These notes refer to the Enterprise and Regulatory Reform Act 2013 (c.24) which received Royal Assent on 25 April 2013

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Reduction of Legislative Burdens

Sunset and review

Section 59: Sunset and review provisions

410. This section amends the Interpretation Act 1978 to help give effect to the Government's policy on the use of sunset and review provisions which was first published in March 2011[1]. A sunset provision provides for legislation to cease to have effect at a particular point in time. A review provision requires a person to review the effectiveness of the legislation within or at the end of a specified period.

411. Section 59 inserts a new section 14A into the Interpretation Act 1978. This ensures Ministers and other people making subordinate legislation may include sunset and review provisions in that legislation and in other subordinate legislation where that is being amended. A review provision may include an obligation to consider whether the objectives of the legislation remain appropriate, and whether they could be achieved in another way. Review or sunset provisions may apply to all or part of the legislation or to its application in particular circumstances. Subordinate legislation including sunset or review provisions may also include certain supplementary provisions, for example transitional or consequential provisions or savings in connection with the sunset or review provision. New section 14A does not apply to Scottish Ministers, or to non-Ministerial Scottish bodies and other persons exercising powers in areas where legislative competence is devolved to the Scottish Parliament.

Heritage planning etc.

Section 60: Listed buildings in England: agreements and orders granting listed building consent

Heritage partnership agreements

412. *Subsection (2)* of section 60 inserts new section 26A into the Planning (Listed Buildings and Conservation Areas) Act 1990 ("P(LBCA)A 1990"), which makes provision for heritage partnership agreements. A relevant local planning authority may make such an agreement with an owner of a listed building, or part of a listed building, in England and any of the persons mentioned in new section 26A(2) may be an additional party to the agreement. A heritage partnership agreement may contain provision granting listed building consent ("LBC") under section 8(1) of the P(LBCA)A 1990 for the execution of specified works for the alteration or extension of the building to which

1 http://www.bis.gov.uk/policies/bre/effectiveness-of-regulation/sunsetting-regulations

it relates, and setting out any conditions attached to that consent. The specified works will still require any other relevant permission, such as planning permission. A heritage partnership agreement cannot be used to grant LBC for demolition. Subsection (6) of new section 26A sets out the range of additional matters that may be covered in a heritage partnership agreement, including which works the parties consider would not, affect the character of the listed building.

413. Subsection (2) also inserts new section 26B into the P(LBCA)A 1990, which makes supplemental provision in relation to heritage partnership agreements. Section 26B(1) provides that such agreements must make provision for review, termination and variation by the parties. Section 26B(1) also makes it clear that more than one listed building or part can be the subject of an agreement, provided that in each case a relevant local planning authority and an owner are parties to the agreement. Section 26B(2) sets out a range of further matters on which the Secretary of State may make regulations, including:

- any consultation that must take place before a heritage partnership agreement is made or varied;
- any publicity requirements;
- any particular terms that must be included in an agreement;
- the termination of an agreement, or of any provision in an agreement, by order of the Secretary of State or any other person specified in the regulations;
- the application or reproduction of sections 10 to 26 and 28 of the P(LBCA)A 1990, which set out certain procedures for listed building consent, for the purposes of heritage partnership agreements; and
- the application, with any modifications consequential on the application or reproduction of sections 10 to 26 and 28, of other specified sections and parts of the P(LBCA)A 1990 for the purposes of heritage partnership agreements.

414. Section 26B(4) provides that, if a heritage partnership agreement grants LBC for specified works, the benefit of such consent is conferred on the listed building and any person interested in it (whether or not that person is a party to the agreement). Section 26B(5) ensures that persons who are not party to the agreement are not subject to any burdens, and do not enjoy any other rights, under the agreement.

Listed building consent orders

415. Currently, works affecting the special architectural or historic interest of a listed building must be authorised through written consent, listed building consent, granted by the local planning authority or the Secretary of State, and must be executed in accordance with the terms of the consent and of any conditions attached to it. Section 60 amends the P(LBCA)A 1990 to allow the Secretary of State or a local planning authority to make an order granting LBC applying (subject to any restrictions) to all works falling within categories specified in the order, known as a "listed building consent order" or "local listed building consent order" respectively. These provisions are broadly based on the provisions set out in sections 59 to 61D of the Town and Country Planning Act 1990 ("TCPA 1990") in respect of development orders and local development orders.

416. *Subsection (3)* of section 60 inserts new section 26C into the P(LBCA)A 1990 to allow the Secretary of State to make a listed building consent order which grants LBC for works of any description for the alteration or extension, but not the demolition, of listed buildings of any description in England. Such orders will be subject to the affirmative resolution procedure. It will be possible to apply conditions to any LBC granted by a listed building consent order, which may include any conditions subject to which LBC may be granted under section 16 of the P(LBCA)A. Section 26C(4) provides that the order may grant consent subject to conditions about the making of

an application to the local planning authority to determine whether prior approval is required for certain details of works and the outcome of that application or the way it is dealt with. Under section 26C(5), a listed building consent order may contain provision allowing the Secretary of State or the local planning authority to direct that the order does not apply to a specified building, or to buildings of a specified type or in a specified area: this will allow the order to be disapplied, for instance, within the area of a local planning authority where the order is not suitable for the character of the buildings in that area. This reflects the mechanism provided under section 60(3) of the TCPA 1990, which allows the Secretary of State or local planning authorities to direct that planning permission granted by a development order shall not apply in certain circumstances.

