kinds of buildings and structures. Indeed, almost certainly more so. It also covers buildings held in a variety of ways for a variety of periods and purposes. Central government departments will require certainty about the scope of the reporting requirements. Similarly, it is important that the reports compiled provide a realistic picture of the military estate, and its level of efficiency and sustainability.

108.5 This means there is a need for the MCO to have power to specify cases where land of a particular description is to be included, or excluded, from the scope of a report to ensure both certainty about the scope of the reporting duty and to avoid distortions to the reports. Please see paragraphs 107.2 to 107.5 above, which set out reasoning that also applies here.

108.6 The military estate also gives rise to particular defence and environmental issues, which may provide reason to include or exclude land of a particular description.

108.7 The nature of the appropriate exclusions and inclusions are inherently difficult to anticipate and might vary from time to time. There may also be a need to make different provision for different cases, depending on the evolving character of what is held within the military estate. The Government therefore considers a delegated power to be appropriate.
Part 9: General

109. **Clause 188: Power to make transitional provision**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure*

109.1 This clause confers power on the Secretary of State to make transitional, transitory or saving provision in connection with the coming into force of any provision in the Bill.

109.2 This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner. Such powers are often included, as here, in conjunction with the power to make commencement regulations, and are not subject to any parliamentary procedure on the grounds that Parliament has already approved the principle of the provisions in the Bill by enacting them.

110. **Clause 189: Power to make consequential provision**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative procedure (if it does not amend primary legislation), otherwise affirmative procedure*

110.1 This clause confers power on the Secretary of State to make provision that is consequential on any other provision. There are a number of consequential changes being made by the Bill, particularly those flowing from the addition of a new type of planning procedure – permission in principle – and amendments to compulsory purchase legislation. It is possible that not all such consequential changes have been identified in the Bill. As such it is considered prudent for the Bill to contain a power to deal with these in secondary legislation.

110.2 If regulations under this clause do not amend primary legislation they will be subject to the negative resolution procedure. If regulations under this clause amend primary legislation they will be subject to the affirmative resolution procedure. It is considered that this provides the appropriate level of Parliamentary scrutiny for the powers conferred by this clause.

111. **Clause 190(2) and (3): Power to make regulations commencing provisions**

*Power conferred on: Secretary of State*

*Power exercisable by: Regulations (Statutory Instrument)*

*Parliamentary Procedure: None*

111.1 This clause contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations.
111.2 As usual with commencement powers, regulations made under this clause are not subject to any Parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Department for Communities and Local Government
January 2016