417. New section 26D of the P(LBCA)A 1990 allows a local planning authority to make a local listed building consent order which grants LBC for works of any description for the alteration or extension, but not the demolition, of listed buildings of a specified description or in a specified part of their area. The order will be able to specify the conditions that apply to any LBC granted by the order, which may include any of the conditions subject to which LBC may be granted under section 16 of the P(LBCA)A 1990. Section 26D(6) provides that the order may contain provision allowing the local planning authority to direct that the order does not apply to a specified building, or to buildings of a specified type or in a specified area. Under section 26D(2) regulations may provide that the power to make a local listed building consent order does not apply to listed buildings of any description or in any area.

418. New section 26E of the P(LBCA)A 1990 gives the Secretary of State the power to direct that a local listed building consent order, or any part of it, is submitted to the Secretary of State for approval before it is adopted. These provisions reflect the 'call in' procedures provided for in section 61B of the TCPA 1990, in respect of local development orders. Under section 26E(2), if the Secretary of State directs that an order is submitted for approval, the order may not be adopted by the local planning authority and it will not have any effect until it has been approved by the Secretary of State. The Secretary of State may approve or reject any order or part of it, or may direct the local planning authority to modify the order, giving reasons for any decision. Under section 26E(7), the local planning authority must comply with a direction from the Secretary of State to modify the order, and may not adopt the order unless the Secretary of State is satisfied that the direction has been complied with. Section 26E(8) allows the Secretary of State at any time, by order, to revoke a local listed building consent order, if of the opinion that it is expedient to do so. The Secretary of State must give reasons for revoking the order. The Secretary of State must also, if proposing to revoke an order, serve notice on the local planning authority giving them at least 28 days, within which time they may request an oral hearing, which the Secretary of State must provide.

419. New section 26F reflects section 16 of the P(LBCA)A 1990 so that in considering whether to make a listed building consent order or local listed building consent order, the Secretary of State or local planning authority must have special regard to the desirability of preserving the listed buildings to which the order applies, as well as their setting and any features of special architectural or historic interest of such buildings. Section 26F(2) requires the Secretary of State to consult English Heritage before making a listed building consent order.

420. New section 26G reflects the provisions set out in section 61D of the TPCA 1990 in providing that a listed building consent order or local listed building consent order may allow for works to be completed when an order is revoked or varied or revised so that it ceases to grant LBC, or if a specified building or building of a specified type or in a specified area is excluded from the order, and as a result the consent granted by the order is withdrawn.

421. *Subsection (4)* of section 60 inserts new section 28A into the P(LBCA)A 1990 to allow compensation to be paid, as set out in section 28 of the P(LBCA)A 1990, where LBC granted by a listed building consent order or a local listed building consent order is

withdrawn, whether by the revocation or amendment of the order or by exclusion by direction of a specified building or building of a specified type or in a specified area. Section 28 will have effect only where: an application for LBC is made, within a time period to be set out in regulations, after the withdrawal of the order; and consent for works formerly authorised by the order is refused or is granted subject to conditions that were not included in the order. The provision for compensation will not apply however where: works have started before consent granted by order is withdrawn and the order included provision to permit the works to be completed after the withdrawal; or the works were not started before the notice of withdrawal was published and notice of the withdrawal was published in the prescribed manner and within the prescribed period.

Schedule 16: Local listed building consent orders: procedure

422. Schedule 16 inserts Schedule 2A into the P(LBCA)A 1990, setting out the procedure for local listed building consent orders. This replicates the procedures set out in Schedule 4A to the TCPA 1990 for local development orders. Paragraph 1 of Schedule 2A provides that a local listed building consent order must be prepared in accordance with such procedure as is prescribed by regulations. The regulations may include provision about the preparation, submission, approval, adoption, revision, revocation and withdrawal of an order. It may also cover any notice, publicity and public inspection requirements, and any provision about consultation. Paragraph 2 provides that a local planning authority may at any time prepare a revision of a local listed building consent order, and must do so if directed by the Secretary of State. Paragraph 2(4) provides that a local authority may not vary or revise a local listed building consent by any means other than under paragraph 2. Paragraph 3 provides that a local listed building consent order must be adopted by resolution of the local planning authority if it is to have effect. Paragraph 4 sets out reporting requirements.

Section 61: Listed buildings in England: certificates of lawfulness

423. Section 7 of the P(LBCA)A 1990 requires a person to obtain LBC for the alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest. Section 61 is intended to provide clarity as to whether any proposed works to a listed building fall within this broad definition by providing for a "certificate of lawfulness of proposed works".

424. Section 61 inserts new section 26H into the P(LBCA)A 1990, mirroring the provisions of section 191 of the TCPA 1990 in respect of certificates of lawfulness of existing use or development in the planning system. Anyone who wishes to ascertain whether proposed works for the alteration or extension of a listed building would be lawful – that is, would not affect the character of the listed building as a building of special architectural or historic interest - will be able to make a simple application to the local planning authority, describing the works, in order to receive a formal response. Under section 26H(3), if the local planning authority is satisfied the works described will be lawful, they must issue a certificate to that effect, or if not, they must refuse the application for a certificate. Section 26H(5) provides that the lawfulness of any works for which a certificate is in force will be conclusively presumed, provided that the works are carried out within 10 years beginning with the date of issue of the certificate, and the certificate is not revoked under section 26I. Reflecting the provisions of section 193 of the TCPA 1990, new section 26I enables the application process for certificates of lawfulness of proposed works to be set out by regulations. Regulations under this section may make provision about how applications for certificates are to be dealt with by the local planning authority. Section 26I(5) provides the certificate must be in a prescribed form. To enable a precise definition of which works do not require LBC it will be possible for a certificate to cover all or part of the listed building which is the subject of the application and all or part of the works described in the application. Under section 26I(6), a local planning authority may revoke a certificate if an application is made on the basis of false information, or if any material information is withheld. The manner in which certificates are revoked may be set out by regulations.

425. Section 26J is inserted into the P(LBCA)A 1990 to replicate the offence set out in section 194(1) of the TCPA 1990 in respect of certificates of lawfulness of proposed works, where false or misleading information is used or information is withheld in an application for a certificate. Section 26J(2) sets out the penalties for a person guilty of this offence, reflecting those in section 194(2) of the TCPA 1990.

426. Following the precedent in section 195 of the TCPA 1990, section 26K provides for a right of appeal to the Secretary of State against refusal or part refusal of a certificate, or against non-determination of an application within the time set by the Secretary of State, as provided for in section 26I, or as extended by written agreement between the applicant and the local authority. The Secretary of State may prescribe in regulations the manner in which a notice of appeal must be served, but at least 28 days must be allowed from the date of notification of the decision on the application, or the end of the period for determination of applications. The time which may be prescribed for an appeal replicates that set out in section 21(2) of the P(LBCA)A 1990 in respect of LBC on an application. In response to an appeal, the Secretary of State may grant or modify a certificate, or dismiss the appeal.

Section 62: Osborne estate

427. Section 62 amends the Osborne Estate Act 1902 ("OEA 1902") to remove the Secretary of State for Culture, Media and Sport's existing statutory obligation to use parts of Osborne House and grounds for the benefit of members of the armed forces and civil service, while retaining the obligation to preserve the royal apartments and keep them open to the public. *Subsection (2)* of this section changes the basis on which Osborne House and grounds are managed, so that the Secretary of State's powers and duties are governed by section 21 rather than section 22 of the Crown Lands Act 1851. Section 21 of that Act already applies to unoccupied Royal Palaces such as Hampton Court Palace and the Tower of London and is more suitable to a property like the Osborne Estate which consists primarily of a substantial house rather than a park or garden.

428. *Subsection (3)* removes the requirement in section 1(4)(b) of the OEA 1902 for parts of Osborne House and grounds other than the royal apartments to be used for the benefit of naval and military officers, their wives, widows or families. *Subsection (4)* removes obsolete provisions of the OEA 1902 which relate to a part of the Osborne estate (Barton House and its grounds) which was sold to a private purchaser in 1922 and so no longer forms part of the estate. *Subsection (5)* repeals the Osborne Estate Act 1914, which gave power to extend the classes of persons who may benefit under section 1(4)(b) of the OEA 1902.

429. The statutory obligation for the Secretary of State (in practice carried out by English Heritage under a direction given under section 34 of the National Heritage Act 1983) to manage the estate and preserve the royal apartments in Osborne House and to keep them open to the public as a memorial to Queen Victoria is not affected.

Section 63 and Schedule 17: Heritage planning regulation

Conservation area consent in England

430. Currently, certain buildings in a conservation area must not be demolished without conservation area consent from the local planning authority. Under Schedule 17, the requirement to have such consent would cease to apply to those buildings situated in England. Instead of having a separate system of conservation area consent, proposals to demolish certain buildings in a conservation area would be considered by the local planning authority as part of the application for planning permission.

431. Paragraph 12 of this Schedule amends section 74 of the P(LBCA)A 1990 to remove the system of conservation area consent as it applies to buildings in conservation areas in England. Planning permission will instead be required under the TCPA 1990. The TCPA 1990 already provides that demolition of buildings requires planning permission

under Part 3 of that Act (see section 55), so it is not necessary to make changes to the TCPA 1990 to apply the planning regime to the demolition of buildings in conservation areas. It will be necessary however to amend the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO 1995") which currently provides that the demolition of a building is, subject to certain conditions, permitted development. The GPDO 1995 will be amended by secondary legislation and, in effect, the amendments will provide that the demolition of certain buildings in a conservation area in England is not permitted development and, therefore, requires planning permission.

432. Paragraphs 3 to 6 of this Schedule amend the TCPA 1990 so that the planning regime offers the same level of protection as the current system of conservation area consent. Paragraph 3 amends section 108 of the TCPA 1990 so that the compensation provisions that apply to the withdrawal of permitted development rights do not apply to development that would previously have required conservation area consent. Paragraph 4 amends section 171B of the TCPA 1990 to provide that there is no time limit on when enforcement action may be taken in relation to a breach of planning control with respect to "relevant demolition", that is the demolition of certain buildings in a conservation area as defined in section 196D(3). Paragraph 5 amends section 174 of the TCPA 1990 to insert a new ground of appeal against an enforcement notice. This replicates the ground of appeal currently in section 39(1)(d) of the P(LBCA)A 1990 in relation to listed building enforcement notices (so far as relevant to the total demolition of a building). This reflects the defence to the new offence in section 196D (described below) except that it is not necessary under section 174 for the person appealing the enforcement notice to prove that they notified the local planning authority of the relevant demolition, unlike in section 196D(4).

433. Paragraph 6 inserts new section 196D into the TCPA 1990 to create an offence of failing to obtain planning permission for the demolition of certain buildings in a conservation area in England. Where planning permission is obtained for such demolition, it is also an offence to fail to comply with any condition or limitation subject to which the permission was granted. The effect of 196D(3)(b) is that the offences do not apply to listed buildings, certain ecclesiastical buildings being used for ecclesiastical purposes, scheduled monuments (within the meaning of the Ancient Monuments and Archaeological Areas Act 1979) and other buildings described in a direction of the Secretary of State under section 75 of the P(LBCA)A 1990. These buildings are not currently subject to the requirement to obtain conservation area consent. In each case these buildings are either protected by other procedures or are trivial and do not justify additional control.

434. It would be a defence for a person accused of an offence under new section 196D to prove that:

a) the demolition was urgently necessary in the interests of safety or health;

b) it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter;

c) the demolition was the minimum measure necessary; and

d) notice in writing of the demolition was given to the local planning authority as soon as reasonably practicable.

435. This defence replicates the defence to unauthorised works affecting a listed building (section 9(3)(a) to (d) of the P(LBCA)A 1990) but modifies the defence so it is relevant to unauthorised demolition in a conservation area. A person guilty of an offence under section 196D is liable to the penalties set out in section 196D(5).

436. Paragraph 1 of this Schedule provides English Heritage with equivalent powers to those that it currently has in relation to conservation area consent under P(LBCA)A 1990. This is achieved by amending section 33 of the National Heritage Act 1983 to provide English Heritage (referred to in that Act as the "Commission") with the power to bring

a prosecution for an offence under section 196D of the TCPA 1990 and to apply to the court for an injunction under section 187B of that Act if it considers it necessary or expedient in relation to an actual or apprehended unauthorised demolition.

Listing of buildings of special architectural or historic interest in England

437. Paragraph 8 of this Schedule amends section 1 of the P(LBCA)A 1990, which deals with the listing of buildings of special architectural or historic interest. Section 1(5) of the P(LBCA)A 1990 provides that a listed building includes any object or structure fixed to the building or within the curtilage of the building, which although not fixed to the building, forms part of the land and has done so since before 1 July 1948. Paragraph 8 of this Schedule inserts new subsection (5A) into section 1 of the P(LBCA)A 1990 which allows the list, for buildings situated in England, to provide that such objects or structures are not to be treated as part of the listed building. It also allows the list, again for buildings situated in England, to state definitively that a particular part or feature of the building is not of special architectural or historic interest.

Certificates of immunity from listing

438. Paragraph 9 of this Schedule amends section 6 of the P(LBCA)A 1990. Section 6 of the P(LBCA)A 1990 currently provides a system of certificates of immunity from listing ("COIs"). A COI is a legal guarantee, in England issued by the Secretary of State, that a building will not be listed for 5 years from the date of issue. COIs are a useful tool where development is intended that would impact on a building that may be eligible for listing. They give certainty to developers and owners by removing the risk of a building being listed at a late stage in the preparation of planning proposals, thereby causing delay or even the abandonment of redevelopment schemes. Currently a person can apply for a COI for a building only where an application has been made for planning permission, or planning permission has been granted, for any development involving the alteration, extension or demolition of the building. Paragraph 9 of this Schedule amends section 6 to remove that restriction so that a COI can be applied for at any time for a building situated in England.

Equality Acts

Section 64: Commission for Equality and Human Rights

439. This section amends Part 1 of the Equality Act 2006, which makes provision for the Commission for Equality and Human Rights, to clarify the Commission's remit by removing some of its powers and duties and by reducing the frequency with which the Commission is required to report on progress in society so that its reports capture more meaningful change over time. This section also makes consequential amendments to the Equality Act 2006 and the Equality Act 2010.

440. Specifically, the section makes the following amendments to the Equality Act 2006:

- repeals section 10(1) and 10(4) to (7), which imposes a duty on the Commission to promote good relations between members of different groups, and section 19, which gives the Commission powers associated with section 10;
- repeals section 27, which enables the Commission to make arrangements for the provision of conciliation in certain non-employment-related disputes;
- amends section 12, to require the Commission to monitor and report on changes and developments in society which are consistent with its duties in sections 8 (Equality and diversity) and 9 (Human rights) instead of reporting on changes relevant to section 3. It also reduces the frequency with which the Commission is required to publish a report on progress from every 3 years to every 5.

441. The section also makes further amendments, consequential on these changes, to provisions in the Equality Act 2006 and the Equality Act 2010.

Section 65: Equality Act 2010: third party harassment of employees

442. Following a review of current legislation (sections 65 and 66) remove from the Equality Act 2010 measures which are considered to impose an unnecessary burden on business. The Government consulted on the repeal of these provisions.

443. Section 65 removes the provisions in section 40 of the Equality Act 2010 which make an employer liable for repeated instances of harassment of its employees by third parties, such as customers or clients, over whom the employer does not have direct control, where the employer knows about the harassment and does not take reasonable steps to stop it happening again.

Section 66: Equality Act 2010: obtaining information for proceedings

444. Section 66 removes section 138 of the Equality Act 2010 which provides a mechanism and statutory forms for a person who thinks that he or she may have been unlawfully discriminated against, harassed or victimised to obtain information from the person he or she thinks has acted unlawfully against him or her (that is to say, the potential respondent or defendant).

445. A potential complainant may still seek information from a potential respondent without the statutory procedure and a court or tribunal may consider any relevant questions and answers as part of the evidence in a case.

Regulatory Enforcement and Sanctions Act 2008

Section 67: Primary authorities

446. Sections 67 and 68 make amendments to provisions contained in Part 2 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA 2008"). Those provisions, introduced as a response to the Hampton Review, Reducing Administrative Burdens: Effective Inspection and Enforcement published in March 2005[2], sought to promote co-ordination of regulatory enforcement amongst local authorities by establishing the Primary Authority Scheme ("PAS").

447. Until 1 April 2012 the PAS was administered by the Local Better Regulation Office ("LBRO"), a statutory corporation created by the RESA 2008. On that date the Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 (SI No. 246 of 2012) dissolved LBRO and its functions in relation to the PAS were transferred to the Secretary of State.

448. The PAS enables a business trading across local authority areas to form a primary authority partnership with a single local authority in relation to regulatory compliance across all the local authority areas in which it operates. Through the partnership the business receives advice on compliance from the primary authority which other local authorities who regulate it must follow. This provides the business with certainty and consistency.

449. Section 67 amends section 22 of the RESA 2008 to broaden the eligibility requirements for the PAS.

450. Under the existing PAS a person is eligible only if they carry out an activity in the area of 2 or more local authorities, and each of those authorities has the same relevant function in relation to that activity. For example a business would be eligible where it sells a product in two different local authorities' areas and is subject to regulatory enforcement by trading standards in both those authorities' areas. The intention behind

2 http://www.berr.gov.uk/files/file22988.pdf

the amendments is to extend the PAS to businesses who share an approach to regulatory compliance, such as the members of a trade association, even if not all of them operate in the area of more than one local authority.

451. *Subsection (4)* inserts new subsections (1A) and (1B) into section 22 of the RESA 2008. These mean that a person is also eligible for the PAS if the Secretary of State is satisfied that they share an approach to regulatory compliance in relation to an activity with at least one other person and between them those persons are regulated, as regards the activity, by more than one local authority.

452. This means, for example, that where a number of members of a trade association are small businesses operating from single stores they could all be eligible for the PAS if the effect of their arrangements with their trade association meant that they shared an approach to compliance in relation to the same activity with other members operating in different local authority areas. Those arrangements might be, for example, that the trade association provides its members with regulatory guidance.

453. Those members of the trade association who had multiple sites across different local authority areas would be eligible for the PAS without needing to satisfy the conditions in new subsection (1B) because they would already come within the test in section 22(1) of the RESA 2008. However, the conditions in new subsection (1B) have deliberately been made fairly wide in order that, continuing with the above example, members of the trade association may apply to join the PAS on the basis of guidance from their association that is applicable to all of its members, without having to distinguish between members who do and do not happen to satisfy the existing eligibility test in section 22(1) of the RESA 2008.

454. *Subsection (5)* amends section 22(2) of the RESA 2008 to include a provision that the Secretary of State may publish guidance about the matters likely to be taken into account when deciding whether two or more persons share an approach to compliance for the purposes of new subsection (1B)(b) .

455. *Subsections (6)* and *(7)* make necessary consequential amendments.

Section 68: Inspection plans

456. Section 68 makes amendments to section 30 of the RESA 2008. That section makes provision for primary authorities that exercise the function of inspection to draw up inspection plans in respect of the regulated person with whom they have a relationship. These inspection plans are intended to act as a guide for other local authorities who also carry out inspections in relation to that person. For example, an inspection plan may set out details of compliance procedures established by a business on a national basis and may indicate areas which do not require inspection, or areas which should be focused upon for inspection purposes. Local authorities, including the primary authority, must have regard to these plans. The intention behind the amendments is to strengthen inspection plans and increase their use.

457. *Subsection (2)* inserts new subsection (3A) into section 30 of the RESA 2008 so that an inspection plan may require a local authority to provide the primary authority with a report on its inspection activities in respect of the regulated person. *Subsection (4)* inserts new subsection (7E) into section 30 of the RESA 2008 so that where an inspection plan includes such a requirement the local authority must provide this report.

458. Subsection (4) also inserts new subsections (7A), (7B), (7C) and (7D) into section 30 of the RESA 2008.

459. New subsection (7A) means that local authorities may not deviate from an inspection plan unless the primary authority has been given written notification of the deviation and given its consent (new subsections (7A)(a) and (b)). These provisions do not apply to inspections carried out by the primary authority but the amendments made by

subsection (3) mean that primary authorities remain under their existing obligation to have regard to inspection plans.

460. Where a local authority has notified the primary authority of its intention to deviate from an inspection plan when carrying out an inspection and the primary authority has failed to respond within 5 working days, the primary authority will be treated as having given consent to the deviation (new subsections (7B), (7C) and (7D)).

461. Subsection (7) inserts new subsections (9A) and (9B) into section 30 of the RESA 2008 which allow a primary authority to revoke an inspection plan and require that such revocation be brought to the attention of local authorities who may wish to carry out inspections.

462. *Subsections (5), (6) and (8)* make necessary consequential amendments.

463. *Subsection (9)* inserts a definition of "working day".

Miscellaneous

Civil liability for breach of health and safety duties

Summary and background

464. Professor Löfstedt's review *Reclaiming health and safety for all: An independent review of health and legislation* (November 2011) identified the potential unfairness that arises where health and safety at work regulations impose a strict liability on employers, making them legally responsible to pay compensation despite having done all that was reasonable to protect their employees. Professor Löfstedt recommended that regulatory provisions which impose strict liability should be reviewed. In its response to the review the Government recognised this unfairness and agreed to look at ways to redress the balance, in particular by preventing civil liability from attaching to a breach of such provisions.

465. The amendment to the Health and Safety at Work etc. Act 1974 ("HSWA 1974") reverses the present position on civil liability, with the effect, unless any exceptions apply, that it will only be possible to claim for compensation in relation to breaches of affected health and safety legislation where it can be proved that the duty holder (usually the employer) has been negligent. This means that in future, for all relevant claims, duty-holders will only have to defend themselves against negligence.

Section 69: Civil liability for breach of health and safety duties

466. Section 69 amends the HSWA 1974 in order to provide that there should be no civil right of action for breach of a duty imposed by certain health and safety legislation, other than where such a right is specifically provided for.

467. Previously, section 47(2) of the HSWA 1974 provided a right of action for breach of a duty contained in a health and safety regulation (a regulation made under section 15 of the HSWA 1974) if that breach caused damage. The section contained a power to make exceptions to this rule in the regulations that imposed the duty.

468. In addition, section 47(1)(b) provided that Part 1 of the HSWA 1974 did not affect whether or not a duty in one of the "existing statutory provisions" gave rise to a right of action. The "existing statutory provisions" are statutes listed in Schedule 1 to the HSWA 1974 that existed before the HSWA 1974 came into force (for example the Factories Act 1961) and secondary legislation made under those statutes. The effect of this was that if a right of action for breach of statutory duty existed (or had been excluded) under one of these statutes the position was not altered after the HSWA 1974 was enacted.

469. *Subsections (2) and (3)* taken together change the position by repealing section 47(1)(b), replacing section 47(2) and inserting sections 47(2A) and (2B).

470. New section 47(2) provides that there is no right of action for a breach of a health and safety regulation unless the regulations expressly provide for this. The provision applies to health and safety regulations (i.e. those made under section 15 of the HSWA 1974) and includes regulations which are made in reliance on other powers in addition to section 15 of the HSWA 1974, for example regulations that also rely on section 2(2) of the European Communities Act 1972.

471. The effect of the removal of section 47(1)(b) and the insertion of section 47(2A) is to remove any pre-existing rights of action accrued under the "existing statutory provisions" and exclude any claims for breach of statutory duty under those statutes. Regulations made under section 47(2A) can provide for an exception to this rule, and there is a power to modify the existing statutory provisions in order to create such an exception.

472. Previously section 47(3) of the HSWA 1974 enabled regulations to include a defence to an action and section 47(5) provided that any terms of an agreement which purported to exclude or restrict liability for a breach of duty would have no effect unless a regulation provided to the contrary. As there is no automatic right of action these provisions are no longer needed but a power has been provided so that similar provisions can be included in regulations that create any exceptions to the general rule. Accordingly section 47(2B)(a) provides that where exceptions have been made and a right of action created under either section 47(2) or section 47(2A) the regulations that create those exceptions can also provide the duty holder with a defence or defences to the action. Section 47(2B)(b) gives a power to include a provision in the regulations that would make agreements trying to exclude liability for breach of the duty ineffective.

473. *Subsection (8)* provides for the amendments of section 47 to have effect in relation to matters outside Great Britain if an Order in Council is in force (under section 84(3) of the HSWA 1974) that applies section 47 to matters (which means persons, premises, work, articles, substances or other matters) outside Great Britain.

474. The subject matter of the HSWA 1974 is reserved to the UK government but there are minor exceptions relating to fire safety. *Subsection (9)* excludes the application of any of the amendments to section 47 to a breach of duty which could be imposed in legislation made by the Scottish Parliament.

475. The effect of *subsection (10)* is that the relevant date for determining whether a claim can be brought is the date on which the breach took place, not the date on which the action is brought. Therefore as long as the alleged breach of statutory duty takes place before the amendments come into force a claim can still be brought, even if it is after the commencement of the amendments, subject to the usual time limits. For example, in an illness with a long latency period, such as mesothelioma (asbestos related cancer) a claim could still be brought in the future, where the breach of duty that led to the exposure to asbestos that caused the illness is shown to have taken place before the new provisions had come into force.

476. Other subsections make minor amendments consequent on the main changes set out above.

Estate Agents etc.

Summary and Background

477. The section extends a current exemption to the definition of 'estate agency work' within the Estate Agents Act 1979 ("EAA 1979") to update and clarify the scope of that legislation.

478. The EAA 1979 regulates persons engaging in estate agency work. Section 1 of the EAA 1979 sets out the definition of estate agency work. The definition provides that anyone acting on instructions from a client (who wants to buy or sell an interest in land) falls within the scope of the EAA 1979 if they do anything for the purpose of,

or with a view to, introducing a prospective buyer and seller, and then for the purpose of securing the sale or purchase. The definition is subject to certain exemptions. The current section 1(4) of the EAA 1979 exempts the publication of advertisements or the dissemination of information, but does not allow for any other act covered by the general definition to be done. Section 1(4) of the EAA 1979 pre-dates the growth of the internet. Currently, some private sales internet portals may be exempt from the EAA 1979 whilst others may be within its scope, depending on whether they simply provide advertising space or enable prospective parties to a property transaction to make contact in response to an advertisement, for example through an online messaging board.

Section 70: Estate agency work

479. Section 70 extends a current exemption to the definition of 'estate agency work' within the EAA 1979.

480. Section 70 excludes from regulation under the EAA 1979 businesses such as private sales internet portals which provide a means for prospective parties to a property transaction to make contact in response to an advertisement or property information. The exemption applies provided that such businesses do nothing further that is covered by the general definition. The intention of the amendment is to update and clarify the law regarding businesses such as private sales portals and to deregulate those businesses in providing services which simply allow buyers and sellers to find and communicate with one another, provided they do not otherwise participate in the transaction for example by advising, negotiating or providing other services.

Adjudicators

Summary and Background

481. Section 71 primarily makes provision amending Parts 9 and 14 of the Insolvency Act 1986 ("IA 1986"). Part 9 provides the legislative framework for bankruptcy proceedings in England and Wales. The purpose of the amendments is to reform the debtor bankruptcy petition procedure for obtaining a bankruptcy order under the IA 1986 by transferring the procedure from the civil court system to a new administrative system. The reforms are intended to free up court resources to deal with matters which do require judicial input, and to improve the accessibility of bankruptcy by facilitating the introduction of a flexible, electronic application process for debtors.

Section 71 and Schedules 18 and 19: Adjudicators: bankruptcy applications by debtors and bankruptcy orders

482. The IA 1986 currently makes provision for debtors to petition the court to be made bankrupt. *Subsection (1)* of section 71 inserts new section 398A into Part 14 of the IA 1986, and through *subsection (2)* and Schedule 18 inserts a new Chapter A1 (comprising new sections 263H to 263O) into Part 9 of the 1986 Act. *Subsection (3)* introduces Schedule 19 which makes minor and consequential amendments to the IA 1986. These amendments provide that debtors who wish to be made bankrupt must apply to an adjudicator for a bankruptcy order. A debtor will no longer be able to petition the court for such an order.

483. New section 398A of the IA 1986 provides for the Secretary of State to appoint persons to the new office of adjudicator.

484. New sections 263H to 263J of the IA 1986 provide that a debtor may apply to an adjudicator to be made bankrupt on the ground that he or she is unable to pay his or her debts, provided that other specified conditions are met. An application will not be regarded as having been made until any fee or deposit that is required by an order made under section 415 of the IA 1986 has been properly paid.

485. New section 263I sets out the jurisdiction requirements to be met by a debtor when making a bankruptcy application to the adjudicator. These are unchanged from the

current requirements that apply in relation to debtor and creditor bankruptcy petitions under section 265 of the IA 1986. However, the drafting of the jurisdiction requirements in new section 263I is intended to make the requirements more easily understood by users of the legislation; and to better reflect the practical application of this provision in the light of European law. Paragraph 7 of Schedule 19 makes a consequential amendment to section 265 of the IA 1986 to narrow the scope of this section so that it applies to creditor bankruptcy petitions only and to adopt the approach taken in new section 263I. This will avoid any possible confusion arising out of having two sections with different drafting that purport to have an identical effect. It will ensure that both creditor bankruptcy petitions and debtor bankruptcy applications will be subject to exactly the same, unchanged, jurisdiction requirements.

486. New section 263K provides that where the specified conditions are met, the adjudicator must make a bankruptcy order. A bankruptcy application must be refused by the adjudicator if the conditions are not met. The form and content of the application will be prescribed in Rules made under section 412 of the IA 1986 ("the Rules"). Paragraph 65 of Schedule 19 amends Schedule 9 to the IA 1986 to provide powers to make such provision, and provision about the practice and procedure of adjudicators generally. Under *subsection (4)* an adjudicator must determine a bankruptcy application within a time period that will be prescribed in the Rules.

487. New section 263L(1) to (3) permits an adjudicator to request further information from the debtor provided it is necessary for the purposes of determining whether a bankruptcy order must be made. Subsection (4) provides that the Rules may make provision for the adjudicator to request information from a third party. The Government's intention is to use this provision to require an adjudicator to undertake checks with a credit reference agency for the purpose of verifying information contained in the bankruptcy application.

488. New section 263M sets out what an adjudicator must do when making a bankruptcy order. *Subsection (2)* provides that bankruptcy orders made by an adjudicator must be made in the form prescribed in the Rules.

489. Where a bankruptcy application is refused, new section 263N provides the debtor with the right to request a review of the adjudicator's decision before the end of the time period prescribed in the Rules. Where the review upholds the decision to refuse to make a bankruptcy order, the debtor has a right of appeal to the court. In the event that the appeal is successful, the court will have the power to make a bankruptcy order. The court will retain general jurisdiction over bankruptcy proceedings after a bankruptcy order has been made by an adjudicator under the IA 1986.

490. New section 263O creates two offences relating to the provision of information to adjudicators. Paragraph 66 of Schedule 19 amends Schedule 10 to the IA 1986 to provide for the maximum punishments for these offences. Section 432 of the IA 1986 (offences by bodies corporate) will apply to an offence under section 263O.

491. Beyond the amendments already mentioned, Schedule 19 makes minor and consequential amendments to the IA 1986. In particular, Chapter 1 of Part 9 is amended to remove provision relating to debtor bankruptcy petitions, and the appointment by the court of insolvency practitioners in relation to such petitions. There will be no equivalent in respect of applications to an adjudicator.

492. Paragraphs 20, 21, 23 and 24 of Schedule 19 amend sections 293, 295, 298 and 299 of the IA 1986 to provide that certain documents relating to the appointment, removal and release of trustees, currently filed with the court, must instead be filed with the persons prescribed in the Rules. That is likely to continue to be the court in creditor initiated bankruptcies and could, for example, be the Official Receiver, Adjudicator, Secretary of State or the court in debtor initiated bankruptcies. The purpose of these amendments is to enable the Government to modernise and make more efficient all of the filing and document inspection processes that govern bankruptcies.

493. Paragraph 59 of Schedule 19 amends section 415 of the IA 1986 to provide that a fees order made under that section may make different provision for different purposes, including by reference to the manner or form by which proceedings are commenced. The purpose of this amendment is to provide the Lord Chancellor with some flexibility in fixing fees so as to take account of more cost-efficient ways of submitting, processing and determining applications.

494. Paragraph 65(4) of Schedule 19 inserts new paragraphs 24A to 24D into Schedule 9 to the 1986 Act. Schedule 9 sets out the provision which may be included in the Rules. New paragraphs 24A, 24C and 24D provide powers to make provision about the responsibility of specified persons (namely, the adjudicator, the official receiver and persons prescribed under sections 293, 295, 298 or 299 of the IA 1986) to keep files and records relating to bankruptcy applications, and to allow for the inspection of such by prescribed persons. New paragraph 24B provides a power to require an adjudicator to make returns to the Secretary of State of the adjudicator's business under Part 9 of the IA 1986.

495. Provision for such other consequential and transitional amendments as may be necessary will be made using the powers contained in sections 99 (consequential amendments, repeals and revocations) and 100 (transitional, transitory or saving provision).

Agricultural Wages Board

Section 72 and Schedule 20: Agricultural Wages Board

496. Section 72 and Schedule 20 abolish the Agricultural Wages Board for England and Wales and related English bodies

497. The Agricultural Wages Act 1948 ("AWA 1948") established the Agricultural Wages Board ("AWB") for England and Wales as an independent body with a statutory duty to set a minimum wage rate for agricultural workers and with discretion to set other minimum terms and conditions. The AWA 1948 provides that the AWB's functions exist in relation to each of the counties and combinations of counties for which Agricultural Wages Committees ("AWCs") have been established. There are 15 AWCs in England and 1 AWC for the whole of Wales.

498. Agricultural Dwelling House Advisory Committees ("ADHACs") were established under the Rent (Agriculture) Act 1976. They provide advice upon request on the urgency and agricultural need of an application by a landlord for re-housing a tenant in tied accommodation in order to provide accommodation for an incoming agricultural worker. There are 16 ADHACs in England and 1 ADHAC for the whole of Wales. Members of ADHACs are appointed by the Chair of the local AWC as necessary.

499. This section provides for the abolition of the AWB in England and Wales and the 15 AWCs and 16 ADHACs in England. The AWC and ADHAC for Wales are not abolished.

500. The section also introduces Schedule 20, which makes consequential provision in respect of relevant primary and secondary legislation. In particular, the Schedule amends the Rent (Agriculture) Act 1976 to remove the ability to apply for the advice of an ADHAC in England, repeals the main provisions of the AWA 1948 and amends the National Minimum Wage Act 1998 to bring agricultural workers in England and Wales within scope of that Act.

Section 73, Schedule 21: Unnecessary regulation: miscellaneous

Part 1, Schedule 21: Notification of TV sales etc.

501. The purpose of Part 1 of Schedule 21 is to repeal the requirement under the Wireless Telegraphy Act 1967 on retailers to notify TV Licensing of sales and rentals of television sets. TV Licensing is the BBC agency responsible for the collection of the television licence fee and the enforcement of the television licensing system. The definition of television sets for these purposes set out in regulation 11 of the Communications (Television Licensing) Regulations 2004 (S.I. 2004/692) covers analogue and digital TV sets, DVD and video recorders, digital boxes and computers (including laptops) with TV cards.

502. The aim of the current requirement is to assist TV Licensing in maximising television licence revenue. The information provided by retailers helps TV Licensing to identify those individuals, businesses and bodies which must hold a television licence. TV Licensing can then take steps to ensure that the individual, business or body purchases a TV Licence, which helps to maximise the television licence revenue provided to the BBC.

503. A Government review of the requirement concluded that it imposed an undue administrative burden on retailers. For example, many purchases are by people who already own a set.

504. Paragraph 1 in Part 1 of Schedule 21 repeals the Wireless Telegraphy Act 1967, the remaining provisions of which impose requirements on television dealers in relation to the notification of the sale or hire of television sets, as defined in the Communications (Television Licensing) Regulations 2004.

505. Paragraph 2 lists consequential repeals which will also have effect.

506. Paragraph 3 is a saving provision in relation to the repeal of section 3 of the Post Office Act 1969.

Part 2, Schedule 21: Water undertakers: in-area ban

507. The removal of the in-area trading ban, included in standard licence conditions by virtue of section 2(3)(d)(iii) of the Water Industry Act 1991, will remove barriers to retail competition in the water sector. The removal of this provision was recommended in Ofwat's review of the water supply licensing regime, which allows large users of water to change their water supplier.

508. The in-area trading ban prevents associate suppliers of water undertakers from trading in the area of their parent water company and therefore prevents them from competing for national multi-site contracts. This puts them at a competitive disadvantage with other water suppliers who have no restrictions on where they can supply water.

509. The repeal of section 2(3)(d)(iii) of the Water Industry Act 1991 will remove the requirement on the Secretary of State or Ofwat to impose a condition in the licence of a licensed water company associated with a water undertaker to prevent the licensed water company from trading in the area of that undertaker. This provision is implemented by a statutory licence condition determined by the Secretary of State under section 17H of the Water Industry Act 1991 and imposed on all companies. Once the requirement has been removed, Ofwat will need to follow the statutory mechanisms for amending licence conditions in sections 17I to 17R of the Water Industry Act 1991.

510. As a result, licensed water companies that are associated with undertakers will be able to compete for multi-site water supply contracts, once Ofwat amends the standard licence conditions.

Part 3, Schedule 21: Bankruptcy early discharge procedure

511. The EA 2002 introduced provisions into the Insolvency Act 1986 reducing the duration of bankruptcy to 12 months. It also introduced the early discharge provisions. The intention behind the early discharge provisions was to benefit those bankrupts who co-operated with the official receiver's inquiries and who posed no risk to the public or commercial community. These bankrupts would be allowed a 'fresh start' sooner than 1 year.

512. An evaluation of the provisions introduced was carried out in 2007 (as part of the "Enterprise Act 2002 - the Personal Insolvency Provisions: Final Evaluation Report"[3]). This evaluation found that early discharge from bankruptcy did not have the desired impact of encouraging early rehabilitation.

513. Part 3 of Schedule 21 repeals section 279(2) of the Insolvency Act 1986 which allows a bankruptcy to end within a year in certain limited circumstances. Discharge from bankruptcy happens in most cases automatically one year from the date of the bankruptcy order (see section 279(1) of that Act). Under section 279(2), a bankrupt may be discharged earlier than the automatic one year by the official receiver filing a notice of early discharge at the court stating that inquiries into the conduct and affairs of the bankrupt under section 289 of that Act are unnecessary or concluded.

514. Before filing this notice the official receiver is required by Rule 6.214A of the Insolvency Rules 1986 (SI 1986/1925) to send notice of his or her intention to begin the early discharge process to all the bankrupt's creditors and to any trustee (if one has been appointed). The official receiver may only file the notice with the court if no objections have been received or if any objections which have been received have been finally determined.

3 www.insolvency.gov.uk